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INVESTIGATIONS OF MARITIME ACCIDENTS INVOLVING PASSENGER SHIPS IN THE REPUBLIC OF CROATIA

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The paper elaborates on national provisions regulating the conduct of safety and administrative investigations for marine casualties and incidents in the Republic of Croatia. On 5 November 2015, the Government of the Republic of Croatia adopted the Regulation on the Methods and Conditions for Conducting Safety Investigation of Marine Casualties and Incidents, which transposes in the legal order of the Republic of Croatia Directive 2009/18/EC of the European Parliament and of the Council of 23 April 2009 establishing the fundamental principles governing the investigation of accidents in the maritime transport sector and amending Council Directive 1999/35/EC and Directive 2002/59/EC of the European Parliament and of the Council. The conducting of administrative investigation in the Republic of Croatia is regulated by the Ordinance on the Methods, Requirements and Powers for Conducting Administrative Investigation of Marine Casualties enacted in 2016. Unlike safety investigation, administrative investigation is conducted to collect evidence and data for detecting the perpetrator of a maritime accident and to ascertain his/her misdemeanour and criminal responsibility. The authors present the outcomes of safety and administrative investigation procedures to effectively establish the circumstances and causes of such casualties and incidents for the purpose of improving maritime safety and reducing the risk of future casualties involving passenger ships and preventing pollution from ships.

Keywords: *safety investigation; administrative investigation; marine casualty; safety of navigation; protection of the marine environment.*

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1. INTRODUCTION

The protection of human life at sea, maintaining a high level of safety of navigation and protecting or preventing pollution of the marine environment are imperatives for every maritime state. A developed and effective system for carrying out safety investigations aimed at identifying the causes of an accident and proposing measures to avoid maritime accidents, and administrative investigations carried out to determine the perpetrator of a maritime accident and his/her misdemeanour liability are certainly among the steps that contribute to achieving these goals. The International Maritime Organization and the European Union have made efforts to establish common rules and methodologies for carrying out safety investigations. According to Directive 2009/18/EC, EU Member States need to establish independent, impartial and permanent accident investigation bodies, investigate casualties depending upon their severity, publish investigation reports and notify the European Commission of marine casualties and incidents via the European Marine Casualty Information Platform. Passenger ships as a special category of vessels must meet stringent and comprehensive technical requirements for navigation safety, which generally implies a higher level of safety in relation to other types of ships. The constant increase in the number of passengers and in the number of passenger ships results in greater danger to people in the event of a marine incident. Therefore, carrying out safety investigations and creating high-quality safety precautions are extremely important. In assessing whether and to what extent the Croatian maritime legal system has implemented international and EU solutions for investigating marine incidents and for carrying out administrative investigations, the authors present the relevant Croatian legal provisions provided in the Maritime Code, the Regulation on the Methods and Conditions of Conducting Safety Investigation of Marine Casualties and Incidents and the Ordinance on the Methods, Requirements and Powers for Conducting Administrative Investigation of Marine Casualties.

2. INTERNATIONAL LEGAL FRAMEWORK

2.1. The International Convention for the Safety of Life at Sea

The IMO legal framework provides a common and consistent approach for States to adopt in the conduct of marine safety investigations. Regulation I/21 of the International Convention for the Safety of Life at Sea prescribes the obligation of each administration to conduct an investigation of any casualty occurring

to a ship subject to the provisions of the present Convention when it judges that such an investigation may assist in determining what changes in the present regulation may be desirable. According to paragraph 2, each Contracting Government undertakes to supply the Organization with pertinent information concerning the findings of such investigations.

2.2. Resolution A.849(20) Code for the Investigation of Marine Casualties and Incidents

The Code for the Investigation of Marine Casualties and Incidents¹ was adopted to facilitate objective marine safety investigations for the benefit of flag States, coastal States, the Organisation and the shipping industry in general.

The purpose of this Code is to promote a common approach to the safety investigation of marine casualties and incidents, and also to promote cooperation between States in identifying the contributing factors leading to marine casualties. Flag States are encouraged to ensure that investigations are carried out into all casualties occurring to its ship. The lead investigating State should be responsible for developing a common strategy for investigating the casualty in liaison with substantially interested States, providing the investigator in charge and coordinating the investigation, establishing the investigation parameters, being the custodian of records and interviews and other evidence, coordinating with other agencies conducting other investigations, and providing logistical support and liaison.² Reports of a casualty investigation should include a summary outlining the basic facts and stating whether any deaths, injuries or pollution occurred as a result.³

¹ Code for the Investigation of Marine Casualties and Incidents adopted by IMO Resolution A.849(20) of 27 November 1997.

² See Luttenberger, A., *Improving Legal Standards in Marine Accident Investigation Activities*, *Proceedings IMLA 20*, Maritime Institute Willem Barentsz, Netherlands, 2012, pp. 2-3.

³ Article 14.2 of the Code. The report also includes the identity of the flag State, owners, managers, the company, the classification society, details of the dimensions and engine of the ships involved, with a description of the crew, work routine, a narrative detailing the circumstances of the casualty, analysis and comments which should enable the report to reach logical conclusions, or findings, establishing all factors that contributed to the casualty, a section analysing and commenting on the casual elements, including both mechanical and human factors, and, where appropriate, recommendations with a view to preventing similar casualties.

2.3. Resolution A.884(21) Amendments to the Code for the Investigation of Marine Casualties and Incidents

Resolution A.884(21)⁴ adopts the Amendments to the Code for the Investigation of Marine Casualties and Incidents, incorporating the Guidelines for the investigation of human factors in marine casualties and incidents. The general investigation procedure and techniques include the timing of the investigation, the site of occurrence, witness and background information, the investigation sequences, fact finding and methods of conducting interviews and the selection of interviews on site and remote from the site of occurrence. Topics to be covered by the investigator are human factors, the organisation on board, the working and living conditions, the ship factor, shore side management, external influences and the environment, analysis, the reporting procedure and the qualifications and training of investigators.

3. THE EU LEGAL FRAMEWORK

3.1. Directive 2009/18/EC of the European Parliament and the Council of 23 April 2009 establishing the fundamental principles governing the investigation of accidents in the maritime transport sector and amending Council Directive 1999/35/EC and Directive 2002/59/EC of the European Parliament and of the Council

The European Union has made (certain) efforts in the development and implementation of the basic principles and common methodology for conducting safety and administrative investigation.⁵

⁴ Resolution A.884(21) adopted on 25 November 1999. In May 2008, the IMO adopted a new Code of the International Standards and Recommended Practices for a Safety Investigation into a Marine Casualty or Marine Incident (Casualty Investigation Code) which entered into force on 1 January 2010. The new regulations expand on the SOLAS regulation I/21. The Code now requires a marine safety investigation to be conducted into every “very serious marine casualty”, defined as a marine casualty involving the total loss of the ship or a death or severe damage to the environment. The Code also recommends an investigation into other marine casualties and incidents, by the flag State of the ship involved, if it is considered likely that it would provide information that could be used to prevent future accidents.

⁵ The European Maritime Safety Agency (EMSA) has a very important role. According to Article 2 of Regulation 1406/2002/EC of the European Parliament and of the Council of 27 June 2002 establishing a European Maritime Safety Agency, the EMSA shall facilitate cooperation between Member States of the European Union and the European Commission in the development, with due regard to different legal systems in the Member States, of a com-

Directive 2009/18/EC was adopted in 2009⁶ and forms an integral part of the Third EU Maritime Safety Package.⁷ Directive 2009/18/EC aimed at harmonising EU legislation in the field of safety of maritime navigation, the fundamental principles of the investigation of marine casualties, as well as investigative methods and procedures.

Directive 2009/18/EC lays down the power of EU Member States to establish, in accordance with their legal systems, the legal status of marine safety investigations.⁸ In line with this Directive, the marine safety investigation procedure should be effective, conducted in an impartial manner, and should be transparent, expeditious and independent of other parallel investigations.

Member States must define, in accordance with their legal systems, the legal status of the safety investigation in such a way that such investigations can be carried out as effectively and rapidly as possible.

Member States need to ensure, in accordance with their legislation and, where appropriate, through collaboration with the authorities responsible for the judicial inquiry, that these safety investigations are independent of criminal or other parallel investigations held to determine liability or apportion blame, which are not unduly precluded, suspended or delayed by reason of such investigations. Safety investigations carried out under this Directive shall result in a published report presented in a format defined by the competent investigative body.

Member States must ensure that the safety recommendations made by the investigative bodies are duly taken into account by the addressees and, where appropriate, that they are given an adequate follow-up in accordance with Community and international law.

mon methodology for investigating maritime accidents according to agreed international principles, in the provision of the support of Member States in activities concerning investigations related to serious maritime accidents, and in carrying out of an analysis of existing accident investigation reports.

⁶ OJ L 131, 28. 5. 2009, pp. 114-131.

⁷ The Third Maritime Safety Package, known as ERIKA III, was adopted by the European Parliament and entered into force on 17 June 2009 with the main aim of creating stricter regimes regarding port State control and classification societies. It also regulates the investigation of maritime accidents and traffic monitoring.

⁸ Directive 2009/18/EC does not define the concept of safety investigation itself but refers to the application of the definition contained in para. 4.6 of the Code for the Investigation of Marine Casualties and Incidents.

3.2. Commission Regulation (EU) No 1286/2011 of 9 December 2011 adopting a common methodology for investigating marine casualties and incidents developed pursuant to Article 5(4) of Directive 2009/18/EC of the European Parliament and of the Council

Regulation (EU) No 1286/2011⁹ provides the common methodology for investigative bodies of the Member States to conduct marine safety investigations in accordance with Directive 2009/18/EC in order to achieve a high level quality investigation. The methodology aims to establish a common approach applicable in principle to all investigations carried out in accordance with Directive 2009/18/EC.

4. NATIONAL LEGAL FRAMEWORK

4.1. Maritime Code

The Republic of Croatia has implemented international rules and EU regulations into its own legislation. The issue regarding the conduct of safety and administrative investigations in the Republic of Croatia is regulated by the Maritime Code.¹⁰ The Maritime Code was passed in 2004 and has been changed several times since then. Article 49, paragraph 1 of the Maritime Code of 2004 regulated the duty of the Ministry competent for maritime affairs to investigate any accident of a ship of Croatian nationality, as well as of a ship of foreign nationality having an accident in the internal waters or territorial sea of the Republic of Croatia if the accident resulted in the death or serious injury of Croatian citizens, in a major loss of or damage to property, or in the pollution of the marine environment. This regulation clearly shows that the legislator does not make a distinction between safety and administrative investigations but speaks of “investigation”. In applying the provision under Article 49, paragraph 1 of the Maritime Code, it is prescribed that it applies only to ships, but not to other waterborne or maritime craft. The Act of 2011 that amends the Maritime Code changed the area of application of the provision under Article 49, paragraph 1 in a manner that it regulates the carrying out of safety and administrative investigations regarding the casualty of a Croatian vessel (maritime craft), as well as one of foreign nationality.¹¹ Article 49, paragraphs 1 and 2 of the Croatian Maritime Code as amended in 2011 prescribe that any

⁹ OJ L 328/40, 10. 12. 2011.

¹⁰ *Official Gazette of the Republic of Croatia*, No. 181/04.

¹¹ *Official Gazette of the Republic of Croatia*, No. 61/11.

accident involving waterborne craft of Croatian nationality, as well as waterborne craft of foreign nationality having an accident in the internal waters or territorial sea of the Republic of Croatia if the accident has resulted in death or serious injury, in a major loss of or damage to property, or in the pollution of the marine environment, must be investigated.¹² This amendment regulates the purpose of carrying out safety¹³ and administrative investigation¹⁴ and, for the first time, prescribes that administrative investigation is to be carried out by the Ministry competent for maritime affairs.¹⁵

In August 2018, the Government of the Republic of Croatia proposed to the Croatian Parliament the Act on Amendments to the Maritime Code. The Act on Amendments to the Maritime Code enacted in 2019¹⁶ primarily defines the following terms: marine casualty, very serious marine casualty, serious marine casualty and marine incident.¹⁷ The amendments prescribe that the Ministry carries out the investigations of maritime offences in accordance with the rules that regulate misdemeanour procedures for the purpose of finding and punishing the perpetrator of maritime offences related to a marine casualty or marine incident.¹⁸ Article 49k defines the status¹⁹ and the powers²⁰ of the Air, Maritime and Railway Casualty Investigation Agency. The provision defining what is considered an obstruction of safety investigation is particularly important.²¹

¹² This provision was not changed by the Act on Amendments to the Maritime Code of 2015, *Official Gazette of the Republic of Croatia*, No. 26/15.

¹³ Safety investigation is carried out for the purpose of promoting navigation safety (Article 49, paragraph 4 of the Maritime Code as amended in 2011).

¹⁴ Administrative investigation is conducted to collect evidence and data for detecting the perpetrator of a maritime accident and ascertain his/her misdemeanour and criminal responsibility (Article 49, paragraph 3 of the Maritime Code as amended in 2011).

¹⁵ Article 49, paragraph 5 of the Maritime Code as amended in 2011.

¹⁶ *Official Gazette of the Republic of Croatia*, No. 17/19. These amendments deleted Article 49 of the Maritime Code and added a new chapter I. b entitled “Investigation of Maritime Accidents”.

¹⁷ Article 9 of the Act on Amendments to the Maritime Code of 2019.

¹⁸ Article 9 of the Act on Amendments to the Maritime Code of 2019 (new Article 49j, paragraph 1 of the Maritime Code).

¹⁹ The Agency acts as an independent entity with public authority established by special law (Article 9 of the Act on Amendments to the Maritime Code of 2019).

²⁰ The Agency is authorised to issue safety recommendations based on the results of the safety investigation with the proposed corrective measures.

²¹ Article 9 of the Act on Amendments to the Maritime Code of 2019 (new Article 49.m, paragraph 2 of the Maritime Code). By hindering the safety investigation, the following

Official acts related to a marine casualty conducted (according to special regulations) by other state or judicial authorities and officials of those authorities are not considered an obstruction of the safety investigation.²² For the purpose of harmonisation with the regulation of Article 22 of Directive 2009/18/EC, in its part regarding maritime offences, the Maritime Code sets out the penalty rules for breaching national provisions regarding safety investigation. A legal person will be fined with an effective, proportionate and dissuasive financial penalty if such a legal person within the prescribed deadline does not inform the Agency about applying remedial actions from a safety recommendation, or provide reasons for not applying them or only partially applying them, if it does not promptly or without any delay inform the Agency on the findings on the occurrence of a marine casualty, and if it obstructs the safety investigation of a marine casualty, all in the manner prescribed by law.²³

shall be considered in particular: 1) not informing the Agency of a maritime accident, within the time and prescribed manner; 2) preventing, disabling or obstructing the officials of the Agency with regard to access to areas or places of an accident, witnesses, vessels involved in maritime accidents, wreckage, sunken things, cargo, cargo residues, equipment, data from maritime charts and ship logs, electronic and magnetic records, audio and video tapes, data from the VDR or other electronic devices relating to the period before, during and after the accident, and other devices and data considered by the Agency to be useful for carrying out a maritime accident investigation; 3) the handling, use, disposal or other use of ship and other equipment after a maritime accident, without the prior consent of the Agency; 4) the handling, use, disposal or other use of data logs and ship logs, electronic and magnetic records, audio and video tapes, data from the VDR or other electronic devices relating to the period before, during and after the accident, without the prior permission of the Agency; 5) extraction and/or removal of wreckage and sunken things related to the maritime accident without the prior permission of the Agency; 6) the unauthorised conducting of other activities and activities related to the maritime accident, without the prior consent of the Agency; 7) refusal to give a statement to the official persons of the Agency, within the deadline and in the manner determined by the Agency; 8) giving false statements or declarations; 9) failure to comply with the Agency's request for information that the Agency considers useful for the conduct of a maritime accident investigation within the deadline and in the manner determined by the Agency; and 10) the non-disclosure by the Agency of the corrective measures contained in the Agency's Safety Recommendation within the deadline and in the manner prescribed in Article 49k, paragraph 6 of the Code.

²² Article 9 of the Act on Amendments to the Maritime Code of 2019 (new Article 49m, paragraph 3 of the Maritime Code).

²³ Article 263 of the Act on Amendments to the Maritime Code of 2019.

4.2. Regulation on the Methods and Conditions for Conducting Safety Investigation of Marine Casualties and Incidents

According to the Article 49 of the Maritime Code as amended in 2011, implementing acts have been passed that define the issue of conducting a safety investigation and administrative investigation in 2015 and 2016. Conducting a safety investigation is stipulated by the Regulation on the Methods and Conditions for Conducting Safety Investigation of Marine Casualties and Incidents.²⁴

According to the provisions of this Regulation, a safety investigation is conducted with the aim of defining what happened, why it happened and how to avoid similar marine casualties and incidents in the future. A further benefit of conducting a safety investigation is certainly to improve maritime safety and to reduce the risk of pollution from ships.

A safety investigation in the Republic of Croatia is carried out by the Air, Maritime and Railway Casualty Investigation Agency. The Agency was established in 2013 by the Act on the Establishment of the Air, Maritime and Railway Casualty Investigation Agency. The agency acts as a legal entity with public authority and is responsible for its work to the Government of the Republic of Croatia. Article 6, paragraph 3 of the Act stipulates the activities and powers of the Agency. The Agency: a) conducts marine safety investigations; b) provides safety recommendations to improve safety in maritime transport; c) manages the national database of marine casualties; d) exchanges data from the national database with other investigation bodies; e) reports to the European Commission on marine casualties and incidents; f) prepares, issues and announces reports of marine safety investigations.²⁵

The Regulation on the Methods and Conditions for Conducting Safety Investigation of Marine Casualties and Incidents provides for cases where safety investigation is compulsory and when it is not. In accordance with Article 6, paragraph 1 of the Regulation, a safety investigation must be initiated in the event of very serious marine casualties.

²⁴ *Official Gazette of the Republic of Croatia*, No. 122/15.

²⁵ *Official Gazette of the Republic of Croatia*, No. 54/13. In 2018 the Act on Amendments to the Act on the Establishment of the Air, Maritime and Railway Casualty Investigation Agency (*Official Gazette of the Republic of Croatia*, No. 96/18) was passed. The Act on Amendments brings new regulations that ban the suspension and obstruction of the Agency's official work (Article 2 of the Act on Amendments to the Act), as well as misdemeanour regulations for such acts; in such a manner, the Agency may perform its work without hinderance (Article 7 of the Act on Amendments to the Act). Article 5 of the Act on Amendments to the Act foresees the forming of permanent and temporary expert advisory bodies with the aim of achieving high quality and prompt Agency work.

In that case, the principal investigator is obliged to initiate a safety investigation immediately or in the shortest possible time. The deadline for initiating an investigation is set at 30 days after the incident at the latest. With such a solution, Croatian legislation differs from the solution provided by Directive 2009/18/EC whose Article 5, paragraph 5 prescribes that a safety investigation shall be started as promptly as is practicable after the marine casualty or incident occurs and, in any event, no later than two months after its occurrence. While Directive 2009/18/EC prescribes a single deadline for all kinds of marine casualties and incidents, Croatia's Regulation differentiates deadlines for initiating an investigation of a very serious marine casualty with a deadline of 30 days after the casualty, while for initiating a serious safety investigation it is prescribed that the main investigator shall act immediately or in the shortest possible time.²⁶

In the case of a serious marine casualty, the principal investigator shall carry out a preliminary assessment to decide whether or not to undertake a safety investigation.

If a marine casualty is not considered to be very serious, or in the case of a serious marine casualty and in the event of a marine incident, the principal investigator will decide, based on the data collected, whether or not to initiate a safety investigation.²⁷ If the principal investigator decides not to launch a safety investigation, the principal investigator must explain the reasons for bringing such a decision. The substantially interested Member State or the competent Ministry may initiate an administrative dispute against the decision not to initiate a safety investigation, all according to the rules of the administrative procedure.

Article 28 of the Regulation prescribes the obligation of the Agency to take into consideration the relevant provisions of the IMO guidelines on the fair treatment of seafarers in the event of a maritime accident.

Every safety investigation ends with the publication of a final report on the results of the conducted investigation. The final report cannot be used as evidence in a judicial procedure that has the aim of establishing the civil, administrative or criminal responsibility of the individual. Directive 2009/18/EC prescribes the deadline for making and publishing reports within 12 months of the day of the casualty. If it is not possible to produce a final report within that time, the investigating body is obliged to publish an interim report within 12 months

²⁶ Article 6, paragraph 2 of the Regulation on the Methods and Conditions for Conducting Safety Investigation of Marine Casualties and Incidents.

²⁷ Article 6, paragraph 4 of the Regulation on the Methods and Conditions for Conducting Safety Investigation of Marine Casualties and Incidents.

of the date of the casualty.²⁸ In the opinion of the authors, there may be a certain omission here since there is no provision to prescribe the final deadline for making the final report. According to the mentioned regulation, the investigating body, under the assumption that it has published an interim report, could, for example, publish a final report after 36 months of the day of the casualty. If understood in this way, the purpose of carrying out a safety investigation, which is the prevention of future marine incidents or casualties, the promotion of navigation safety, and the prevention of pollution from ships, would be partly lost.

The Regulation modified the solution included in Directive 2009/18/EC in such a way that the prescribed obligation of the Agency is that, in the case of publishing an interim report, it will release an interim statement at least on each anniversary of the casualty or incident, detailing the progress of the investigation and any safety issues raised.²⁹

Safety recommendations are a very important part of the final report. They can be published together within the final reports or as separate recommendations. It is important to emphasise that safety recommendations cannot in any case determine responsibility or apportion guilt for a marine casualty or marine incident. Safety recommendations are brought for the addressees that need to implement the proposed safety measures contained in the safety recommendation. The mentioned addressees, among others, may be: shipowners, managers (companies), recognised organisations, vessel traffic services/maritime traffic control and management services, port authorities, etc.³⁰

Article 22, paragraph 3 of the Regulation prescribes the obligation of the addressees of the safety recommendations and their representatives having a seat in the Republic of Croatia, within a period of three months of receipt of that letter, to give feedback to the Agency on the actions taken and on the implementation of the proposed safety measures encompassed by each safety recommendation.

²⁸ Article 14, paragraph 2 of Directive 2009/18/EZ.

²⁹ Article 20, paragraph 4 of the Regulation on the Methods and Conditions for Conducting Safety Investigation of Marine Casualties and Incidents.

³⁰ According to the common methodology any recommendation shall be: necessary, likely to be effective, practicable, relevant, targeted, stated in a clear, concise and direct manner, stated so that it can be the basis for corrective action plans, highlighting the safety gap that needs to be addressed, to facilitate as much as possible acceptance and implementation by the recipients (Commission Regulation (EU) No 1286/2011 of 9 December 2011 adopting a common methodology for investigating marine casualties and incidents developed pursuant to Article 5 (4) of Directive 2009/18/EC of the European Parliament and of the Council, OJ L 328736. 10. 12. 2011).

For the purposes of storing the data on marine casualties and incidents, the Republic of Croatia has established a database under the name Croatian Marine Casualty Information Platform, run by the Agency. The Agency must also bring a Protocol on informing and data entry on marine casualties and incidents into the national database. Article 26, paragraph 3 of the Regulation foresees the possibility for the database to be searched by external shareholders. It is not expressly defined who has access to the database since the following formulation is used: “all interested economic and other subjects of maritime transport”. This means that the Agency in each individual case decides on approving access.

4.3. Ordinance on the Methods, Requirements and Powers for Conducting Administrative Investigation of Marine Casualties

Another type of investigation is an administrative investigation. An administrative investigation in the Republic of Croatia is conducted in accordance with the provisions of the Ordinance on the Methods, Requirements and Powers for Conducting Administrative Investigation of Marine Casualties.³¹

An administrative investigation is carried out independently of a safety investigation of a marine casualty. It is important to say that the purpose of an administrative investigation and safety investigation is different. The purpose of an administrative investigation is to find the perpetrator and detect objects, traces, and other evidence that may serve to determine the facts in a misdemeanour or criminal procedure. Launching and conducting an administrative investigation is carried out *ex officio*.³²

According to Article 2, paragraph 1 of the Ordinance, the Ordinance applies to marine casualties where there were deaths, severe bodily injury, damage to the property, or pollution of the sea

- a) which includes waterborne and other maritime craft having Croatian nationality, no matter where the casualty happened;
- b) which happened within the territorial sea and internal waters of the Republic of Croatia, irrespective of the nationality of the waterborne and other maritime craft included in the casualty;
- c) which happened inside the protected environmental fishing zone, within the jurisdiction as defined by the Decision of the Croatian Parliament on

³¹ *Official Gazette of the Republic of Croatia*, No. 69/16.

³² Article 10, paragraph 1 of the Ordinance on the Methods, Requirements and Powers for Conducting Administrative Investigation of Marine Casualties.

the Extension of the Jurisdiction of the Republic of Croatia on the Adriatic Sea³³ and the Convention on the Law of the Sea of 1982.

The Ordinance sets the obligation to make a notification of the marine casualty, as well as the obligation to report the marine casualty. According to Article 6 of the Ordinance, actors of the marine casualty and any other person having knowledge that the casualty occurred are obliged to notify without any delay the occurrence of the marine casualty falling under the scope of application of the Ordinance, that is, to notify it to the National Headquarter for Search and Rescue at Sea; such a body shall forward the received information to the Harbour Master's Office³⁴ with territorial jurisdiction and to the Ministry competent for maritime affairs. The captain of the ship or the manager of a maritime craft that is involved in the marine casualty also has the obligation to notify the event of a marine casualty. Article 7, paragraph 4 of the Ordinance prescribes that the event of the marine casualty is reported on the assigned form as defined in Annex I, which is a constituent part of the Ordinance, although the Ordinance does not include the above-mentioned form. It is therefore suggested that the amendments to the Ordinance should correct the above-mentioned detected omission.

An administrative investigation is conducted only when an inquiry or inspection determines reasonable suspicion of the perpetration of a maritime misdemeanour related to the event of a marine casualty.³⁵ An administrative investigation is not conducted in cases where the competent State Attorney institutes criminal proceedings for a criminal act that usually encompasses a maritime misdemeanour related to a marine casualty. A perpetrator who has been legally declared guilty of a criminal offence that includes the characteristics of a misdemeanour in criminal proceedings cannot be punished in misdemeanour proceedings.³⁶

An administrative investigation is normally initiated and conducted by a Harbour Master's Office where the marine casualty occurred. Exceptionally, an administrative investigation will be initiated by a Harbour Master's Office

³³ *Official Gazette of the Republic of Croatia*, No. 157/03, 138/06.

³⁴ For information on the legal status of Harbour Master's Offices, see: Petrinović, R.; Mandić, N., *Pravni položaj lučke kapetanije u pomorskopravnom pravu Republike Hrvatske, Zbornik radova Pravnog fakulteta u Splitu*, Vol. 43, No. 1, Split, 2006., pp. 63-81.

³⁵ Article 8, paragraph 2 of the Ordinance on the Methods, Requirements and Powers for Conducting Administrative Investigation of Marine Casualties.

³⁶ See Primorac, Ž., *Aktualnosti u sustavu obavljanja upravnih istraga pomorskih nesreća prema najnovijim rješenjima hrvatskih pomorskopravnih propisa, Proceedings Book "Modern Challenges of Marine Navigation"*, 1st International Scientific Conference of Maritime Law, Faculty of Law, University of Split, Split, 2016, p. 347.

whose territory encompasses the first harbour into which the waterborne or maritime craft sailed or was towed after the casualty, if this is the first Harbour Master's Office to which the event of the marine casualty has been notified.

The Harbour Master appoints the Head of the Administrative Investigation. The Head of the Administrative Investigation is mostly the person who carries out the duties of the inspection of maritime safety (safety of navigation) and is additionally qualified for carrying out an administrative investigation of a marine casualty according to the professional training programme organised and conducted by the Ministry.

The Ordinance prescribes cases where an administrative investigation is initiated and managed by the competent ministry; one of such cases is that of a vessel of Croatian nationality when the casualty occurred beyond the territorial sea and internal waters.

The official person or the Head of the Administrative Investigation, while conducting the inquiry actions, is obliged to determine the following: a) does the Ordinance apply to this marine casualty; b) is the committed maritime misdemeanour related to the marine casualty; and c) who is the perpetrator of the marine casualty?

An administrative investigation of a marine casualty ends with the issuing of a misdemeanour warrant, by submitting a proposal for indictment, or by a decision not to initiate a misdemeanour procedure.

If the administrative investigation establishes that a maritime offence has been committed for which a misdemeanour warrant may be issued, the Head of the Administrative Investigation will issue a misdemeanour warrant to the perpetrator of such a misdemeanour offence.

If the administrative investigation establishes the perpetration of a maritime offence for which a misdemeanour warrant cannot be issued, the Head of the Administrative Investigation will submit a proposal for an indictment against the perpetrator of the maritime offence to the court or State body that has jurisdiction at the first level to conduct a misdemeanour procedure.

An administrative investigation will be stopped in the following situations:

- a) When the State Attorney initiates criminal prosecution for a criminal offence that encompasses the maritime offence in relation to a marine casualty that is the subject matter of an administrative investigation;
- b) When the Head of Administrative Investigation establishes that there are no grounds for initiating a misdemeanour procedure in relation to a marine casualty that is the subject matter of an administrative investi-

gation³⁷ If the administrative investigation determines reasonable suspicion that a criminal act has been committed in relation to a marine casualty which is the subject matter of an administrative investigation, the Head of Administrative Investigation will deliver a notice to the competent State Attorney for further proceedings that there is suspicion that a criminal act has been committed.

An administrative investigation of a marine casualty is carried out according to the Ordinance and the law which regulate the misdemeanour procedure, that is, the Misdemeanour Act.³⁸

Evidence in the misdemeanour procedure collected by the Head of Administrative Investigation may include: a) a record of the on-site investigation of the marine casualty; b) a record of the examination/interrogation of the person as suspect; c) a record of the examination/interrogation of the person as witness; d) a report of the expert, witness, etc.

The final report will be made following the completion of the administrative investigation. The final report must include: the title, preface, summary, overview of the undertaken actions, objective facts, description of events, analysis, conclusions and annexes.

This final report listing and describing all the evidence and data collected during the administrative investigation can be used as evidence in establishing civil liability.

According to Article 31 of the Ordinance, Harbour Master Offices are obliged to submit to the Ministry every six months reports on the initiated and completed administrative investigations of marine casualties with proposed measures to improve the safety of maritime navigation.

³⁷ Article 11, paragraphs 3 and 4 of the Ordinance on the Methods, Requirements and Powers for Conducting Administrative Investigation of Marine Casualties. Administrative investigations shall not be suspended in cases where some other body governed by public law and according to its legal powers brings a decision on initiating a misdemeanour procedure or submits a proposal to the court for an indictment against the defendant for committing a misdemeanour that is not a maritime offence, but is related to the marine casualty that is the subject matter of the administrative investigation (Article 11, paragraph 5 of the Ordinance).

³⁸ *Official Gazette of the Republic of Croatia*, No. 107/07, 39/13, 157/13, 110/15, 70/17.

5. CONCLUSIONS

The Republic of Croatia has an adequate legal framework for conducting safety and administrative investigations. The issue of safety and administrative investigations is regulated by Article 49 of the Maritime Code. Article 49 of the Maritime Code stipulates in which cases safety and administrative investigation is carried out and to which waterborne craft it applies. Apart from the Maritime Code, the issue of conducting safety and administrative investigations is regulated in detail by two implementing acts. The Government of the Republic of Croatia adopted in 2015 the Regulation on the Methods and Conditions for Conducting Maritime Safety Investigation of Marine Casualties and Incidents by transposing Directive 2009/18/EC into the legal order of the Republic of Croatia. One year later, the minister responsible for maritime affairs passed the Ordinance on the Methods, Requirements and Powers for Conducting Administrative Investigation of Marine Casualties. A special law established an Air, Maritime and Railway Casualty Investigation Agency as an autonomous and independent investigative body authorised to conduct safety investigations and to issue safety recommendations. The Agency can establish permanent and occasional professional advisory bodies with the aim of raising the quality of work and ensuring faster performance.

The opinion of the authors is that it is highly important to observe the results obtained from safety investigations since from these results we may find the reasons for the occurrence of a marine casualty or incident and appropriate remedial actions may be taken to stop them in the future. The rules in force may also be amended if they turn out to be incomplete or ineffective. The forming of a Croatian Marine Casualty Information Platform run by the Agency and which is related to the European Marine Casualty Information Platform will contribute to this goal.

The authors of this paper support the amendments to the Maritime Code of 2019 in the part that deals with maritime offences which lay down misdemeanour rules applicable for the infringement of national provisions regarding safety investigation, especially in the case of the obstruction of safety investigations. In this way, the Croatian Maritime Code is harmonised with Article 22 of Directive 2009/18/EC.

It is highly important to educate professionals who will carry out safety and administrative investigation having in mind that the data/evidence collected in the administrative investigation may be used to detect the perpetrator of a maritime accident and ascertain his/her misdemeanour and criminal responsibility. At the same time, safety investigations contribute to maritime safety and the protection of the marine environment.

BIBLIOGRAPHY

Articles:

1. Luttenberger, A.; Kos, S., Improving Legal Standards in Marine Accident Investigation Activities, *Proceedings Book IMLA 20*, Maritime Institute Willem Barentsz, Netherlands, 2012, pp. 1-3.
2. Petrinović, R.; Mandić, N., Pravni položaj lučke kapetanije u pomorskopravnom pravu Republike Hrvatske, *Zbornik radova Pravnog fakulteta u Splitu*, Vol. 43, No. 1, Split, 2006, pp. 63-81.
3. Primorac, Ž., Aktualnosti u sustavu obavljanja upravnih istraga pomorskih nesreća prema najnovijim rješenjima hrvatskih pomorskopravnih propisa, *Proceedings Book "Modern Challenges of Marine Navigation"*, 1st International Scientific Conference of Maritime Law, Faculty of Law, University of Split, Split, 2016, pp. 335-352.

Legislation:

1. Act on the Establishment of the Air, Maritime and Railway Casualty Investigation Agency, *Official Gazette of the Republic of Croatia*, No. 54/13, 96/18.
2. Commission Regulation (EU) No 1286/2011 of 9 December 2011 adopting a common methodology for investigating marine casualties and incidents developed pursuant to Article 5(4) of Directive 2009/18/EC of the European Parliament and of the Council, OJ L 328/40, 10. 12. 2011.
3. Decision on the Extension of the Jurisdiction of the Republic of Croatia in the Adriatic Sea, *Official Gazette of the Republic of Croatia*, No. 157/03, 138/06.
4. Directive 2009/18/EC of the European Parliament and the Council of 23 April 2009 establishing the fundamental principles governing the investigation of accidents in the maritime transport sector and amending Council Directive 1999/35/EC and Directive 2002/59/EC of the European Parliament and of the Council, OJ L 131, 28. 5. 2009.
5. IMO Resolution A.849(20) Code for the Investigation of Marine Casualties and Incidents of 27 November 1997.
6. IMO Resolution A.884(21) Amendments to the Code for the Investigation of Marine Casualties and Incidents.
7. International Convention for the Safety of Life at Sea, Consolidated Edition 2014.
8. Maritime Code, *Official Gazette of the Republic of Croatia*, No. 181/04, 61/11, 26/15.
9. Misdemeanour Act, *Official Gazette of the Republic of Croatia*, No. 107/07, 39/13, 157/13, 110/15, 70/17.
10. Ordinance on the Methods, Requirements and Powers for Conducting Administrative Investigation of Marine Casualties, *Official Gazette of the Republic of Croatia*, No. 69/16.

11. Regulation on the Methods and Conditions for Conducting Safety Investigation of Marine Casualties and Incidents, *Official Gazette of the Republic of Croatia*, No. 122/15.

Sažetak:

**ISTRAGE POMORSKIH NESREĆA NA PUTNIČKIM
BRODOVIMA U REPUBLICI HRVATSKOJ**

U radu se analiziraju nacionalne odredbe kojima se regulira provođenje sigurnosnih i upravnih istraga u slučaju nastanka pomorskih nesreća i nezgoda u Republici Hrvatskoj. Vlada Republike Hrvatske donijela je 5. studenoga 2015. godine Uredbu o načinu i uvjetima za obavljanje sigurnosnih istraga pomorskih nesreća i nezgoda, koja u pravni poređak Republike Hrvatske prenosi Direktivu 2009/18/EZ Europskog parlamenta i Vijeća od 23. travnja 2009. o određivanju temeljnih načela o istraživanju nesreća u području pomorskog prometa i izmjeni Direktive Vijeća 1999/35/EZ i Direktive 2002/59/EZ Europskog parlamenta i Vijeća. Provođenje upravne istrage u Republici Hrvatskoj regulirano je Pravilnikom o načinu, uvjetima i ovlastima za obavljanje upravne istrage pomorskih nesreća koji je donesen 2016. godine. Za razliku od sigurnosnih istraga, upravna istraga provodi se radi prikupljanja dokaza i podataka za otkrivanje počinitelja pomorske nesreće te utvrđivanja njegove prekršajne i kaznene odgovornosti. Autori predstavljaju ishode sigurnosnih i upravnih istraga koje se provode kako bi se učinkovito utvrdile okolnosti i uzroci nastanka takvih nezgoda i nesreća, a sve radi bolje sigurnosti pomorske plovidbe i smanjenja rizika od budućih nezgoda koje uključuju putničke brodove, kao i sprječavanja onečišćenja s takve vrste brodova.

Ključne riječi: sigurnosna istraga; upravna istraga; pomorska nesreća; sigurnost plovidbe; zaštita morskog okoliša.