

## CRIMES AND ACCIDENTS ON THE SEAS – INTERNATIONAL AND NATIONAL PROBLEM

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*„Going to the seashore, gives the illusion that we are traveling towards perfection”,  
.....” leaving a hard and harsh land ”and moving to a” restless carpet that leads to  
uncertainty and distance. ”*

(With the greatest inspiration, our Nobel laureate  
Ivo Andrić wrote about the sea and sea shores.)

**ABSTRACT:** *Until today, the worst shipwreck in maritime history is the famous catastrophe of the Roman fleet near Sicily. After the defeat of the Roman army in the battle against Carthage, the Roman fleet with about 400 ships embarked the fugitives. The Carthaginian fleet tried to destroy the remaining part of the defeated Roman forces, but was repulsed in the battle near the African coast, losing 114 warships. The Roman fleet set out to transport its army to Sicily, but the suffering was not over yet, as the hardest blow occurred when the fleet almost reached its destination, sailing along the southern coast of Sicily, when a storm came. The storm was of a hurricane force, the waves hit the ships, breaking masts, sails, oars, and the hulls of the ships were broken and the ships fell apart and sank. At that time, 280 ships sank in the storm, and about 100,000 people disappeared forever in the waves. It was the worst shipwreck in the entire history of shipping.*

**KEY WORDS:** *crimes; accidents, seas; search; rescue.*

**JEL Code:** *K 14*

### 1. INTRODUCTORY CONSIDERATIONS

And in October 1827, the Battle of Navarino took place, the largest naval battle in modern history, the last naval battle fought by sailboats, when on a beautiful day, at exactly 2 o'clock in the afternoon, three Allied fleets sailed into Navarino Bay<sup>1</sup> one by one. Three Allied Admirals Vice Admiral Sir E. Codrington took command of the English Mediterranean Fleet, French Count Henri de Rigny, the youngest of the three Allied Fleet Commanders and the Russian Fleet led by the Danish Count Login Petrovich von Hayden, who had previously served in the English Royal navy, did not lose a single ship, while the Turks and Egyptians experienced a debacle. Of their 82 ships, only 29 weren't sunk the next morning. This serious defeat of the Turks and the Egyptians

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<sup>1</sup> The Navarine Bay, four and a half kilometers long and three kilometers wide, is protected from the open Ionian Sea by the rocky island of Sfaktirija, and the only entrance and exit from the bay is only 1200 meters wide.

brought the long-awaited independence and freedom to the Greek rebels in the Peloponnese.

Nowadays accidents on the seas are sometimes followed by crimes and sometimes they represent result of a crime.

## 2. PIRACY ONCE AND TODAY

The *jus naufragii* (right of shipwreck), sometimes *lex naufragii* (law of shipwreck), was a medieval custom (never actually a law) which allowed the inhabitants or lord of a territory to seize all that washed ashore from the wreck of a ship along its coast. This applied, at first, to all the cargo of the ship, the wreckage itself, and even any passengers who came ashore, who were became slaves. This latter custom disappeared before the *jus naufragii* came to the attention of lawmakers. Pirates, by contrast did not enjoy any juridical recognition and they did not acquire ownership of the goods that fell into their hands.

Criminal Code of the Republic of Serbia in article 294. predicts the criminal offense "Piracy". A crew member or passenger of a ship who, on the high seas or in a place not under the authority of any State, commits violence or robbery against persons on another ship, detains, seizes, damages or destroys another ship or property on it or causes large-scale damage, shall be punished by imprisonment for a term between two and twelve years, and if one or more persons have died as a result of this offense, the perpetrator shall be punished by imprisonment for a term between five and fifteen years.<sup>2</sup> These acts and pirates are not rarity in the world even today.

In January 2022, the Huthi movement, which controls the most of North Yemen, hijacked a cargo ship under the flag of the United Arab Emirates near the Yemeni port city Hudaida. According to a Huthis statement, the cargo ship was carrying military equipment, including armored cars and weapons, while Saudi Arabia reported that the ship was transporting hospital equipment.

In mid-December 2021, pirates attacked a Greek cargo ship in the international waters of the Gulf of Guinea in the Atlantic and took six hostages. A Danish frigate patrolling the Atlantic along the west coast of Africa has sent a helicopter to help rescue of a Liberian-flagged container ship, the Tonsberg<sup>3</sup>, which was attacked by pirates in speedboats near the island of Bioko, in the territorial waters of Equatorial Guinea (Reuters). The helicopter was following a pirate boat with six hostages while they were sailing towards the Niger Delta, but the chase was stopped when the plane reached the territorial waters of Nigeria, because it did not have a permit for entrance.

In October 2021, Denmark sent the frigate "Esbern Snare" to the Gulf of Guinea. The crew opened fire, killed four pirates in the waters south of Nigeria and captured four who are being held in custody until extradition to their home countries.

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<sup>2</sup> Criminal Code, "Official Gazette of the Republic of Serbia", no. 85/05, 88/05, 107/05, 72/09, 111/09, 121/12, 104/13, 108/14, 94/16, 35/19.

<sup>3</sup> According to data from the global commercial database Eikon Refinitiv, the container ship "Tonsberg" is operated by "Conchart Commercial", company with residence in Greece.

So far on the international level the final solution for the problem of piracy has not yet been found.

### 3. REFUGEES AND UNLAWFUL ACTS IN NAVIGATION

Convention on the Suppression of Unlawful Acts against the Safety of Maritime Navigation is adopted in our country in March 2004 with the adoption of the Decree promulgating the Law on Ratification of the Convention on the Suppression of Unlawful Acts against the Safety of Maritime Navigation.<sup>4</sup> By this act the state parties have confirmed their wish to monitor rules and standards related to the prevention and control of unlawful acts against ships and persons on board ships, in order, to update them if necessary. Non-contractual liability of the carrier, i.e. ship refers to the so-called maritime accidents or navigation incidents not preceded by a contractual relationship, the most often it is a collision of ships, stranding, sinking or shipwreck. Accidents are resulting from natural causes during the maritime navigation or human factor.

Refugees from war-torn areas who are trying to get to a better life and the "promised land" by sea are often not accepted as welcome and this often ends tragically.

Almost a million people, mostly Syrian refugees, arrived in Europe in 2015 after traveling from Turkey to nearby Greek islands. When a boat with migrants sank in the Aegean Sea at the end of December 2021, 16 people died, the Coast Guard announced. After a boat with 80 people sank near the island of Paros, sixteen bodies were found, including 12 men, three women and a child, and 63 people were rescued. A few hours earlier, 11 bodies were found after the sinking of a boat with about 100 migrants, which was grounded a few days earlier on an island in southern Greece. The UN High Commissioner for Refugees (UNHCR) estimates that from January to November 2021, more than 2.500 people died or disappeared at sea trying to reach Europe.

The Italian navy pulled out a ship that sank near Sicily in June 2016 with about 700 migrants in one of the biggest tragedies in the Mediterranean during the refugee crisis. It is estimated that there were between 700 and 800 migrants on the ship, mostly from Africa, which sank on April 18, 2015, and only 28 passengers survived the accident.

The UN Migration Agency announced in July 2019 that a ship with 86 migrants leaving Libya sank in the Mediterranean Sea and only three people survived, and 82 are listed as missing. The accident happened near the coast of the city of Zarzis in Tunisia, the day after the air attack on the migrant center near Tripoli, where 44 migrants were killed.

A cargo ship with 130 illegal passengers sank at the northeastern coast of Madagascar in December 2021, killing 17 people and missing 68, local authorities said. The ship *Francia*<sup>5</sup> left the port in the city of Antanambe in the eastern district of Mananara North, and at least 45 people were rescued from the waves of the Indian Ocean, according to a statement from the Maritime and River Navigation Agency. Are migrants without the right to a future, without the right to choose, without the right to destiny?

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<sup>4</sup> "Official Gazette of SCG - International treaties", no. 2/04, "Official Gazette of RS - International treaties", no. 1/10.

<sup>5</sup> The ship is registered as a cargo ship, not for passenger transport, and Antanambe is not an official port, said the director general of the Agency for Maritime and River Navigation, and assessed that the ship sank due to a hole in the hull through which water entered.

According to the Law on maritime navigation of the Republic of Serbia in performing maritime accident and accident investigation activities, the inspector has the following authorizations: 1) free access to the accident area or site, as well as to any ship, wreck or facility including goods, passengers, equipment or remains involved in a maritime accident or incident, without a court order and with the presentation of official identification; 2) to provide for recording (listing, photographing, recording, etc.) and protection of evidence as soon as possible, to provide for supervision over the search, collection or movement of evidence, such as wrecks, remains or other parts and objects for analysis and investigation; 3) free access, copying and use of all relevant information and recorded data, relating to the ship, voyage, goods, crew or any other person, facility, condition or circumstance; 4) free access to the results of examinations of victims or interrogations performed on samples taken from the bodies of victims, except for the record of the security investigation made during the conduct of the security investigation; 5) access to the results of inspections or tests performed on samples taken from persons who worked on the ship or other appropriate persons, except for the records of the bodies referred to in Article 13, paragraph 4 of the Law on maritime navigation; 6) to examine witnesses, without the presence of persons whose interests, in the opinion of the inspector, may interfere with the examination of maritime accidents; 7) to request, through the Ministry, the realization of the necessary cooperation when necessary to seek the assistance of relevant authorities of other states, including inspectors of flag states and port authorities, coast guard officers, other maritime services, search and rescue services, pilots or other port or naval personnel; 8) to require the cooperation of the owner of the vessel or company, the captain, the operator of the machine or their deputies in performing the actions necessary for the investigation of maritime accidents; 9) to cooperate with the body referred to in Article 13, paragraph 4 of this Law, especially in the collection, storage and analysis of evidence. When the inspector determines that there is a grounded suspicion that the maritime accident and the accident was caused by a human factor, he will initiate a misdemeanor procedure and submit an appropriate report to the competent authority against the responsible persons.<sup>6</sup>

The carrier is obliged to compensate the crew member for the damage caused to the items intended for his personal use on the ship, which were destroyed or damaged during a maritime accident. The Government shall prescribe the measures to be taken in order to ensure the fair treatment of seafarers in the event of a maritime accident or incident, as well as the obligations of carriers and seafarers in the event of a maritime accident or incident, in accordance with IMO guidelines for the fair treatment of seafarers in the case of maritime accidents.<sup>7</sup>

The carrier shall be liable for the damage caused by assault and battery or death of a member of the ship's crew if he does not prove that the damage was caused without his fault or the fault of the person for whom the carrier is responsible. The carrier shall be liable for such damage caused by dangerous cargo or dangerous activity in accordance with the general regulations on liability for damage from dangerous cargo or dangerous

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<sup>6</sup> See: article 189a of the Law on maritime navigation, "Official Gazette of the Republic of Serbia", no. 87/11, 104/13, 18/15, 113/17, 83/18.

<sup>7</sup> See: Article 94, paragraph 1 and 6. of the Law on maritime navigation.

activity. For the stated damage that a member of the ship's crew suffers at work or in connection with work on the ship due to the lack of conditions for safe work, the carrier is responsible if he does not prove that the ship's crew member caused it intentionally or through gross negligence. The carrier, manager, company and employer are jointly liable for the damages referred to in this Article.<sup>8</sup>

#### 4. SEARCH AND RESCUE AS LEGAL AND MORAL DUTIES

Search<sup>9</sup> and rescue<sup>10</sup> at sea is the obligation to provide all kinds of assistance and rescue endangered people, ships and things. Search and rescue of endangered persons is obligatory.<sup>11</sup>

According to the Law on Navigation and Harbors in Inland Waters, the search represents actions for establishing the location, nature and extent of the accident on waterways, as well as hydro meteorological conditions for providing of assistance, primarily to protect and rescue vulnerable persons. Rescue represents actions with aim of providing assistance, i.e. eliminating the danger in the event of an accident on waterways. Domestic carriers bring their own contingency plans to help victims and their families, which include transportation, accommodation and medical assistance to victims and their families in the event of accident on waterways in inland navigation.<sup>12</sup>

According to the Law on maritime navigation<sup>13</sup> of the Republic of Serbia, if the events that endanger the ship or persons on it occur, the captain of the ship is obliged to take all measures to rescue persons and eliminate the danger for the ship and its belongings, as well as to protect the environment. In that case, the captain of the ship is obliged to sacrifice or damage the cargo, other things or ship devices or equipment that are not necessary for navigation, or parts of the ship whose sacrifice or damage is less harmful for the carrier and persons interested in cargo on board.<sup>14</sup>

If in the case of danger for the ship, all measures taken to rescue the ship were unsuccessful, and if the shipwreck is inevitable, the captain of the ship is obliged to take the necessary measures<sup>15</sup> to rescue passengers and other persons on board, as well as to order to leave the ship.<sup>16</sup>

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<sup>8</sup> See: Article 95. of the Law on maritime navigation.

<sup>9</sup> The search includes actions to establish the location, nature and extent of the accident at sea, as well as hydro meteorological conditions for the purpose of providing assistance, primarily for the protection and rescue of endangered persons.

<sup>10</sup> Rescue includes actions aimed at providing assistance, i.e. eliminating the danger in the event of an accident at sea.

<sup>11</sup> Article 122. and 123. of the Law on maritime navigation, "Official Gazette of the Republic of Serbia", no. 87/11, 104/13, 18/15, 113/17, 83/18. and see: article 69. of the Law on navigation and harbors in inland waters, "Official Gazette of the Republic of Serbia", no. 73/10, 121/12, 18/15, 96/15, 92/16, 104/16, 113/17, 41/18, 95/18.

<sup>12</sup> See: article 70. the Law on navigation and harbors in inland waters, "Official Gazette of the Republic of Serbia", no. 73/10, 121/12, 18/15, 96/15, 92/16, 104/16, 113/17, 41/18, 95/18.

<sup>13</sup> "Official Gazette of the Republic of Serbia", no. 87/11, 104/13, 18/15, 113/17, 83/18.

<sup>14</sup> See: article 102. of the Law on maritime navigation, "Official Gazette of the Republic of Serbia", no. 87/11, 104/13, 18/15, 113/17, 83/18.

<sup>15</sup> In that case, the captain of the ship is obliged to take all measures necessary to save the logbook, if the circumstances of the case allow - and measures to save other ship's books, ship's documents, nautical charts and

Exceptionally from the provisions of article 115 of the Law on Maritime Navigation, the captain of the ship shall not be obliged to assist and undertake the rescue of persons in danger: 1) if undertaking of that rescue would present a serious danger for the ship he commands and persons on that ship, or if he justifiably considers that, in the particular circumstances of the case, the rescue of a person in danger would not be successful; 2) if it learns that another ship has been chosen to assist and that the chosen ship has accepted that choice; 3) if he is informed by the captain of the ship in danger, or directly by the persons who were in life danger, or by the captain of another ship who reached those persons, that assistance is no longer needed.<sup>17</sup>

In the event of a ship collision, the captain of the ship is obliged to, in addition to the primary rescue of persons, undertake the rescue of another ship with which the ship he commands collided if possible without serious danger for the ship he commands and persons on board. In the internal sea waters of the coastal state in which the domestic ship is located, the captain of the ship is obliged, when the ship he commands is near the ship calling for help, and when there was no collision, to immediately rescue the ship, if has the ability to do so without serious danger to the ship he commands and to the persons on board.<sup>18</sup>

The captain of a domestic ship who learns that another domestic ship is in danger at sea is obliged, in addition to the primary rescue of persons, to undertake the rescue of the ship and items from that ship owned by domestic carriers and other legal entities or citizens of the Republic of Serbia if the captain of the ship, i.e. the owner of the ship or the carrier in danger is not explicitly opposed to the rescue of the ship and the items on it. The captain of a ship shall not be obliged to undertake the rescue of a ship under this provision if he cannot do so without serious danger to persons on board or to the ship he commands, or if he justifiably considers that rescuing of the ship would not be suitable or reasonable having in mind the possibilities of salvation, the value of the ship in danger and the items on that ship, as well as the risks and costs to which the undertaken rescue would expose the ship he commands.<sup>19</sup>

Search and rescue of domestic ships and endangered items of local juristic and physical persons is compulsory, on condition that it does not endanger the safety of persons, the safety of a boat, a yacht, boat or other vessel or other devices that perform the search, i.e. the rescue. Search and rescue of endangered items in foreign ownership is obligatory if these prevent or eliminate damage that can occur or that remove the threat to the navigation safety.<sup>20</sup>

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cash of the ship's cash register. The captain of the ship may leave the ship only after, within the limits of real possibilities, he has taken all the previously mentioned measures.

<sup>16</sup> See: article 103. of the Law on maritime navigation, "Official Gazette of the Republic of Serbia", no. 87/11, 104/13, 18/15, 113/17, 83/18.

<sup>17</sup> Article 116. of the Law on maritime navigation.

<sup>18</sup> Article 117. of the Law on maritime navigation.

<sup>19</sup> See: article 118. of the Law on maritime navigation.

<sup>20</sup> Article 124. of the Law on maritime navigation, "Official Gazette of the Republic of Serbia", no. 87/11, 104/13, 18/15, 113/17, 83/18. and article 71. Law on navigation and harbors in inland waters, "Official Gazette of the Republic of Serbia", no. 73/10, 121/12, 18/15, 96/15, 92/16, 104/16, 113/17, 41/18, 95/18.

Only legal entities based in the Republic of Serbia or natural persons who are citizens of the Republic of Serbia have the right to rescue grounded or damaged vessels left by the crew, as well as items from those vessels on inland waters. Foreign legal or natural persons may perform these search and rescue operations with the approval of the Minister competent for traffic affairs with the consent of the Minister in charge of internal affairs.<sup>21</sup>

According to the Law on navigation and harbors in inland waters the search and rescue of endangered persons and items on waterways is performed by the ministry competent for internal affairs in cooperation with the Harbor Authority. Upon the order of the Minister responsible for internal affairs, obliged to engage in search and rescue with the available staff and equipment are: 1) companies, other legal entities and entrepreneurs who perform activities on inland waters in or in connection with the use of inland waters and possess vessels and other means suitable for conducting search and rescue; 2) citizens - owners of vessels that are suitable for search and rescue; 3) state bodies and special organizations suitable for the performance of certain search and rescue tasks. Exceptionally, the search and rescue of endangered persons and things is performed without a warrant when the urgency and other circumstances of the accident require it.<sup>22</sup>

If on board happens an event which endangers the ship or navigation safety, or if an extraordinary event to the ship, passengers, other persons or property on board appears, or if any immediate danger to the safety of navigation, pollution with dangerous or harmful substances on the waterway is noticed, commander is required to describe the event, i.e. enter in the logbook immediately the note on remarked immediate danger or pollution of the waterway. The commander is obliged to inform on the event immediately by radio communication other participants in navigation and the nearest Harbor Authority, and on arrival at the first port, i.e. dock, submit a report to the Port Authority, together with an excerpt from the logbook. If this event occurred during the sailing abroad, the commander shall, after arrival at the first port, i.e. dock submit a report on the event, together with an excerpt from the logbook, to a diplomatic or consular mission of the Republic of Serbia.<sup>23</sup>

## 5. CONCLUSION

During 2019, from 35,000 refugees who passed through our country, Serbia, almost every third officially expressed their intention to stay in the country. However, only 200 initiated a concrete procedure, and 31 people were granted asylum, while the rest are waiting in refugee shelters or on the streets. We took care for about 500 children of migrants without parental care in Serbia.

However, the exact number of migrants who drowned on their way to Europe will probably never be known. A large number of ships that sank while transporting migrants were never pulled ashore, and the victims have not been identified.

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<sup>21</sup> See: article 72. the Law on navigation and harbors in inland waters

<sup>22</sup> See: article 73. the Law on navigation and harbors in inland waters

<sup>23</sup> Article 148. of the Law on navigation and harbors in inland waters.

The digital age and pandemic are rapidly changing our lives and our reality has been gripped by pandemic insecurity, and hundreds of thousands of children in the world have been left without parents<sup>24</sup> due to the pandemic. In December, on its 75th anniversary, UNICEF warned that Covid was the biggest global crisis for children in the entire history of their existence.

In addition to education, punitive measures are also very important for the realization of safe navigation. Despite the numerous efforts of researchers around the world, having in mind the importance of the rivers and sea and resources that they offer, accidents and endangering of safety in water traffic happen and we should be aware of their serious consequences.

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<sup>24</sup> The "Lancet" published a study and data that around the world from March 1<sup>st</sup>, 2020 to April 30<sup>th</sup> 2021, even 1.134.000 children had been affected by the death of a primary guardian.