

## **Implementation of Penal Jurisdiction in Merchant Vessels and Warships in the Hellenic Legal Order**

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### **Abstract**

*As it is been known Hellas possesses one of the most important positions in the Mediterranean Sea region, between two continents (Asia and Europe), near of a third continent (Africa), between Black sea and Mediterranean Sea, between Eastern and Western Mediterranean. Automatically Hellas because of its strategic position is rendered nodal point in political, geographic and economic level between these three continents. Additionally Hellas allocates a coast line, roughly 19.000 kilometers which corresponds at the two of third parts of African continent perimeter. Hellenic people from the antiquity have developed an intense shipping activity and an intense relation with the sea, which led them progressively to the configuration of one of the most important shipping forces in world level. Today Hellas possesses the first position in the European Union (EU) concerning the capacity in tons by vessels under Hellenic flag, while at the same time is between sovereign forces in international level concerning the capacity of vessels under Hellenic flag but also in vessels which are under different flag but are owned by Hellenic ship owners. All these, have led to the configuration and growth of a law concrete sector, the maritime law, which is constituted by national provisions as also by international provisions.*

**Key words:** Hellenic Coast Guard (HCG), Hellenic Penal Code (HPC), Hellenic Code of Public Maritime Law (HCOPML), Hellenic Penal Procedure (HPP), Ministry of Mercantile Marine (MMM-YEN), United Nations Convention on the Law of The Sea (UNCLOS)

### **Introduction**

Hellenic commercial shipping constitutes one of the most important factors which support the Hellenic economy. Hellenic commercial shipping during centuries played as continues to play important role in Hellas economic and cultural growth, with subscription in defense items but also contributes in the projection of Hellas worldwide in the biggest possible level. Hellenic commercial shipping possess one of the first positions in capacity worldwide and the vessels that are under Hellenic flag or belong in Hellenic ship owners but are under different flag serves the international marine trade with 3.500 big vessels with 175.000.000 tons load transportation capacity, while at the same time because of Hellas islander character (many islands, multifarious coastline, a lot cities on the coast etc), has also been developed a widest network of Hellenic cabotage transports that aims in passengers transportation, products and means from the continental country in the marine country and reversely.

Its contribution concerning the workforce employment is consisted in two directions: in the employment of Hellenic seamen but also in the workers employment in shipping offices and other professions relative to commercial shipping like ship-brokers, lawyers specialized in shipping subjects, bankers etc. The eminently institutional institution for policing of vessels, seamen, ports and maritime area and consecutively responsible for the application and supervision of relative legal provisions that constitutes the maritime law is the HCG<sup>1</sup>. HCG recommends one of the main Law Enforcement Agency (LEA) in Hellas which checks and enforces the familiar legal provisions in Hellas and in the all world under concrete conditions each time.

The maritime tradition that has been developed by Hellas in centuries has led to maritime law configuration, law in which have been incorporated and international legal provisions. Subjects research that are related with offences which have been taken place in vessels but also in the maritime area, engage the Hellenic Administrative and Juridical Authorities in a large extent. This specific penal sector presents a lot of peculiarities that are connected with many sectors of other laws, as the maritime law, the law of the sea, special maritime laws, bilateral agreements etc.

Aim of this concise study, is the examination of provisions that are reported in the local limits in which are enforced the Hellenic penal laws, the territoriality principle, the flag principle, the penal jurisdiction on crimes that are taken place in merchant and warships vessels as well as the examination of provisions that are reported in special maritime crimes that are taken place by Hellenic seamen who work in foreigner vessels but are insured in the Maritime Retirement Fund (NAT-MRF). Finally the study will close with the conclusions formulation. It is noted that in order to exist a relative completed concise search for this specific item, will follow the publication of a second study which will be reported in the coastal state exceptions according to the penal jurisdiction.

### ***1. Hellenic penal laws local limits and the territoriality principle***

The provisions that are reported in the enforcement extent of the domestic penal jurisdiction are described in the department B' and in the articles 5 - 11 of Hellenic Penal Code (HPC) with subject «Penal law local limits»<sup>2</sup>. These provisions determine the force extent of Hellenic penal laws on action of foreigners' and domestic nationals', that were carried out so in national as also in foreigner level<sup>3</sup>.

More specifically with the above mentioned provisions were regulated two basic items:

- A. which are the criteria in order the Hellenic state to express penal interest for some action that was taken place (articles 5-8 HPC),
- B. what's going on when the penal interest of Hellenic legal order coincides with foreigners, for concrete penal offences.

Territorially principle is regulated in the provision of article 5 paragraph 1 of HPC, according to “the Hellenic penal laws are enforced in all actions that are taken place in the territorial territory even by foreigner”.

Territory plays important role in the relations frame between internal and international law, because determines the territorial extent of national legal order rules enforcement, that according to the international law are exclusively enforced in territorial national sovereignty frame. Territory constitutes the indirect criterion for the compatibility of national rules to the international law<sup>4</sup>.

Territoriality principle is emanation of state sovereignty. As sovereignty is meant the legal situation that allows in the state to enforce its power in its territory and via this in the persons, goods, relations and situations that are created<sup>5</sup>. The state sovereignty includes the continental and islander region, rivers and the lakes that land encompass, the internally maritime waters, territorial sea and the equivalent to them air space<sup>6 7</sup>. With the significance of exclusivity is meant that the state has the exclusively possibility and only that to act with its bodies in the legislation area, in administration and in jurisdiction, unless the state has international engagements which exclude something like that<sup>8</sup>.

Hellenic state penal power is extended so in criminal actions that has been taken place by foreigner inside of territorial limits, as also in those which a part of them was carried out in the domestic territory as reveals from article 16 of HPC<sup>9</sup>. With the territoriality principle is expressed by the Hellenic state its legalization to extend its penal power in each action that is taken place in the Hellenic territory, unless is established exception from the international law and on the other hand expresses the principle that the actions which took place outside of the Hellenic territory are punished only if is provided that aids certain other base or jurisdiction contact.

Based on the state sovereignty principle, foreigners that are in some state can ask juridical protection only by this state. Besides from the recognition of human value in a lot of Constitutions but also in international texts, is concluded that the sovereign states have duty to provide in the foreigners who are in their territory limits, all the essential guarantees in order to exercise the human rights<sup>10 11</sup>. The determination of Hellenic territory significance is reduced mainly in the public international law and is determined basically on the internationally recognized Hellenic territory geographic limits. Thus in the significance of domestic territory belongs not only its territory, but also where internationally the Hellenic sovereignty is extended.

Sovereignty is extended also in the subsoil and unlimitedly in atmospheric space over the ground<sup>12</sup>. It is extended also on the area of territorial sea. The borders of each state erase also its limits of the local law rules enforcement because that up to them is exhausted its sovereignty. Exception constitutes the territory fictitious extensions in the Hellenic vessels and planes that are moved outside of the territory limits, according to the article 5 paragraph 2 of HPC<sup>13</sup>.

## 2. Flag principle

Flag principle constitutes necessary extension of territoriality principle. According to this, penal state power is extended in actions that are taken place in vessels which bring its flag, or in planes that have its nationality in any place they are, even if they have taken place by foreigner or in foreigner territory or in the open sea or up to this. Taking into consideration that a vessel can eligible brings only one flag and a plane can be registered only in one state, flag principle leads to the conclusion that flag state maintains its penal power in any place the vessel or the plane is. Flag principle as has already reported is forecasted in the article 5 paragraph 2 of HPC.

The conditions that a vessel should fills in order to bring legally the flag of certain state are determined in the national legislation as also in the international law. Concretely in the article 5 of HCOMPL [Legislative Decree (LD) 187/1973 (A' 261)] as it was modified by the Presidential Decree (PD) 11/2000 (A' 11) is determined that<sup>14</sup>:

1. Vessels are recognized as Hellenic<sup>15</sup> that belong in percentage that exceeds the fifty hundredth in Hellenic nationals or in Hellenic legal persons or in nationals of EU rest states or in EU companies of EU rest states that are reported in the article 48 of EU treaty, after application of their ship owners, which is accompanied by the relative title of property possession.
2. Concerning EU companies of rest states for the recognition of commercial vessel as Hellenic, is required its installation according to article 43 significance of EU treaty, while for EU persons of rest states the requirement of installation should have been achieved until the moment of vessel registration. In this frame, the vessel management is required to be practiced by Hellas. The vessel representative that is determined at its registration or the guarantor as also the person or the representative of legal person, who carries out the management, will be installed in Hellas.
3. The provisions of present have also proportional enforcement in the nationals or the companies of Member – States that are contracting parts in the Agreement on European Economic Area (EEA).
4. If the vessel property document transfer was formed out in the foreigner, for its registration in shipping register is required regard authentication by consular Authority or Apostlie according to the Hague International Convention of 1961 «Convention abolishing the requirement of legalization for foreign public documents»<sup>16</sup>.
5. By presidential decree that is published after minister proposal and after Commercial Shipping Council consultation are determined items relative to the recognition of Hellenic vessels as passenger».

Still relatively for the same subject is article 6 paragraph 1 and articles 7 and 10 of HCOMPL<sup>17</sup>.

In UNCLOS relative are articles 91, 92 and 93<sup>18</sup>.

According to the article 13 of LD 2687/1953 “Concerning investment and foreigner capital protection”, as it was authentically interpreted by the LD 2928/1954, is provided under certain conditions the possibility to be recognized as Hellenic, vessels that belong completely in foreigners if also aids the formal condition of registration in the Hellenic shipping register after interested application.

## 3. Penal jurisdiction on crimes taken place in vessels

### 3.1 On warships

In article 29 of UNCLOS<sup>19</sup>, is determined that “For the purposes of this Convention, "warship" means a ship belonging to the armed forces of a State bearing the external marks distinguishing such ships of its nationality, under the command of an officer duly commissioned by the government of the State and whose name appears in the appropriate service list or its equivalent, and manned by a crew which is under regular armed forces discipline”.

All kinds of warships are assimilated with the territorial territory, which its flag brings. Warships are covered by immunity<sup>20</sup> and consequently the coastal state cannot enforce in them and in their crew any power or penal jurisdiction, not only when they pass through the territorial sea but also when they are in the territorial water, in the internal waters and the ports of coastal state. It is supported that according to the international law the warships in any place they are, are considered as territory of its state that belongs, and that they are moved fortresses that sail the sea, representing everywhere the force and the independence of its state.

They cannot be subject of seizure or of detention as also of any other juridical meter. Civil disputes that by any chance revealed from ship collision etc are submitted in front the courts of flag state that they carry, apart from certain exceptions that are recognized by the international law especially on extraterritoriality issues<sup>21</sup>. The unique case of intervention in foreigner warship that can be justified is the one with which the captain of the warship or the consul will ask the subscription of coastal state Authorities. Warships members crew, provided that they are in ordered service, are covered by penal extraterritoriality. The intervention of coastal state will be possible only if were held hostile action<sup>22 23</sup>.

However according to the article 30 of UNCLOS “If any warship does not comply with the laws and regulations of the coastal State concerning passage through the territorial sea and disregards any request for compliance therewith which is made to it, the coastal State may require it to leave the territorial sea immediately”<sup>24</sup>.

According to article 163 of HCOMPL<sup>25</sup> on the vessel is excluded the penal jurisdiction for crimes that are taken place on foreigner warship, but not the penal power of coastal state. Concretely attack from the vessel against persons or things which are in the land or in the port establish defense right but not possibility of arrest or reception of other meters with procedural coercion. That is also revealed by the article 41 of Vienna Convention on Diplomatic Relations.

In the event of domestic attendance in main action taken place in foreigner warship that lies in Hellenic harbor, the perpetrator extraterritoriality does not profit the participating domestic<sup>26</sup>.

Concerning crime that has been taken place in foreigner warship, auxiliary of foreigner fleet which is moored in Hellenic port, does not exist penal jurisdiction provided that also these vessels falling in the warships category, independently if they belong in state property or are leased. It is enough to be used for troop’s transportation or for any kind of supplies for war operations. It is allowed as exception the intervention of the domestic authorities if the crime recommends hostile action against the state<sup>27</sup>.

In case that members of warship crew, commits offences in the territory of coastal state and these are under ordered service, the local authorities can arrest the perpetrators, but they ought to deliver them in the captain as soon as they receive his/her relative application.

Different is the case when the warship members’ crews commit in the land penal offence and they are not in ordered service. The local authorities’ can arrest the perpetrators and refer them in the juridical Authorities. However in case that accomplishes slip the arrest and return in their warship, the local authorities are unable to arrest them as no action cannot take place on the vessel without captain authorization<sup>28</sup>.

For the above mentioned subject controversy exist. This because extraterritoriality concerns only the warships and not the persons that board on them, because when they separate the vessel and go down in the land, ceases to enjoy the extraterritoriality right, independent if they landed for service or not and under the orders of their superior, opinion which finds me agreeing.

Captain of foreign warship is not compelled to deliver in the local authorities political fugitives who resort to his/her warship. Regarding deserters that belong to army forces and asking asylum on foreigner warship this right is disputed to warship captain<sup>29</sup>.

In case that the perpetrator is foreigner, he/she constitutes crew member and he/she has resorted to the land and his/her delivery to the warship for any reason is impossible, is supported that he/she will be punished according to the domestic laws.

According to my personal opinion importance has where was committed the crime. If the crime committed on the warship he/she must be delivered in the diplomatic Authorities of his/her country. Only if this is not possible he/she must be judged by the local Authorities.

If the perpetrator is not crew member and the action took place in the warship then if it was against at a crew member, exists aiding jurisdiction of the flag state and coastal state, while if it was not against a crew member exists coastal state exclusive jurisdiction<sup>30</sup>.

According to article 147 of HCOMPL<sup>31</sup> after order of minister of Mercantile Marine the Aegean and Island Policy (now minister of Citizen Protection) which will be based in previous decision issued by the Cabinet, Port Police Authorities can prohibit provisionally for reasons concerning security or legal order, the stay or passage of all the foreigner warships via Hellas territorial sea.

### **3.2 On commercial vessels**

According to flag principle (article 5 paragraph 2 of HPC) and the internationally recognized principle of sea freedom, any offence that is taken place by domestic or foreigner on vessel under Hellenic flag and is located in the open sea, is under the domestic penal power and is enforced on this the domestic penal jurisdiction, provided that action performance place is Hellas.

The aforementioned have the following consequences:

- A. cannot be enforced the provisions of articles 6, 7 and 8 of HPC that concern offences taken place from domestics or foreigners exclusive in foreigner,
- B. innocent penal decision issued by foreigner Court for this offence, does not constitute precedent that commits the Hellenic juridical Authorities,
- C. in case of condemnation in the foreigner for the same action, it will become calculation of sentence that took place in the foreigner prison and abstraction from the sentence that was imposed by the Hellenic Court as is determined in the article 10 of HPC<sup>32</sup>,
- D. the Hellenic penal procedural rules are enforced completely, the domestic authorities can board in the vessel in order to enforce all the necessary procedural action and as long as the vessel is located in the open sea, interrogative duties are enforced by the captain (article 241 of HCOMPL)<sup>33</sup>.

Delivery of foreign perpetrator who is on vessel to foreigner authorities is not allowed unless is determined differently in international convention<sup>34</sup>.

When vessel under Hellenic flag enters in territorial sea<sup>35</sup> of foreigner state or in foreigner port, Hellenic penal procedural laws enforcement is limited, provided that exists aiding jurisdiction of the coastal state. Interrogative duties are enforced by the familiar consular Authority<sup>36</sup>.

In case that domestic commits offence on the vessel under foreigner flag that sails in the open sea, performance place is the foreigner and concretely the state of the flag that vessel brings. On crimes that are taken place on vessels during passage via the territorial sea is enforced the flag law.

Foreigner vessel that is located in port state is under the status as the vessels that bring the flag of the same state. In the legislation of member state are subjected:

- A. the vessel as thing,
- B. passengers of the vessel,
- C. the foreigner things on the vessel<sup>37</sup>.

Each action or omission that taken place in vessel which is located in foreign port is conditioned by the penal provisions of state port. In vessel that lies in the Hellenic territorial waters, is enforced for penal actions that are taken place on it the Hellenic penal laws, while in Hellenic vessel that lies in foreign port is enforced the foreign penal laws<sup>38</sup>.

Based on sovereignty principle and according to the public international law rules, territorial waters belong in the exclusive penal power of coastal state and vessel that enters in territorial waters of foreigner enters in foreigner territorial territory<sup>39</sup>.

#### **3.2.1 On foreigner vessels lie in Hellenic port**

Crimes that are taken place in foreigner vessel while this lies in Hellenic port are considered that were taken place in the domestic land and are enforced the Hellenic penal laws. According to article 5 paragraph 1 of HPC, as territorial territory is considered also the part of the sea, which is included inside the ports and the impetuses of Hellenic territory.

Only regarding the territorial water had been formulated contestations. However finally the opinion that in territorial waters minus the right of innocent passage has prevailed, constitute integral part of coastal state territorial territory, which sovereignty is also extended on the maritime area of the above mentioned sea part<sup>40</sup>. Consequently the enforcement of Hellenic public power is complete and unlimited in commercial vessels that are under foreigner flag and lie in Hellenic ports, on persons and things that are on them according to the above mentioned article of HPC.

The above principle is limited only in case where on crime that has been taken place in commercial vessel under foreigner flag which lies in Hellenic port or sails Hellenic waters having departure from Hellenic port is determined differently in convention or rule of internal law<sup>41</sup>.

The domestic interrogative authorities and Hellenic Courts have jurisdiction for offences that have been taken place on foreigner vessels, independent the flag that bring provided that is not regulated something different in international treaty or rule of internal law.

In Hellas consular conventions with France, Belgium, USA, Italy and Spain, was determined with small variants, that the local Authorities cannot intervene, unless the actions which are taken place on the vessel can disturb the public order and the quietness in the land or in the port, or when person that does not constitute crew member took part in such action<sup>42</sup>.

In jurisprudential level has been judged that on fire which was expressed in foreigner vessel that lied in Piraeus port, does not exist domestic penal jurisdiction for the action of arson by negligence against foreigner defendant, because of the fire exceptionally small extent and its direct extinguishment as was not disturbed the order and the port quietness according to HCOMPL provisions as also according to the forecasted in the bilateral consular conventions<sup>43</sup>.

### **3.2.2 On Hellenic vessels lie in foreign port**

Crimes that are taken place on Hellenic vessel, while this lies in foreign port, are considered that they were taken place in the “foreigner”, provided that the foreign port belongs in the coastal state territorial territory, independent if this state which has complete and unlimited penal power on all the action that are taken place in its ports will enforce or not its power.

Hellenic vessels are considered as “domestic”, only when they sail in the open sea or make an innocent passage via foreign territorial zone and not when they are in foreign port<sup>44</sup>.

In this case importance has that the offence was taken place in the territory of coastal state in which is lying the vessel, namely in the “foreigner” and not in the “fictitious” territory of Hellenic territory because of the Hellenic flag, as this fictitious situation with the entry of Hellenic vessel in area that according to the international law is considered that belongs in the territorial territory of foreign territory. It is unlimitedly in force the rule that the foreigner commercial vessels are subjected in the jurisdiction of the country, in waters of which lie<sup>45</sup>.

Hellas always followed the French system<sup>46</sup>[Royal decree (RD) 4-1-1834 “Port Police Authorities Organization”]. It is supported that this system which imports self-restraint of state port sovereignty, is based on general international custom. If certain states included in its internal legislation this restriction of their jurisdiction, this constitutes expression or repetition of international law rule by their internal right<sup>47</sup>.

It was supported that HPC appears to follow the French system because as territorial territory are considered the vessels in any place they lie unless if they according to the international law are subjected in the coastal state law. This is not precise. The French system was followed in the HCOMPL provisions and not in the HPC. On the contrary, according to article 5 paragraph 2 of the HPC is concluded that the vessel is considered as territorial territory, as a rule while as an exception is not considered as territorial territory, if enters in area that according to the international law, recommends coastal state territory.

The state practice in jurisdiction subject is explicit. They enforce the competences that are drawn by the title of their territorial sovereignty, according to their desire whenever they are interested and mainly when the vessel actions or vessel influence the internal legal order or the international society<sup>48</sup>.

The self-restraint of coastal state jurisdiction is recommended, primarily to be avoided interventions on the vessel for internal discipline items, for the relations between the captain, crew and the passengers provided that is not offended the public order of state port.

Equitably has been supported that each international treaty constitutes in some way, from one side confirmation of state sovereignty and on the other side its restriction. Consequently the sovereignty remains exclusive, autonomous and complete, even when is limited with the processes that are recognized by the international law<sup>49</sup>. The discreet states occasion that lies in their choice if they will enforce or not their jurisdiction, does not reverse by any meaning the fact that crimes which were taken place on foreigner vessels lie in territorial waters of coastal state, were taken place in the territory of this state. The coastal state penal power is exclusive because is based in its territorial sovereignty. Other subject is the fact of absoluteness and exclusivities of penal power and other is the enforcement of penal jurisdiction or not by the coastal state.

When the international legislator wanted to limit the coastal state penal jurisdiction made it with explicit exceptions as in the article 27 of UNCLOS<sup>50</sup>. As there is no relatively provision in UNCLOS that would contain special regulations on the penal jurisdiction of coastal state in its internal waters and its ports, as exists for its jurisdiction in its territorial water, is concluded that the coastal state has complete, exclusive and absolute jurisdiction in its internal waters and in its ports, independent if it wants or not to enforce it.

Each time that reveals item concerning the determination of penal jurisdiction fundamental is to be determined the place of criminal action performance. If it took place in the foreigner, firstly has jurisdiction the state of performance place that springs from its territorial sovereignty. The state that claims also this jurisdiction because the crime took place by its national/s will draw its aiding jurisdiction based on other title of jurisdiction and under the conditions that are forecasted by its legislation on the punishment of action that is taken place in the foreigner<sup>51</sup>.

Thus exists aiding jurisdiction of domestic Courts for action of domestic nationals that took place on Hellenic vessel in foreigner port, but because the crimes took place in foreigner port should aid the conditions of article 6 of HPC, that requires for the prosecution of delinquencies that took place in the foreigner by domestic, the action offense according to the foreign law and complaint of the victim<sup>52</sup>.

On jurisprudential level is acceptable that the coastal state has complete and unlimited penal power on crimes that were taken place on foreigner vessels lie in its ports, independently if it will enforce the arising from its territorial sovereignty penal jurisdiction, restraint or by internal law rules or by international conventions and customs<sup>53</sup>. The item that many times the coastal states by courtesy reasons do not enforce their penal jurisdiction, does not produce various legal consequence and does not reverse the fact that the offence took place in the territorial territory of coastal state namely in the foreigner even if the crime was committed on vessel under Hellenic flag<sup>54</sup>. Summarizing we lead to the followings:

1. Crime taken place on foreigner vessel in Hellenic port, namely taken place in the domestic land according to article 5 paragraph 1 of HPC, in order to be enforced the Hellenic penal laws, that are firstly applicable, should be searched if Hellas has restraint its penal jurisdiction with rule of internal law or with rule of international law (bilateral or multilateral convention). In any case this is interpreted by the Hellenic Courts.
2. On crime that is taken place in Hellenic vessel in the "foreigner", performance place is foreigner. The coastal state can enforce its jurisdiction for the following reasons:
  - a) because this is forecasted in internal law rule,
  - b) does not intervene for courtesy reasons,
  - c) because based on bilateral or other international convention, has ceded vessel flag state penal jurisdiction.

In the above mentioned cases the coastal state will judge sovereignty if there is aid reason in order not to enforce its penal jurisdiction and its Courts will interpret if the case is excluded from its penal jurisdiction based on concrete rule of internal law or international convention<sup>55</sup>.

In all the above cases even in the third case therefore with international convention the Hellenic penal justice is exclusive and not aiding as in the remaining cases, is enforced the Hellenic penal laws, with the obvious condition that the crime took place in the foreigner.

The foreigner as place of offence performance is not differentiated whether aiding or exclusive jurisdiction of Hellas exists. For the enforcement of domestic penal jurisdiction is consequently required the subscription of articles 6 and 7 of HPC conditions.

In this case coastal state interests are ensured, after this judges sovereignty if and in which extent was disturbed the common quietness of port in any case. The subscription elaboration or not of the conditions in order not to enforce its penal jurisdiction, rests exclusively in the Authorities of this state<sup>56</sup>.

When is taken place offence in foreigner vessel in Hellenic port that means that is taken place in the domestic land, while when is taken place on Hellenic vessel in foreigner port then is considered that it takes place in the foreigner. Proportionally in the first case will be enforced the article 5 of HPC while in the second will be enforced articles 6-11 of HPC.

When article 5 paragraph 2 of HPC considers as a rule the Hellenic vessel as territorial territory, places also simultaneously the exception that the Hellenic vessel is not considered as territory of Hellenic territory, if enters in other area that according to the public international law is considered as foreign territory.

Any other interpretation, extends impermissible the jurisdiction of state flag against the territorially jurisdiction, which constitutes the rule according to the international law. Consequently is also opposite to article 28 paragraph 1 of the Constitution. If Hellenic legislation considered as domestic specific spaces, in violation of international law general rules, this would recommend infringement of the above mentioned article of Constitution<sup>57</sup>.

Besides provision of article 5 paragraph 2 of HPC, is provision of common penal law, while the principles of public international law concerning exclusive penal power of coastal state on its territories, is increased surpassing force according to the article 28 paragraph 1 of the Constitution.

UNCLOS in article 94<sup>58</sup> expressly reports which are the obligations of state flag. In them is included the control administrative of technical and social subjects concerning vessel and everything that has relation with the vessel safety.

Benefit of penal protection is not forecasted but is forecasted only its obligation to attend the conducting of search for each maritime accident or maritime incident in the open sea, that concerns vessel which brings its flag and which has caused life loss and serious lesions in other states nationals or serious damage in vessel or in installations of other state or in the marine environment (article 94 paragraph 7).

From the above provision of UNCLOS reveals with clarity that the international law provided the competence of maritime accidents search in state flag, but expressly only in the open sea. This is reliable to the other principle that the competence for territorial waters has been ceded by the international law in each coastal state in order not to exist maritime place which would not be subjected in the territorial competence of legal order. There has been realized distribution of competences by the public international law (articles 2, 27 paragraph 1 and 2, 92, 94 paragraph 1 and 7)<sup>59</sup>.

From the combination of articles 2 and 27 of UNCLOS reveals that the coastal state has complete and exclusive jurisdiction for what is taking place in its territorial waters. From the provisions of articles 94 paragraph 7 and 97 paragraph 1 of UNCLOS, reveals the exclusive jurisdiction of state flag on the maritime accidents or maritime incidents, that took place only in the open sea, as well as the exclusive jurisdiction of state flag on vessels conflict or other maritime episode but also again in international waters. This because with the previous provisions determined that when these incidents happen in coastal state territorial waters, then in them is in effect the penal jurisdiction of this state.

### **3.2.3 Special maritime offences, taken place by Hellenic seamen on foreigner vessels insured in Maritime Retirement Fund [NAT-MRF].**

While the conditions that are reported in the article 6 of HPC should aid in general for all the misdemeanor that are taken place on vessel with foreigner flag, the legislator in the article 239 of HCOMPL<sup>60</sup>, regulated as exception the extension and enforcement of certain penal provisions in Hellenic seamen, who serve in vessels under foreigner flag but are contracted with the Maritime Retirement Fund [MRF-NAT].



For certain important maritime offences, the penal prosecution of guilty Hellenic seamen is taken place automatically without aiding the conditions of articles 6 and 7 of HPC<sup>61</sup>.

It is marked that according to article 3 of the International Convention “Regarding unification of certain rules relative with the penal jurisdiction on vessels conflict”, is forecasted that the Authorities of contracting countries can prosecute their nationals for infringements that were committed on vessel which brings the flag of other country, however the case concerns only infringements from conflict or other incidents of sailing that involve penal responsibility for vessel crew.

The article 239 of HCOMPL as it has been modified and been in effect is determined:

1. The provisions of articles 207 (desertion), 209 (abandonment of vessel being in danger), 213 (attitude), 214 (battery), 216 (scheming against captain), 217 (theft and load deterioration or vessel equipment), 218 (power abuse), 219 (not personal monitoring of the vessel), 222 (refusal of orders implementation in the foreigner), 223 (captains infringements during danger), 224 (captains omission on collision), 225 (regulation infringement for collision reject), 226 (illegal course deviation), 227 (help omission in persons being in danger), 228 (patients abandonment in foreigner), 230 (deserters illegal enlisting) and 231 (facilitating the escape of) are also enforced for domestic seamen serving on vessels under foreigner flag insured in MRF-NAT.

2. The penal prosecution is taken place automatically.

3. The domestic captain owes to submit relative complaint in front of the first Hellenic official Port Police Authority or consular Authority of place in which the vessel will arrive”.

4. Penal sanctions that are forecasted in the articles 205, 207 paragraph 1, 208, 210 paragraph 1 and 222, as well as in the paragraph 1 of article 4 of Compulsory Law (CL) 3276/1944 (A’ 24’) are only imposed if:

A) Is placed at risk the safety of: persons that board or not on the vessel, the vessel, the load or the property or

B) is caused pollution or other damage of maritime environment or

C) is disturbed the order or is placed at risk the public health”.

The conditions of provision enforcement are as follows:

#### A. Domestic seaman

Law is reported at seamen in general. As consequence are included those who have been engaged in the vessel service and are registered in the shipping articles or in the crew table, independently if they have been provided with Hellenic booklet, which is not needed for sailors enlisting in foreigner vessel<sup>62</sup>.

It is enough namely de facto recognition of the seaman profession without to be essential the formal condition of seaman registration in the Hellenic seamen registrations.

#### B. Vessel under foreigner flag

Vessel which is not registered in the Hellenic port shipping registration or is not provided with provisional nationality document. It is the exception that is formulated in the article 202, paragraph 1, subparagraph A of HCOMPL<sup>63</sup> according to the provisions of articles 202 - 238 are enforced for crimes that are committed on domestic vessels or auxiliary docked vessel.

Keeping in mind the principle of international law that the vessel in the open sea constitutes part of its flag state and the enforcement of Hellenic penal law would crash in aiding competence of flag state the legislator intention was the subordination of Hellenic vessels, that carry occasion flags in Hellenic penal laws regime and for that is reported only in the vessels under foreigner flag that are insured in MRF-NAT.

#### C. Vessel insured in MRF [NAT]

The ship owner company that insures the vessel should proven cover Hellenic interests at a percentage up the 50% of its capital [PD 913/1978 (A’ 220)]

#### D. Subjecting offences

These are reported in the article 239 of HCOMPL as it has been modified and been in effect. According to the offences character aim of this provision is the obligation of Hellenic captains to compliance themselves with the rules of safety navigation and furthermore to be ensured the order and the discipline of Hellenic crews on vessels. It is potentially that may reveal problem from the enforcement of article 222 in case where are given opposite orders from the responsible Authorities of vessel flag.

According to my opinion, captain owes to enforce the defined in the article 222 of HCOMPL. Individually and taking into consideration the more general principles of international law the captain will act out of the limits of article in question.

Regarding the article 235 of HCOMPL, since it is not reported in the maritime offences of article 239 of HCOMPL it means that when is committed the offence in question from Hellenic seamen in vessels under foreigner flag, the action is offence according to the law of performance place as is determined in article 6 of HPC<sup>64</sup>.

The offence of vessel departure without the Port Police Authority authorization as is determined in the article 234 of HCOMPL<sup>65</sup>, is in effect also for the vessels under foreigner flag according to explicit provision of article 234. Regarding the infringements offences that are reported in the articles 224 and 225<sup>66</sup> the enforcement of penal provisions in Hellenic captains and crews of vessels under foreigner flag and in particular insured in MRF-NAT, can be supported in the provision of article 202 paragraph 2 provided that the action took place in Hellenic territorial waters.

In all the above cases, the penal prosecution is taken place automatically. This recommends the big difference of article 6 paragraph 3 of HPC according to the enforcement of Hellenic penal laws in domestic on misdemeanor that took place in the foreigner, hence on foreigner vessel, presupposes victims' complaint or application by the government.

In the above must be under consideration article 42 of Hellenic Penal Procedure (HPP)<sup>67</sup> where apart from underprivileged each other has also the right to denounce in the Authorities offenses actions that was informed. In consequence if in a vessel under foreigner flag took place crime by domestic containing in the article 239 of HCOMPL anyone who was informed is eligible to report it to the Authorities.

Hellenic captain of vessel under foreigner flag is compelled to submit relative complaint in front of Port Police Authority or in front of consular Authority of the first place in which will arrive the vessel according to article 239 paragraph 3. In different case is able to be referred in front of the disciplined council with the question of provisional deprival right of exercising the maritime profession for omission of special exercising duties that clashes to his/her legal obligations (article 249 and 253 of HCOMPL)<sup>68</sup>.

The captain in case that the vessel will not approach quickly in port where Hellenic Authority resides can denounce the crime dispatching written report in the responsible Authorities<sup>69</sup>.

### **Conclusions**

In present concise study were examined the provisions that are reported in the local force limits of Hellenic penal laws, the territoriality principle, the flag principle, the penal jurisdiction on crimes that are taken place in commercial vessels and in warships as also as the provisions that are reported in special maritime crimes that are taken place by Hellenic seamen that work in foreigner vessels but are insured in MRF-NAT.

From the provisions apposition reveals that the frame of the relative national and international provisions that are enforced by the Hellenic national Authorities is sufficient and numerous. At the same time the Hellenic juridical Authorities have developed an extremely interesting case law that is related with the affairs of provisions enforcement on offences that have taken place on commercial vessels and warships.

It is observed that the provisions that are enforced on offences that have taken place on commercial vessels are more flexible in their enforcement from the relative enforcement of the provisions for warships. This to a large extent is comprehensible, because the warships express in absolute degree the government sovereignty of flag state they bring. However i believe that for perpetration of penal offences on warships or by personnel of these out of the vessel should be more flexible the provisions concerning the arrest and the presentation of persons in charge in trial.

Parallel the states can extend their collaboration on penal subjects that are related with the vessels by the signature of bilateral conventions, something which Hellas has done to a large extent by the signature of enough bilateral maritime conventions because of the shipping size that manages.

It is marked that for the regular enforcement of legal provisions that commits legally Hellas, Hellas has developed an important network of consular Port Police Authorities in various states in abroad, which have been staffed by officers of HCG and aims not only in the narrow follow-up of shipping policy subjects in states that they have powerful shipping or based shipping international organizations but also in the enforcement of familiar provisions from the indebted individually ship owners, vessels and crews based on the flag and the nationality that individually bring.

At the same time participates in all the international meetings that aim in the training and signature of conventions that are related with relevant subjects, something which is essential because of the enormous size of shipping that is managed by the responsible national Hellenic Authorities. It is also observed that important role on penal jurisdiction issues on vessels plays the UNCLOS, given the fact that the Convention in question has been signed and incorporated in the national legal orders of a lot of states.

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## Notes

<sup>1</sup> Korontzis, Tr. (2011). PhD titled “The stationary role of HCG”, Library of Panteion University of Social and Political Sciences, Athens, (in Hellenic) and Korontzis, Tr. (2012) “b”. The Hellenic Ministry of Mercantile Marine, as an autonomous administrative governmental institution in the period 1971-2011. A descriptive and critical approach, International Journal of Business and Social Science Vol. 3, No. 8, p.p.61-75.

<sup>2</sup> See Anagnostopoulos I., Vathiotis, K., (1999). Penal Code. Athens: Sakkoulas p.p. 2-5 (in Hellenic)

Concretely articles titles are as follows:

article 5 “crimes that were taken place in the domestic land”, article 6 “domestic national crimes in the foreigner”, article 6 “foreigners crimes in the foreigner”, article 8 “crimes in the foreigner that are always punished according to the Hellenic laws”, article 9 “crimes unprosecuted that were taken place in the foreigner”, article 10 “sentences calculation of sentences that took place in the foreigner”, article 11 “recognition of alien penal decisions».

<sup>3</sup> See Mylonopoulos D. (2000). Public and Private Maritime Law, Piraeus: Stamoulis p.p. 141-166 (in Hellenic).

<sup>4</sup> See Asonitis G. (1995). The United Nations Convention on the law and the sea. Athens: Papazisis, p.69, article 8, subparagraph 2 (in Hellenic).

<sup>5</sup> See Ioannou, K., Oikonomidis, K., Rozakis, Ch., Fatouros, A. (1991). Public International Law, Competences in the international law. Athens-Komotini: Ant. Sakkoulas, p. 57 (in Hellenic).

<sup>6</sup> See Roukounas, E. (1982-83). International Law II, State and Territory, the law of Sea. Athens: Komotini: A. Sakkoulas, p.12 (in Hellenic).

<sup>7</sup> It is marked that the International Court of The Hague in its decision concerning the continental shelf of Aegean (1978) judged that it is included in the significance of “status”, see Ioannou, K., Oikonomidis, K., Rozakis, Ch., Fatouros, A. (1991), op.cit, p. 23.

<sup>8</sup> See Ioannou, K., Oikonomidis, K., Rozakis, Ch., Fatouros, A. (1991), op.cit, p. 42.

<sup>9</sup> See Anagnostopoulos I., Vathiotis, K., (1999), op.cit, p.p.7-8.

Article 16 of HPC “Action performance place”

“Action performance place is considered the place that the guilty committed totally or partially the offense with energy or omission, as well as the place that befell or in attempt case should according to the intention of guilty to befall the offense result»

<sup>10</sup> According to article 5 paragraph 2 of the Constitution: “All who are in the Hellenic territory enjoy absolute protection of life, honor and freedom, independently nationality, race or language and religious or political convictions»

<sup>11</sup> See Manoledakis, I. (1989). Penal Law, General Part Epitome, articles 1-49 HPC, Publication b’, p.79 (in Hellenic).

<sup>12</sup> See article 2 of L 5017/1931 “Civil Aviation”, International convention of 13-10-1919 “Regulation of Aviation” that was ratified by the L 2569/1921.

<sup>13</sup> See Manoledakis, I., op.cit, p.77.

<sup>14</sup> See Antapasis, An. (1996). The Hellenic vessel and its personnel from Community law viewpoint, Aegean Institute of Law on Sea and Maritime Law, Rhodes, p.p. 39-68 (in Hellenic) and Mylonopoulos, D., op.cit, p.p.37-42.

<sup>15</sup> The legislative significance of vessel varies in various texts depending on the more special aim of text. One definition is in HCOMPL and more specifically in article 3, paragraph 1 titled «‘Vessel significance». More specifically is defined “vessel, according to the meaning of the present code, is every vessel, destined to move in the water in order to carry persons or things, towing, sea assistance, fishery, recreation, scientific research or other purpose”.

In Private Maritime Code Law (L 3816/1958) in article 1 is defined the meaning of the vessel. More specifically, "vessel, according to the meaning of the present code, is every vessel with capacity at least ten tons, destined to be moved with its own power at sea. The provisions of third, fourth, sixth, seventh, twelfth, thirteenth and fourteenth title of this law are enforced mutadis mutandis to any other docked vessel”.

For vessel meaning see Antapasis, An., op.cit, p.p.19-68 (in Hellenic).

Also the vessel meaning especially when to a the vessel is imposed the meter of prohibition departure according to articles 720, 992,1011, 1012 and 1013 of the Hellenic Civil Procedure Code is peculiar more to the meaning of Hellenic Private Maritime Code Law. According to my personnel opinion the vessel meaning in HCOMPL is larger and the present article is based on this concept. Also according to the decision No 857/1958 issued by the Athens Appeal Court, Hellenic vessels are meant both commercial vessels and warships in any place they are.

According to article 1, subparagraph Z of L 1363/1983 with was ratified the European Convention on Consular Duties, the term vessel of dispatching state, means every vessel apart from warships that has the nationality of mission state according to the legislation of this state.

The definition that is contained in the Consular Convention with Poland in article 1 subparagraph IV, L 838/1978 for the vessel is “every navigable permitted in order to bring the flag of state mission or is registered to this state, with the exception of warships”.

The formulation of consular Convention with the B. Britain according to article 2ω, paragraph 5 of LD 2619/1953 is defined that “any vessel or navigable mean registered in any port of its territory”.

The definition that is contained in L 1441/1984 (A’ 71) “Ratification of Agreement on the shipping and the maritime transports ..... that were signed in Cairo between the Hellenic Democracy and the Government of Egypt Arabic Republic ....” in article 1 paragraph 1 defines that with the term “vessel of Contracting part” is meant any vessel registered in the shipping registers of Contracting Part and which its flag brings.

The same formulation is included also in laws 2419/1996 (A' 141), "Ratification of Agreement on the maritime transports between the Government of Hellenic Democracy and the Government of China Republic" article 1 paragraph 1, L 2574 /1998 (A' 22), "Ratification of agreement between the Government of Hellenic Democracy and the Government of Georgia for commercial shipping", article 1 paragraph 1, L 2967/2001 (A' 277), "Ratification of agreement between the Government of Hellenic Democracy and the Ministerial Council of Ukraine on the commercial shipping", article 1 paragraph 1.

<sup>16</sup> Relative for the same subject is the "Convention of Europe Council for suppression of documents ratification drawn up by diplomatic and consular Agents (London, 7/6/1968) which was ratified by Hellas with L 844/1978.

For the States that have adhered - ratifies respectively the Convention relative is the document with No oik. 47302 from 26 August 2008 issued by the Ministry of Internal/ General Directorate of Administrative Support/Division of Organization and Process Simplification/Department of Process Simplification and Productivity.

<sup>17</sup>See Code of Maritime Law as is in effect today (1988). Publication issued by the Ministry of Mercantile Marine. Athens, p.p. 17-18 (in Hellenic).

Article 6, paragraph 1: "The recognition of vessel as Hellenic takes place with the registration of the vessel in the shipping register that is observed by Port Police Authority in domestic or Port Police Authority in foreigner that is determined by presidential decree, which is published with proposal of Ministers of Foreign Affairs and Mercantile Marine. For the rest are enforced the relative provisions of Private Maritime Law Code".

Article 7: "1.From the Authority by which was recognized the vessel is issued nationality document that includes the main characteristics of vessel specialization (name, capacity, number and port of registration), ship owner elements , as well as other elements that are determined by the presidential decree and are reduced in the vessel technical description.

2. The nationality document is always booked in the vessel".

Article 10: "Only vessels registered in the Hellenic shipping register or vessels in which were granted provisional shipping documents in force, bring the Hellenic flag".

<sup>18</sup> See Asonitis G., op.cit, p.p. 126-127.

<sup>19</sup> See Asonitis G., op.cit, p. 81.

<sup>20</sup> See Asonitis G., op.cit, p. 32.

"Article 32

Warships immunities and of other state vessels that are used for not commercial purposes.

With the reserve of exceptions that are forecasted by the provisions of subdivision A and in articles 30-31, none provision of this present Convention offends the immunities that warships enjoy and of other state vessels that are used for commercial aims»

<sup>21</sup> See Chortatos, K. (1993). Modern perceptions of international sea law and the Conventions of United Nations on the sea law of 1982. Athens – Komotini: Sakkoulas p.p. 63-64(in Hellenic).

<sup>22</sup> See Georgeakopoulos, G. (1988). The Hellenic territorial zone (Legal status, development and prospects with the new law of sea). Athens, p. 247 (in Hellenic) and Roukouas, Em., op.cit, p. 139.

<sup>23</sup> In any other case is determined in the article 31 of UNCLOS "The flag State shall bear international responsibility for any loss or damage to the coastal State resulting from the non-compliance by a warship or other government ship operated for non-commercial purposes with the laws and regulations of the coastal State concerning passage through the territorial sea or with the provisions of this Convention or other rules of international law". See Asonitis, G., op.cit, p. 82.

<sup>24</sup> See Asonitis G., op.cit, p.82

<sup>25</sup> See Code of Maritime Law as is in effect today (1988), op.cit, p. 95.

Article 163

"Crew members crimes of foreigner warships"

"1. The Port Police Authorities abstain from any intervention concerning crimes that are taken place on foreigner warships.

2. All the times that resort to foreigner warships persons that are mentioned to the previous article, Port Police Authorities ask from the captain their delivery and in case of its refusal, they are reported in the Ministry and in the responsible Public Prosecutor Authority».

<sup>26</sup> See Mylonopoulos, Ch., op.cit, p. 246

<sup>27</sup> See consultation issued by the Public Prosecutor of Hellas Supreme Court , Mpouropoulos, Θεμ. ΝΘ, p. 396

<sup>28</sup> See Roukouas E., op.cit, p.139

<sup>29</sup> For this specific item had pronounced the International Law Institute in 1928 without however its opinions to be bided.

<sup>30</sup> See Mylonopoulos Ch., op.cit, p. 247

<sup>31</sup> See Code of Maritime Law as is in effect today (1988), op.cit, p. 90.

<sup>32</sup> See Supreme Court of Hellas, 537/79.

<sup>33</sup> Relative is also the article 124 of Hellenic Penal Procedure that is determined "For crimes that were committed in Hellenic vessel in abroad or in open sea, the competence is determined by the place of harbor where the vessel was registered or in the harbor where the vessel approached for first time afterwards the action", see Kalfelis, Gr. (2009).Code of Penal Procedure and Special Procedural Laws, 2nd publication. Athens: Legal Library, p.p. 75-78 (in Hellenic).

<sup>34</sup> According to article 438 of Hellenic Penal Procedure is prohibited the extradition of domestic nationals.

<sup>35</sup> See Doris, E. (1995). Public properties, seashore and beach, maritime environment pollution, territorial sea, continental shelf, receiving sand, Volume B', Copy A'. Athens: A. Sakkoulas, p.p. 189-202 (in Hellenic).

<sup>36</sup> The duties of consular Port Police Authorities are determined in the Ministerial Decisions (MD): No. 1141.1/39/02 (B' 929) "Determination of shipping attachés competences" and 1141.1/11/2005 (B' 729) "Determination of HCG officers additional competences who are posted in the Shipping Attaches in London" equivalent.

For the same subject relative is the consultation with No. 48/1992 issued by the Hellenic Legal Council according to is possible the conducting of preliminary investigation by The Consular Port Police Authorities for declared accidents that happen in Hellenic seamen who work as crew in vessels under foreigner flag not contracted with MRF [NAT].

<sup>37</sup> See Krispis, I., (1951). *Legal Status of Commercial Vessels in the ports and in the territorial sea in time peace*. Athens: N. Sakkoulas p. 26 and next (in Hellenic).

<sup>38</sup> Each state enforces power on persons and things that are located in the open sea. See Krispis, I., op.cit, p. 24 and next.

<sup>39</sup> The flag principle as is determined in the article 5 paragraph 2 of HPC is limited if is taken into consideration and the article 28 paragraph 1 of the Constitution. See, Hellas constitution,, Hellenic Parliament January 2005, p.41.

<sup>40</sup> See Roukounas E., op.cit, p. 140 and next.

<sup>41</sup> See Supreme Court of Hellas 261/84, 648/77, 87/1954 and Piraeus Misdemeanor 358/74.

<sup>42</sup> See consultation issued by the Public Prosecutor of Hellas Supreme Court, Mpouropoulos, No. 47/78 and Kollias, NoB 1961, p. 560.

<sup>43</sup> See Piraeus Misdemeanor Court 358/74 and 896/69.

<sup>44</sup> See Corfu Appeals Court 397/1981, Misdemeanor Court of Corfu 684/1954.

<sup>45</sup> See Chortatos K., op.cit, p.68.

<sup>46</sup> See Chortatos K., op.cit, p.68. Based on the French system, foreigner commercial vessels are under the jurisdiction of the country, the flag of which they bring, and under exception they are in the jurisdiction of state, in territorial waters of which they are:

a. - provided that the action taken place on the vessel became from person or person that does not belong in crew,

b. - provided that they were taken place by such person but was disturbed against the port quietness and

c. - if was asked the subscription of local authorities by the captain.

<sup>47</sup> See Krispis, I., op.cit, p. 59.

<sup>48</sup> See Ioannou, K., Oikonomidis, K., Rozakis, Ch., Fatouros, A. (1991), op.cit, p.p. 59-60.

<sup>49</sup> See Ioannou, K., Oikonomidis, K., Rozakis, Ch., Fatouros, A. (1991), op.cit, p. 47.

<sup>50</sup> See Asonitis, G., op.cit. p.p. 79-80.

<sup>51</sup> See Tsiridis, P., op.cit, p. 90.

<sup>52</sup> See Piraeus Misdemeanor Court 155/85.

<sup>53</sup> See Hellas Supreme Court 1105/73.

<sup>54</sup> See Five Members Court of Piraeus 166/83, Piraeus Appeal Court 72/90, Syros Misdemeanor Court 131/64.

<sup>55</sup> See Tsiridis, P., op.cit, p.92.

<sup>56</sup> See Tsiridis, P., op.cit, p.92.

<sup>57</sup> See Mylonopoulos, Ch., op.cit, p. 211.

<sup>58</sup> See Asonitis, G., op.cit. p.p. 128-130.

<sup>59</sup> See Tsiridis, P., op.cit, p. 101 and next.

<sup>60</sup> See Code of Maritime Law as is in effect today, p. 128. The article in question was modified - supplemented by the article 7 of L 2987/2002 (A' 27), «Modification of provisions of L 959/1979 "Maritime Company" (A' 192) and regulation of other subjects of Ministry of Mercantile Marine competence». More specifically its title was replaced as "Penal provisions enforcement".

Additionally was added paragraph 4 as follows:

"4. Penal sanctions that are forecasted in articles 205, 207 paragraph 1, 208, 210 paragraph 1 and 222, as well as in the paragraph 1 of article 4 of CL 3276/1944 (A' 24) are imposed if:

A) is placed at risk or safety: persons that get or not on the vessel, the vessel, the load or property or

B) are caused pollution or other damage of maritime environment or

C) is disturbed the order or is placed at risk the public health".

According to my opinion, the above legislative regulation is misplaced, as is obvious that for instance if the composition of the crew is not completed then the passengers' safety as the safety of the vessel is getting on risk etc. Also the disobedience is obvious that disturbs the order on the vessel.

The offences that are regulated - included in the above provision are:

Article 205 "Crew member outlaw absence of on duty hour",

Article 207, paragraph 1 "Desertion",

Article 208 "Not attendance for undertaking service",

Article 210 paragraph 1 "Disobedience",

Article 222 "Refusal of orders implementation in foreigner" and

Also relative is article 4 paragraph 1 of CL 3276/19944 (A' 24). It is marked that LD on 13-12-1923 that is reported in the previous paragraph was suppressed by the HCOMPL.

With the above exceptions is becoming lighter the penal prosecution for offences taken place by seamen. The particular provision is coming straight in opposition with the provision of article 87 in implementation of which is published the lawful action that regulates the composition of crew for various vessel categories. The interpretation of these depends by the penal courts elaboration but is placed subject how is interpreted or proved that has been placed at risk the vessel safety.

Besides the order perturbation is significance that is interpreted individually by the penal courts, as does not exist legally definition that would attribute – defines the above significance.

<sup>61</sup> Sea Piraeus Misdemeanor Court 117/74, 775/79, Poinika Chronika AA/498.

Independent from the above, the ex ministry of Mercantile Marine [YEN] (now ministry of Citizen Protection) has circulated directives concerning how will be formed and will be submitted insurance legal file (document with No. 32524/2012/86 issued on 07-11-1986 by YEN/DPN 2<sup>0</sup>), how will be limited the shaping of insurance legal files (document with No. 1144/Φ.9a issued on 17-03-1987 by YEN/ΔΑΠ-ΔΕΝ-ΔΛΑ-ΔΠΝ-ΔΝΕΡ-ΔΩΝ) as well as directives on forming and submission of legal files concerning HCOMPL violations (document with No. 3330/03/88 issued on 19-07-1988 by YEN/Disciplinary Security Division/Section 3rd and document with No. 2234/01/90 issued on 12-01-1990 circulated by the same Service).

It is remarkable to the above mentioned documents, that YEN circulate directives concerning the way how the HCG personnel will enforce its preliminary investigation duties for infringements of HCOMPL as also for general provisions eg. seaman injury, illness etc. Namely the ministry in this particular case, substitutes if it does not replace the Juridical and Public Prosecutor Authorities circulating directives that suffer legally and probably create legal consequences in the HCG personnel in case of their enforcement (it is generally known that circular do not recommend rules of law, but the bodies –military personnel- can be checked disciplinarily in case that do not enforce the circulars of the HCG Headquarter). More specifically:

1. - With circular No. 35524/3687/82 issued on 19-11-1982 are provided directives concerning shaping on insurance legal folder (term unknown so in the penal code procedure as also in HCOMPL). The particular insurance penal folder which according to the circular are self-existent and coincide from practical side with the preliminary examinations, aims in seaman right who suffered accident, or injury or died or become ill, to claim pension or to be claimed by her/his family. In the circular is determined not only where the penal insurance folder will be submitted but is also ordered the syntax of statutory preliminary investigation (report) by the responsible Port Police Officers which will be submitted individually in various YEN services.

In this specific case is forecasted not only the syntax of statutory preliminary investigation (report) [at my opinion recommends arbitrary action and the HCG personnel do not have legal obligation of preliminary investigation material evaluation in order to syntax a report without relative legislative provision), but is also forecasted where will be submitted copies of insurance penal folder without something like that to be known to Public Prosecutor Authority and also without the existence of relative legislative provision. The above except the lack of relative provisions are contrary to provisions of HPP, articles 27, 28, 31, 33, 36, 37, 43, 44, 45,148 and next.

2. - With the circular with No 1144/Φ.9a issued on 17-03-1987 is also observed the phenomenon YEN to provide commands concerning how the HCG personnel will enforce its preliminary investigation duties and more specifically how they will evaluate each incident in order to shape and to submit preliminary investigation material to Juridical Authority. Further of the fact that YEN does not have any absolutely competence in order to provide directives - directions for shaping insurance penal folders as the evaluation of each incident belongs exclusively in Public Prosecutor Authority competence, by the above circular the administrative Authority and in the particular case YEN without absolutely no competence grants directives that are contrary to the provisions of HPP. They are in effect and here the containing in the previous paragraph.

3. – With circular No. 3330/03/88 issued on 19-07-1988 with which also are provided directives on the shaping and submission of insurance penal folders for HCOMPL infringements, deserves to be marked that according to paragraph 12 of this document, the HCG personnel is compelled without existing legal provision to shape and to submit with the material of preliminary investigation and report.

Even if it is recognized that not only is not forecasted something like that but also is contrary to basic provisions of HPP, nevertheless is ordered committing the HCG personnel to pronounce with proposal for guilty Penal or Disciplinary prosecution. I believe that regarding the Penal part of course, the syntax of conclusion is out of HCG competences as expressly the penal prosecution is in juridical Authorities elaboration.

Concerning the case for reference in front of First Degree Disciplined Council for imposition of sentence of maritime profession deprival exercise according to articles 249 and 250 of HCOMPL, is required special on the facts report by the Port Police Authority or Service that enforces the disciplinary prosecution which is submitted by the relative folder in YEN [article 12 PD 861/79, (A 246), “Disciplined Councils of Merchant Shipping and the process in front of them”].

<sup>62</sup>For the terms, processes and the preconditions of pensioners employment because of seaman old age relative is the MD with No. 3511.4/20/2004 [B’ 1782), which modified the MD with No 3511.4/49/2002 (B’ 306) and No. 3511.4/86/2002 (B’ 1591), decisions which were published according to the authorization of article 8 paragraph 2 of L 2987/2002 (A’ 27).

At my opinion the above mentioned initial MD has of course exceeded the limits of the authorization that was placed by the L 2987/2002 because while in article 8 paragraph 1 is determined that is allowed in the seamen that have not supplemented the fiftieth fifth year of their age to repeat the maritime profession in vessels independently of flag, in the article 1 of the above lawful act is determined that “Pensioner seaman age up to 65 years, in order to repeat the maritime profession submits .....”.

<sup>63</sup> See COMPL, op.cit, p. 117.

<sup>64</sup> See Piraeus Misdemeanor Court 775/79.

<sup>65</sup> See COMPL, op.cit, p.p. 125-126.

<sup>66</sup> See COMPL, op.cit, p.p. 123-124.

<sup>67</sup> See Kalfelis Gr.,op.cit, p.p. 24-30.

<sup>68</sup> See COMPL, op.cit, p.p. 132-133-135.

<sup>69</sup> See article 36 and next of HPP and Kalfelis Gr., op.cit, p.24 and next.