

OPENING/FALLING OF THE BOW VISOR/RAMP AS THE CAUSE OF MARITIME CASUALTIES – LIABILITY AND INSURANCE ASPECTS

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ABSTRACT

One of the fundamental determinants concerning the safety of maritime navigation is the need to comply with all safety standards of ship maintenance and safe working conditions, the non-fulfilment or non-observance of which is considered a decisive factor in the occurrence of maritime casualties. In this article, the international, European and national normative legal issues of liability for damages and insurance cover are presented and explained using the example of two maritime casualties involving ro-ro passenger ships: 15-year old ship "Estonia" from 1994 (the accident occurred due to the opening of the bow visor during the navigation, which led to the sinking of the ship in international waters of the Baltic Sea and the death of 852 people) and the 55-year old ship "Lastovo" from 2024 (the accident occurred as a result of the fall of the bow ramp on a crew member at the pier, resulting in the death of 3 crew members and serious bodily injuries to 1 crew member). Although these are maritime accidents that occurred almost 30 years apart, they have a common link and raise questions about the (un)seaworthiness of the ship - which was established in the case of the maritime accident of the ship "Estonia" and seaworthiness of the ship which was established in the case of the maritime accident of the ship "Lastovo". Given the above, the authors refer to the changes in the international and European legal framework (changes in ferry safety regulations, changes in liability and insurance cover regulations) that followed the „Estonia“ maritime casualties, and which, since a more compre-

hensive analysis was not possible, focussed exclusively on the damage suffered by passengers. At the same time, the national legal framework of liability and insurance coverage (according to the decisions of the Croatian Maritime Code, national Collective Agreement, Maritime Labour Convention, and P&I Club Rules) is considered in relation to damage caused by the death or physical injury of a „Lastovo“ crew member. The paper aims to discuss important issues related to the appropriate application of the International Safety Management Code (ISM Code), which was adopted immediately after the „Estonia“ maritime casualties, in order to ensure the safety of all operations related to the operation of the ship, including the prevention of injury or loss of life to passengers/crew members. Although the ISM Code does not regulate property liability issues, its non-application may be an important factor in determining the shipowner's liability for all contractual and non-contractual obligations that may arise from the shipping operation and thus for the successful exercise of maritime insurance rights.

Keywords: maritime casualties, insurance, ISM Code, liability

1. INTRODUCTION

Safety of maritime navigation is based on meeting extremely demanding maritime navigation safety standards, which also apply to ro-ro passenger ships (ferries). It is unquestionable that it includes complying with international convention and European rules (for ships on international voyages and voyages between 2 EU Member States) and European and national rules (for ships on domestic voyages - between ports of 1 EU Member State).¹ Passenger ships as a special category of vessels must meet stringent and comprehensive technical requirements for navigation safety, which generally implies a higher level of safety in relation to other types of ships.² Latent defects of the ship, its poor maintenance, but also failures in the management of the shipping company are factors that contribute to a greater likelihood of maritime accidents.³ Likewise, worn-out condition and average age of ships (the operational life of most merchant ships is 20-25 years)⁴ directly affect the much higher operating cost for their maintenance⁵ which in turn brings into

¹ See more Jacobs, K., *Safety of ro-ro passenger ships – Stability requirements*, European Parliament, July 2023, p. 2, available at: [[https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/733616/EPRS_BRI\(2022\)733616_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/733616/EPRS_BRI(2022)733616_EN.pdf)], Accessed 10 February 2025.

² Rukavina, B.; Luttenberger, A., *Investigations of Maritime Accidents Involving Passengers Ships in the Republic of Croatia*, Poredbeno pomorsko pravo, No. 175, 2021, p. 140.

³ See more Vio, I., *Pravni okvir odgovornosti brodarka za smrt i tjelesne ozljede člana posade u angloameričkom pomorskom zakonodavstvu*, Poredbeno pomorsko pravo, Vol. 61, No. 176, p. 388.

⁴ Anderson, C. B., *Shipping and the environment law and practice*, Informa, London, 2009, p. 1029. The average ocean-going commercial vessel will have an operational life of 28 years, Prentiss Pskowski, R., *No Country for Old Ships?: Emerging Liabilities for Ship Recycling Stakeholders*, Tulane Maritime Law Journal, Vol. 45, No. 61, 2020, p. 62.

⁵ Some ship machinery and equipment break down or wear out faster than others, so their timely renewal extends the life of the ship (see more: Hlača, V., *Hrvatsko pomorsko pravo*, Pravni fakultet u Rijeci, 2001, p. 229).

question their seaworthiness.⁶ One of the fundamental objectives of European maritime policy includes determining that a ship is seaworthy,⁷ i.e. establishing a system for early detection of substandard ships and measures to prevent their further navigation through regular technical controls – technical supervision, i.e. ship inspection.⁸ Classification societies have an important role when it comes to the safety of maritime navigation, because their high-quality and efficient work leaves less room for substandard ships.⁹ In classification society rules there are set out a numerous standards for safe operation, including about seaworthiness. But it is sometimes considered that a certificate of seaworthiness issued by a classification society only reflects the condition of the ship at the time of the inspection and loses its validity once the ship sails.¹⁰ In any case, failure to maintain a ship seaworthy has a direct impact on the safety of maritime navigation, or the possible occurrence of a maritime accident that can have tragic consequences for passengers and crew members. However, it is important to emphasise that the requirements of the new safety standards exceed the traditional supervision and the role of classification societies, extending them to the assessment of ship management and crew procedures, which represents significantly more complex requirements for classification societies.¹¹

In this paper, the authors conduct a legal analysis of normative provisions on liability and insurance coverage for damages incurred to passengers (in the case of a maritime accident involving the 15-year-old passenger ship “Estonia”) or to crew members (in the case of a maritime accident involving the 55-year-old passenger

⁶ More about the legal standardisation of a ship's seaworthiness in terms of meeting the requirements for safe navigation see Bolanča, D.; Barun, M., *Neke novosti na području usklađivanja hrvatskog pomorskog upravnog prava sa pravnom stečevinom Europske unije*, Zbornik Pravnog fakulteta u Splitu, Split, No. 4, 2008, p. 747-752; Bolanča, D.; Primorac, Ž., *Sigurnost plovidbe u Zakonu o izmjenama i dopunama Pomorskog zakonika iz 2007. godine*, Naše more, Dubrovnik, No. 3-4, 2008, p. 148-151; Capar, R., *Pomorsko upravno pravo*, Školska knjiga, Zagreb, 1987, p. 60-77; Grabovac, I., *Pomorsko pravo*, knjiga prva, Visoka pomorska škola u Splitu, Split, 2001, p. 62-64.; Luttenberger, A., *Pomorsko upravno pravo*, Pomorski fakultet u Rijeci, Rijeka, 2008, p. 110-116. More about the carrier's responsibility for the ship's seaworthiness see Marin, J., *Odgovornost prijevoznika za plovidbenu sposobnost broda*, Zbornik Pravnog fakulteta u Zagrebu, Vol. 58, No. 1-2, 2008, p. 489-507.

⁷ The standard applied for the determination or whether or not a ship is seaworthy is an objective one. Arguably, it is only possible to make this determination before and at the beginning of the undertaking of a voyage when the ship is still in port, Rong, P., *Liability in Criminal and Private Law Regarding Maritime Safety*, Journal of Maritime Law & Commerce, Vol. 48, No. 1, 2007, p. 68-69.

⁸ See more Luttenberger, A., *op. cit.*, note 6, pp. 111-113.

⁹ Bulum, B., *Pomorski promet*, in: *Europsko prometno pravo*, Pravni fakultet u Zagrebu, Zagreb, 2011, p. 326.

¹⁰ Rong, P., *op. cit.*, note 7, pp. 68-69.

¹¹ Kiperaš, Ž., *ISM Kodeks – primjena od strane države zastave*, Uporedno pomorsko pravo, Vol. 38, No. 149-152, 1996, p. 78.

ship “Lastovo”), with regard to the fact that the maritime accident occurred due to the opening of the bow visor during navigation (“MV Estonia”) and the falling of the bow ramp on a crew member at the pier in the ferry port (“Lastovo”). Since there are various mechanisms (hydraulic mechanisms, etc.) that serve as measures to ensure the application of safety procedures for implementing all phases of opening/closing bow visors and ramps, their adherence and appropriate application aim to prevent their uncontrolled manoeuvre.

2. MARITIME CASUALTIES WITH OPENING BOW VISOR / FALLING BOW VISOR ON RO-RO PASSENGER SHIPS – LIABILITY AND INSURANCE ASPECTS

Civil liability of a shipowner for damage caused to passengers and crew members is the subject of insurance under maritime liability insurance. Determining liability is preceded by an assessment of whether, at the time of the maritime accident, the requirements regarding the application of valid international unification instruments and European maritime law on the safety of navigation and the fulfilment of standardised safe navigation norms, i.e. the application of safety standards, were met.¹² This is particularly significant since non-compliance and/or inadequate application of safety standards are among the determining factors in the occurrence of maritime accidents so the question arises on the liability of the shipowner as the possessor of the ship, organiser and bearer of maritime ventures.

The contractual liability of a shipowner arises from the breach of contractual obligations, which may manifest itself as the shipowner’s failure to perform, improper performance or delay in performing his contractual obligation. It certainly includes the shipowner’s liability for death and bodily injury to passengers and crew members when this is the result of a maritime accident. A special requirement that P&I clubs place on their members (shipowners) is that they strictly comply with the legal requirements of the country whose flag the member ship flies (ship nationality) in terms of use, construction, adaptation, condition of the ship, seaworthiness and equipment.¹³ They must have, in relation to each ship from their fleet, met all international ship safety management standards (technical, organizational and procedural) fulfilled in order to achieve the safety of all operations related to the use of the ship.

¹² Historically, efforts have been made to incorporate stricter standards for navigation safety into global standards.

¹³ Pavić, D., *Pomorsko osiguranje pravo i praksa*, Književni krug, Split, 2012, p. 454.

2.1. Accident of ro-ro passenger ship (ferry) “Estonia” in 1994

On 27 September 1994, the Estonian-owned ro-ro passenger ship (ferry) “Estonia”¹⁴ set sail on its last route from Tallinn (Estonia) to Stockholm (Sweden). Due to a severe storm accompanied by strong waves, on the night of 28 September 1994, the bow visor was opened and ripped off the hull, which caused rapid water penetration to the lower deck (vehicle deck), jeopardizing the stability and buoyancy of the ship and consequently causing the ship to sink in a very short period of time (30 min.).¹⁵ The “Estonia” sank to a depth of approximately 90 meters, and of the total number of people on board - 852 people died. After the maritime accident of the passenger ship “Titanic”, this is an accident that is considered the largest peacetime maritime accident of a European passenger ship in Europe due to the number of fatalities. Since the maritime accident occurred in international waters of the Baltic Sea, Estonia, Finland and Sweden formed an international Accident Investigation Committee, which after 3 years (on 3 December 1997) published their joint Final Report on the Capsizing of the “Estonia”.¹⁶ It was concluded that “bow visor attachments were not strong enough for the hydrodynamic loads of the waves”,¹⁷ i.e. that the maritime accident was the result of mechanical failure of the ship’s bow visor.¹⁸ At the same time, the investigation determined that the bow ramp remained attached to the sunken ship. Based on data from the Final Report, we observed that the “Estonia” sank at a distance of about 22 nautical miles from the Finnish island of Utö. But her design was permitted for vessels in protected waters which would sail no further than 20 miles from land.¹⁹ According to the Report, „Estonia“ was not seaworthy. Neither the German ship-builder nor the French agency Bureau Veritas that deemed the ship seaworthy were ever held responsible for the accident.²⁰

¹⁴ „Estonia“ was built in autumn 1979, in Meyer Werft shipyard (Germany).

¹⁵ See more Dhillon, B. S., *Transportation Systems Reliability and Safety*, CRC Press, Boca Raton, 2016, p. 155; Whittingham, R., *The Blame Machine: Why Human Error Causes Accidents*, Routledge, London, 2004, p. 130-131; Yang, Z.; Wang, J., *Ship Formal Safety Assessment*, Talley, W. K. (ed.), Maritime Safety, Security and Piracy, Informa Law from Routledge, London, 2009, p. 33.

¹⁶ See more Tiberg, H., *International Update: Swedish Maritime Law 1999*, Tulane Maritime Law Journal, vol. 24, 2000., p. 864.

¹⁷ Klingbeil, D.; Klinger, C.; Kinder, J.; Baer, W., *Investigations for indications of deliberate blasting on the front bulkhead of the ro-ro ferry MV ESTONIA*, Engineering Failure Analysis, Vol. 43, 2014, p. 186-197.

¹⁸ *Sweden Closes Case of MV Estonia Sinking*, The Maritime Executive, available at: [<https://maritime-executive.com/article/sweden-closes-case-of-mv-estonia-sinking>], Accessed 21 February 2025.

¹⁹ Tiberg, H., *Why Cover the Wreck of a Sunken Ship?*, Scandinavian Studies in Law, Vol. 39, 2000., p. 481.

²⁰ *Estonia shipwreck claimants have low hopes for compensation hearing*, 2019, available at: [<https://www.france24.com/en/20190412-estonia-shipwreck-claimants-have-low-hopes-compensation-hearing>], Accessed 2 March 2025.

At the time of the maritime accident “Estonia”, the provisions of the most important and most complete international convention on safety at sea, protection of human life at sea,²¹ had already entered into force. This is the International Convention for the Safety of Life at Sea - SOLAS Convention (1974), whose basic goal was to determine minimum safety standards for the construction, equipment and operation of ships.²² The importance of the issue of liability of a maritime carrier for death and bodily injury to passengers (violation of their physical integrity)²³ and loss, damage and delay in the delivery of luggage is indicated by the provisions of the Athens Convention Relating to the Carriage of Passengers and Their Luggage by Sea (1974),²⁴ which regulates them internationally and applies only to international transport.²⁵ This is the first international act that regulated the issue of contractual liability of a maritime carrier for death and bodily injury to passengers. Although Athens Convention has been incorporated into the legal systems of more than 30 countries from all around the world,²⁶ Estonia, Finland and Sweden were/are not state parties.²⁷ The resulting damage to passengers was paid from the carrier’s liability insurance policy – through P&I Club “Skuld” using Swedish Maritime Code which had rules on limitation liability for damages to passengers to the order of 260 million crowns (only 100 000 SDR per passenger).²⁸

2.1.1. Influence of the “Estonia” maritime accident on international and European legal framework changes

The maritime accident involving the ro-ro passenger ship “Estonia” contributed to the introduction of significant changes in terms of the legal basis and limits of liability of carriers for death and bodily injury to passengers, but also the introduction of mandatory passenger insurance in maritime transport according to

²¹ Grabovac, I., *Plovidbeno pravo Republike Hrvatske*, Književni krug, Split, 2003, p. 60.

²² Grabovac, I., *Suvremeno hrvatsko pomorsko pravo*, Književni krug, Split, 2005, p. 34. More on SOLAS Convention see Luttenberger, A., *op. cit.*, note 6, pp. 19.-20.

²³ It is about any injury to the physical or psychological condition of a person in relation to his condition that existed before the injury, including death as the destruction of the physical existence of a person, Milošević-Pujo, B., *Pravna priroda ugovora o prijevozu putnika – posebno o odgovornosti brodarka za fizički integritet putnika*, Naše more, Dubrovnik, No. 5-6, 2003, p. 211.

²⁴ Athens Convention Relating to the Carriage of Passengers and Their Luggage by Sea (1974), further: Athens Convention.

²⁵ More on international transport see Marin, J., *Međunarodne konvencije i protokoli kao izvori hrvatskog pomorskog prava*, Poredbeno pomorsko pravo, Vol. 46, No. 161, 2007, p. 107.

²⁶ Soyer, B.; Leloudas, G., *Carriage of Passengers by Sea: A Critical Analysis of the International Regime*, Michigan State International Law Review, Vol. 26, No. 3, 2018., p. 486.

²⁷ See more: Pospíšil-Miler, M., *Novi sustav odgovornosti za smrt i tjelesne ozljede putnika u pomorskom prijevozu*, Pravni fakultet Sveučilišta u Rijeci, Rijeka, 2014, p. 195-198.

²⁸ See Tiberg, H., *op. cit.*, note 19, p. 483.

the provisions of the Protocol of 2002 to the Athens Convention Relating to the Carriage of Passengers and Their Luggage by Sea.²⁹ The aim of the provisions in question was to improve the legal position of passengers and enable greater safety for passengers in the event of a violation of their physical integrity. At the same time, amendments were made to the then valid international legal provisions, or rather, the implementation of new provisions³⁰ in the SOLAS Convention, which applies to passenger ships on international voyages. In particular, only 5 days after the “Estonia” maritime accident (on October 4, 1994) IMO started an initiative that included proposals for the adoption of special legal norms on ro-ro passenger ships safety. After only a year, amendments to existing provisions, as well as new provisions, were incorporated into the SOLAS Convention.

It is significant to note how the improvement of the normative legal framework of maritime safety regulation was approached even before the accident of the passenger ship “Estonia”. Specifically, at the end of 1993, International Safety Management Code (ISM Code) was adopted³¹ aiming to provide international safety standard for all ships in international voyages (including ro-ro passenger ships), which introduces demanding international standards regarding operational safety issues and safe management. ISM Code introduces higher global standards in terms of ship management by ship masters, officers and crew members, and in relation to functionality requirements in terms of management procedures within shipping companies on land.³² The implementation of the ISM Code is obligatory for all shipping companies.³³ The basic principles according to ISM Code are that company³⁴ should provide, among others, for safe practices in ship opera-

²⁹ Protocol of 2002 to the Athens Convention Relating to the Carriage of Passengers and Their Luggage by Sea (further: Protocol of 2002 to the Athens Convention), see more Primorac, Ž., *Obvezno osiguranje od odgovornosti prijevoznika za smrt i tjelesne ozljede putnika prema odredbama protokola Atenske konvencije iz 2002.god.*, Pravni vjesnik, Osijek, Vol. 37, No. 3-4, 2011, pp. 257-274.

³⁰ More on all requirements which were made as a consequence of a several disasters, including Estonia accident in 1994, see: Szymonski, M., *Safety Management on ro-ro Passenger Ships*, TransNav, International Journal on Marine Navigation and Safety of Sea Transportation, Vol. 18, No. 2, 2024, pp. 281-285.

³¹ See more: Grabovac, I., *Plovidbeno pravo Republike Hrvatske, op. cit.*, note 21, pp. 75-78; Pavić, D., *Pravni učinci primjene ISM kodeksa na ograničenje odgovornosti brodara*, Poredbeno pomorsko pravo, Zagreb, No. 155, 2001, pp. 57-70; Hess, M.; Kos, S.; Njegovan, M., *Procjena i kontrola operativnih rizika na brodu u skladu s ISM Pravilnikom*, Pomorstvo, Rijeka, No. 2, 2011, pp. 405-416. More on 5 amendments to the ISM Code (in 2000, 2004, 2005, 2008, 2013) see more: International Maritime Organization, *The International Safety Management (ISM) Code*, available at: [https://www.imo.org/en/ourwork/humanelement/pages/ISMCode.aspx], Accessed 2 March 2025.

³² Bolanča, D., *Prometno pravo Republike Hrvatske*, Pravni fakultet u Splitu, Split, 2016, p. 72.

³³ Karakasnaki, M.; Vlachopoulos, P.; Pantouvakis, A.; Bouranta, N., *ISM Code implementation: an investigation of safety issues in the shipping industry*, WMU Journal of Maritime Affairs, Vol. 17, 2018, p. 462.

³⁴ Company means the owner of the ship or any other organization or person such as the manager, or the bareboat charterer, who has assumed the responsibility for operation of the ship from the shipowner

tion and a safe working environment (1.2.2 of the ISM Code). Considering that managerial errors were identified as important causal factors (also in case of maritime accident of “Estonia”) – IMO accelerated the work with a code to regulate workplace safety and pollution.³⁵ ISM Code was incorporated in a new chapter IX of the SOLAS convention and it became mandatory from July 1, 1998 in State Parties to the SOLAS Convention, for companies operating ro-ro passenger ships. Consequently, P&I clubs have prescribed the obligation that a ship must always have valid prescribed certificates regarding the company and ship safety management system (ISM Code), which aims to unify and improve existing ship safety management procedures in order to achieve the safety of all operations related to the use of a ship.³⁶ All EU Member States ratified SOLAS convention, but its provisions do not apply on domestic voyages.³⁷ While ensuring safety of ships is flag state responsibility, obligation of companies and EU Member States according to ISM Code were prescribed in Council Regulation (EC) No 3051/95³⁸ which was limited to safety management of ro-ro passenger ships (ferries) and was, after amending ISM Code in 2000, repealed by Regulation (EC) No 336/2006.³⁹ New European legal provisions adopted with the aim of achieving greater safety of maritime navigation were related to the adoption of the safety of passenger ships regulation:⁴⁰ a) Council Directive 98/18EC⁴¹ with goal to introduce a uniform

and who, on assuming such responsibility, has agreed to take over all duties and responsibility imposed by the ISM Code (1.1.2. of the ISM Code). More on positive and negative consequences of the ISM Code for shipping companies see: Størkersen, K. V.; Antonsen, S.; Kongsvik, T., *One size fits all? Safety management regulation of ship accidents and personal injuries*, Journal of Risk Research, Vol. 20, No. 9, pp. 1162-1163.

³⁵ *Ibid.*, p. 1157.

³⁶ See more Herdzik, J., *ISM Code on Vessels With or Without Impact on a Number of Incidents Threats*, Journal of KONES Powertrain and Transport, vol. 26, no. 2, 2019, pp. 54-58.

³⁷ See more: Wang, H. C.; Wu, C. H., *A Scenario Simulation-Evaluating Evacuation Analysis for ro-ro Passenger Ship in MV Tai Hwa*, Journal of ship production and design, Vol. 36, No. 4, 2020, pp. 240-249.

³⁸ Council Regulation (EC) No 3051/95 of 8 December 1995 on the safety management of roll-on/roll-off passenger ferries (ro-ro ferries), [1995] OJ L320/14-24, further: Council Regulation (EC) No 3051/95. The provisions in question, whose application began on July 1, 1996 - ISM Code has become mandatory in the EU for ro-ro passenger ships (ferries) operating to or from EU Member States ports on a regular service regardless of its flag, demanding that companies which operating with that ships comply with ISM Code (see more Art. 1 and 3 of the Council Regulation (EC) No 3051/95).

³⁹ Regulation (EC) No 336/2006 of the European Parliament and of the Council of 15 February 2006 on the implementation of the International Safety Management Code within the Community and repealing Council Regulation (EC) No 3051/95, [2006] OJ L64/1-36.

⁴⁰ More on safety of passenger ships regulation see Jenisch, U., *The European Union as an Actor in the Law of the Sea: The Emergence of Regionalism in Maritime Safety, Transportation and Ports*, German Yearbook of International Law, Vol. 58, 2005, pp. 242-243.

⁴¹ Council Directive 98/18/EC of 17 March 1998 on safety rules and standards for passenger ships, [1998] OJ L144/1-110.

level of safety of life and property on new and existing passenger ships; b) Council Directive 1999/35/EC⁴² which prescribes the establishment of a system of mandatory inspections,⁴³ etc.

The needs of modern maritime transport, as well as the legal aspects of protecting the legal position and safety of passengers in maritime transport, required higher limits on the liability of maritime carriers for violations of the physical integrity of passengers, so much so that the Protocol of 2002 to the Athens Convention introduced changes to the existing international system of liability and compensation for damage due to death or bodily injury to passengers, tightening the liability of carriers for the damages in question, but also introducing mandatory insurance of carriers' liability for violations of the physical integrity of passengers. Compulsory insurance was also intended to contribute to a higher standard of ship safety, because in order to be able to insure their ship, carriers are obliged to maintain the ship's seaworthiness and a certain standard of ship safety.⁴⁴

2.1.1.1. Unseaworthiness - "CMA CGM LIBRA case"

Container ship "CMA CGM LIBRA" (Maltese flag) grounded shortly after leaving the Chinese port (Xiamen). The grounding itself was held to have been caused by negligent navigation by the master in that he departed from the marked fairway and into shallow waters, which turned out not to have sufficient depth for the ship's draft.⁴⁵ According to Art. 4(1) of the Hague Rules "neither the carrier nor the ship shall be liable for loss or damage arising or resulting from unseaworthiness unless caused by want of due diligence on the part of the carrier to make the ship seaworthy, and to secure that the ship is properly manned, equipped and sup-

⁴² Council Directive 1999/35/EC of 29 April 1999 on a system of mandatory surveys for the safe operation of regular ro-ro ferry and high-speed passenger craft services, [1999] OJ L138/1-19. See more Vatanckhan, S., *EU-Regulations on Inquiries into Maritime Casualties*, Ehlers, P.; Lagoni, R. (ed.), Enforcement of International and EU Law in Maritime Affairs, LIT Verlag, Münster, 2008, p. 129.

⁴³ The provisions in question were repealed with the entry into force of the new Directive (EU) 2017/2110 of the European Parliament and of the Council of 15 November 2017 on a system of inspections for the safe operation of ro-ro passenger ships and high-speed passenger craft in regular service and amending Directive 2009/16/EC and repealing Council Directive 1999/35/EC [1999] OJ L315/61-77, which in Art. 14 prescribes the duty to carry out inspection of ro-ro passenger ships and high speed passenger craft in regular service.

⁴⁴ Pospíšil, M., *Protecting & Indemnity (P&I) osiguranje i obvezno osiguranje prema međunarodnim pomorskim konvencijama*, vlastita naklada, Crikvenica, 2021, p. 232.

⁴⁵ Solvang, T., *The relationship between nautical fault and initial unseaworthiness under the Hague-Visby Rules*, Marius Scandinavian Institute of Maritime Law, SIMPLY 2020, p. 70, available at: [https://www.sjorettsfondet.no/journal/2022/565/mc-05/Selected_topics_of_causation_between_nautical_fault_and_initial_unseaworthiness_under_the_Hague-Visby_Rules_a_comparative_analysis], Accessed 8 June 2025.

plied, and to make the holds, refrigerating and cool chambers and all other parts of the ship in which goods are carried fit and safe for their reception, carriage and preservation“. Because of the defective passage plan, the courts (in CMA CGM LIBRA case) concluded that the ship was unseaworthy⁴⁶ already at the moment of departure from the port. Although shipowners “argued that the defective passage plan was a matter that fell under the error in navigation exception under the Hague Rules and therefore they were not liable⁴⁷ - in Judgement (from 8th March 2019) Admiralty Court concluded that “the vessel was unseaworthy before and at the beginning of the voyage from Xiamen because it carried a defective passage plan.”⁴⁸ That means that shipowner was not exempted from his liability for loss and damage.

Court of Appeal Judgement (from 4th March 2020) concluded that “a properly prepared passage plan is an essential document which the vessel must carry at the beginning of any voyage“ and that “there is no reason why the absence of such a document should not render a vessel unseaworthy, just as in the case of any other essential document“.⁴⁹ Also, it is important to note that according to that judgement “the shipowner cannot avoid liability by delegating responsibility for making the vessel seaworthy to the master and officers.”⁵⁰ Namely, the Court found that the shipowner did not prove that he exercised due diligence to make the vessel seaworthy.⁵¹

The Supreme Court Judgement (from 10 November 2021) confirms the position of the lower court’s judgements stating that: a) negligent navigation or management of the ship may cause unseaworthiness;⁵² b) seaworthiness is not limited to physical defects in the vessel and her equipment (it extends, for example, to docu-

⁴⁶ More on unseaworthiness arising from the defective passage plan see Heit, L., *ALIZE 1954 AND CMA CGM SA v ALLIANZ ELEMENTARY VERSICHERUNGS AG & ORS* [2021] UKSC 51, Australian and New Zealand Maritime Law Journal, Vol. 35, No. 1, 2021, p. 89.

⁴⁷ Tezuka, S., *The “CMA CGM LIBRA” – Analysis of the impact on technical management practice of the UK Supreme Court’s decision that a defective passage plan may make a ship unseaworthy*, April 2022, p. 1 [https://www.piclub.or.jp/en/news/9999999902], Accessed 8 June 2025.

⁴⁸ Admiralty Court Judgement - Queen’s Bench Division, [2019] EWHC 481, point 129, available at: [http://www.bailii.org/ew/cases/EWHC/Admlty/2019/481.html], Accessed 8 June 2025.

⁴⁹ England and Wales Court of Appeal (Civil Division), [2020] EWCA Civ 293, point 87, available at: [https://www.bailii.org/ew/cases/EWCA/Civ/2020/293.html], Accessed 8 June 2025.

⁵⁰ *Ibid.*, point 99.

⁵¹ Pospíšil, M., *The impact of CMA CGM LIBRA on the allocation of risk in a maritime adventure*, Poredbeno pomorsko pravo, Vol.61, No.176, 2022, p. 461.

⁵² The Supreme Court of the United Kingdom, *Press summary – Alize 1954 and another (Appellants) v. Allianz Elementar Versicherungs AG and others (Respondents)*, [2021] UKSC 51, 10 November 2021, p.1 [https://supremecourt.uk/uploads/uksc_2020_0071_press_summary_b9b4e30e01.pdf], Accessed 8 June 2025.

mentary matters, to the knowledge and skill of the crew, to the vessel's systems and sometimes to the vessel's cargo or trading history);⁵³ c) it was "inconceivable" that a prudent owner would allow the vessel to depart on her voyage with a passage plan which was defective in the manner found;⁵⁴ d) carrier's seaworthiness obligation in relation to passage planning is not limited to providing a proper system for such planning.⁵⁵

2.2. Accident of ro-ro passenger ship (ferry) "Lastovo" in 2024

On August 11, 2024, a maritime accident (very serious maritime accident) occurred involving the ro-ro passenger ship "Lastovo"⁵⁶ at the pier in the ferry port in Mali Lošinj. The maritime accident was caused by the fall⁵⁷ of the bow ramp on the ship's crew members, which resulted in the death of 3 ship's crew members and serious injury of 1 ship's crew member. Of utmost importance for establishing the circumstances and causes of a maritime accident is the impartial conduct of a safety investigation,⁵⁸ which is not intended to determine liability or appoint blame and, in this regard, to establish civil, administrative or criminal liability.⁵⁹ While safety investigation is launched in order to prevent maritime casualties and accidents in the future and to promote navigation safety, its Final Report⁶⁰ con-

⁵³ *Ibid.* p. 2.

⁵⁴ Supreme Court Judgement, [2021] UKSC 51, point 127 [https://supremecourt.uk/uploads/uksc_2020_0071_judgment_772c8b5f47.pdf], Accessed 8 June 2025.

⁵⁵ *Ibid.*, point 145 on (viii).

⁵⁶ "Lastovo" was built in 1969, in Japan. After 20 years it became part of the Jadrolinija fleet.

⁵⁷ Technical problems with the bow ramp were also observed during the navigation of the ro-ro passenger ship "Mljet" (built in 2014) when during the navigation (when the ship docked in the port of Supetar) the ramp collapsed due to a breaking of the cable used to raise and lower the ramp, and the sea penetrated the interior of the ship. In the case of the maritime accident of the ro-ro passenger ship "Lastovo", the collapse of the bow ramp followed after its previous lifting for the purpose of inspecting the condition of the bow visor seal.

⁵⁸ Conditions and manner for conducting safety investigation in Republic of Croatia are written in in Regulation on the manner and conditions of conducting safety investigation of marine casualties and incidents (Official Gazette, No. 122/2015), further: Regulation, which clearly emphasises its basic objectives: prevention of future marine incidents and casualties, promotion of navigation safety and prevention of pollution from ships (Art.1(1) of the Regulation). Initiation and implementation of the safety investigation is the responsibility of Agency for the Investigation of Accidents in Air, Maritime and Railway Traffic (Art.1(2) of the Regulation) – an independent investigative body. See more: Rukavina; Luttenberger, *op. cit.*, note 2, pp. 147-150.

⁵⁹ Art.1(3) of the Regulation.

⁶⁰ Agencija za istraživanje nesreća u zračnom, pomorskom i željezničkom prometu - Odjel za istrage nesreća u pomorskom prometu, *Završno izvješće vrlo ozbiljne pomorske nesreće ro-ro putničkog broda „Lastovo“*, Mali Lošinj, 11 August 2024, available at: [https://ain.hr/wp-content/uploads/2025/02/342-27_24-01_07_završno-izvjesce.pdf], Accessed 17 February 2025, further: Final Report – Croatia.

tains important data such as: a) the seaworthiness of ships which, in relations to ships of Croatian nationality in national navigation, is determined by the Croatian Register of Shipping;⁶¹ b) the working order/defectiveness of the equipment and devices that were used on board; c) equipment or maintenance of the ship according to the Technical Rules for Statutory Certification of Maritime Objects; d) possession of correct ship certificates, etc.

In order to collect evidence and data (to find the perpetrator and detect objects, traces and other evidence that may serve to determine the facts in a misdemeanour or criminal procedure) for the purpose of determining misdemeanour and criminal liability in relation to the maritime accident in question, independently of conducting a maritime casualty investigation,⁶² an administrative investigation shall be conducted – according to the provisions of the Ordinance on the Methods, Requirements and Powers for Conducting Administrative Investigation of Marine Casualties.⁶³ The Ordinance stipulates that an administrative investigation shall be conducted only in case when an inquiry or inspection determines grounds for suspicion of a maritime offence⁶⁴ in connection with a maritime accident which in this case includes causing the death of a person or serious bodily injury on a ship of Croatian nationality.⁶⁵ However, it is important to emphasise that administrative investigation shall not be concluded if the competent State Attorney initiates criminal prosecution for the commission of a criminal offence that encompasses a maritime offence related to a maritime accident (Art.8(3) of the Ordinance).

There has been public speculation about technical difficulties/safety failures or failure to maintain safety standards on ships which are part of the shipping company's - Jadrolinija's⁶⁶ - fleet. Without entering into a polemic about the aforementioned speculations and insinuations, the aim of this paper is to point out the applicable

⁶¹ The Croatian Register of Shipping is a public institution that performs tasks of special interest to the Republic of Croatia, it was established by the Act on the Croatian Register of Shipping (Official Gazette, No. 81/1996, 76/2013, 62/2020), and its activity is social welfare in all respects, including the protection of life and property at sea and on inland waterways and the protection of the marine and inland waterways environment (Art.1 of the Act on the Croatian Register of Shipping).

⁶² It is important to note that the Final Report – Croatia itself emphasizes that it cannot be used as evidence in court proceedings aimed at determining civil, administrative or criminal liability, see Final Report – Croatia, p. 2.

⁶³ Ordinance on the Methods, Requirements and Powers for Conducting Administrative Investigation of Marine Casualties (Official Gazette, No. 69/2016), further: Ordinance. See more: Rukavina; Luttenberger, *op. cit.*, note 2, pp. 150-153.

⁶⁴ Art.1(8) of the Ordinance.

⁶⁵ See Art.2 of the Ordinance.

⁶⁶ Jadrolinija is a company for liner shipping and cargo, of strategic importance for the Republic of Croatia and is 100% owned by it. See more: Act on Jadroliniji, Rijeka, Official Gazette, No. 11/1996, 33/2006.

legal norms on liability and insurance coverage in relation to damages incurred to ship crew members from the aspect of compliance or non-compliance with the company's and ship's safety management system, as this is one of the conditions that must be met for a ship to be considered seaworthy.⁶⁷ Since accidents at work involving ship crew members can also be caused by technical deficiencies on older ships, faulty equipment, etc., it is important to note that maintaining safe working conditions on board is the duty of the company or owner of the ship who is obliged to maintain the condition of the ship and its equipment so that the ship retains the ship's seaworthiness in every sense, without carrying any risk for the ship, persons on board, cargo and environment (Art.85 of the CMC). Checking the ship's seaworthiness is carried out by inspection.⁶⁸

The technical and safety standards of a ship of Croatian nationality that carries out public maritime transport in the internal waters and territorial sea of the Republic of Croatia and between ports in the Republic of Croatia are regulated by the Ordinance on Technical and Safety Standards in Public Liner and International Maritime Transport,⁶⁹ and the technical requirements for certain types of passenger ships and high-speed passenger craft that perform voyages in national navigation are prescribed by the Rules for Statutory Certification of Passenger Ships in National Navigation.⁷⁰ The seaworthiness of a ship is one of five cumulatively prescribed conditions that a ship that carries out public liner maritime transport in the Republic of Croatia must meet. In order to determine compliance with the above condition, the following documentation must be submitted: a) statutory ship certificates with all associated attachments and additional information on possible due or future statutory objections, certificates, documents and documents regarding compliance with statutory requirements regarding safety, environmental protection, passenger accommodation, cargo transport and occupational safety and crew accommodation, issued by the ship's flag state or a recognised organisation on behalf of the ship's flag state;⁷¹ b) a class certificate with all accompanying

⁶⁷ See Art.76(1) point 2 of the CMC.

⁶⁸ See more Bolanča, D.; Amižić Jelovčić, P.: *Pomorsko pravo*, Pravni fakultet u Splitu, Split, 2023, p. 287-289.

⁶⁹ Ordinance on Technical and Safety Standards in Public Liner and International Maritime Transport (Official Gazette, No. 47/2023), further: Ordinance - 2023.

⁷⁰ Rules for Statutory Certification of Passenger Ships in National Navigation, Official Gazette, No. 106/2021.

⁷¹ Annex I. "Ship certificates, certificates and documents relating to compliance with the requirements of navigation safety, environmental protection, passenger accommodation, cargo transport and occupational safety and crew accommodation" of the Ordinance stipulates that, in relation to ro-ro passenger ships in national navigation, it is necessary to submit, among others, a Safety Management Certificate or an Interim Safety Management Certificate issued in accordance with the SOLAS Convention or the ISM Code.

annexes, together with additional information on the due or future class conditions, which must be issued by a recognised organisation; c) information on any exemptions, equivalent technical solutions or any restrictions issued or approved by the maritime administration of the ship's flag state.⁷² The provisions in question correspond to the requirements which, at European level, are prescribed for all ships sailing within the EU, regardless of the flag the ship flies.

2.2.1. Legal framework for liability for damages

The shipowner as an employer and the seafarer as an employee-worker conclude an employment contract by which the seafarer undertakes to perform the duties of his/her job.⁷³ When the essential elements of the employment relationship are taken into account, the employment status of seafarers is primarily specific due to the double subordination: to the employer and to the ship's master as the main and responsible person on the ship.⁷⁴ Since 1 September 2023, the Collective Agreement for Seafarers on Ships in Coastal Liner Maritime Transport from 2023⁷⁵ has been in force in the Republic of Croatia. It replaced the previous one (National Collective Agreement for Croatian Seafarers on Passenger Ships and Ferries) concluded in 1998, which was in force for 25 years.⁷⁶ The Collective Agreement from 2023, as a national collective agreement,⁷⁷ applies as an integral part of every employment contract to all Croatian seafarers and seafarers from other Member States of the European Economic Area – EEA (who sail on ships engaged in coastal shipping in the Republic of Croatia)⁷⁸ and regulates the rights and obligations of seafarers employed on ships engaged in coastal shipping in the Republic of Croatia.⁷⁹ It is significant that the Collective Agreement from 2023 stipulates the employer's duty to procure and maintain facilities, devices, equipment, tools, workplaces and access to the workplace, and to organise work in a

⁷² Art. 5 of the Ordinance – 2023.

⁷³ More on the responsibilities of seafarers for the performance of their work obligations see: Grabovac, I.; Perlain, J., *Prava i dužnosti pomoraca*, Školska knjiga, Zagreb, 1978, pp. 153-162.

⁷⁴ Rozić, I.; Vuković, T., *Analiza radnopravnog statusa pomoraca u Bosni i Hercegovini i Republici Hrvatskoj*, Zbornik radova „Aktualnosti građanskog i trgovačkog zakonodavstva i pravne prakse“, No. 21, 2024, p. 214.

⁷⁵ Collective Agreement for Seafarers on Ships in Coastal Liner Maritime Transport from 2023, Official Gazette, No. 93/2023, further: Collective Agreement from 2023. More about the legal nature of collective agreements for seafarers see: Učur, M. Đ., *Radnopravni status pomoraca*, Pravni fakultet Sveučilišta u Rijeci, Rijeka, 2003, pp. 83-85.

⁷⁶ Rozić; Vuković, *op. cit.*, note 74, p. 227.

⁷⁷ Decision on the extension of the application of the Collective Agreement for seafarers on ships engaged in liner coastal maritime transport (Official Gazette, No. 138/2023).

⁷⁸ See Act on the Transport in Liner and Occasional Coastline Shipping, Official Gazette, No. 19/2022.

⁷⁹ Art. 2(3) of the Collective Agreement from 2023.

manner that ensures the protection of the life and health of seafarers in accordance with special laws and other regulations, while the seafarer is obliged to comply with occupational safety measures and rules.⁸⁰

When determining the shipowner's liability, the provisions of the Croatian Maritime Code⁸¹ as the basic law of the Republic of Croatia in the field of maritime (private) law, which is harmonised with numerous European maritime law regulations and international unification instruments, will be relevant. According to Art. 48(2) of the CMC, the owner and/or company of a ship of Croatian nationality are obliged to: 1) establish and maintain a documented safety management system and a safety protection system if this is required according to Technical Rules and other regulations; 2) maintain the condition of the ship and its equipment so that while the ship is seaworthy in every respect and safe for the performance of all operations in service while performing them, without danger to the ship, persons on board, cargo and the environment; 3) ensure that the ship has valid certificates and documents prescribed by the Technical Rules and other regulations, except for the time when it is in a lay-up or under repair at the shipyard; 4) ensure that the requirements of the Technical Rules and other regulations are complied with on board and in connection with the ship. We realise that the provisions of the ISM Code, which prescribes the duty of the company to apply the requirements of the ISM Code, will be relevant when determining the liability of the shipowner.⁸² Issues on civil liability are not regulated by the ISM Code, but non-application or non-compliance with the procedures prescribed by the ISM Code⁸³ may affect the determination of contractual or non-contractual liability. The obligation to moni-

⁸⁰ Art. 8(2 and 5) of the Collective Agreement from 2023.

⁸¹ Croatian Maritime Code (Official Gazette, No. 181/2004, 76/2007, 146/2008, 61/2011, 56/2013, 26/2015, 17/2019), further: CMC.

⁸² Milošević-Pujo, B., *Pomorsko pravo – Odabrane teme po STCW konvenciji*, Sveučilište u Dubrovniku, 2006, p. 110.

⁸³ Here we can see that the Final Report – Croatia (p. 61) states that in accordance with the ISM Code, part “1.2. Objectives” point 1.2.2.1 the company should provide for safe practices in ship operation and a safe working environment. In addition, the ISM Code in part “1.4. Functional requirements for a Safety Management System” point 1.4.2. requires that the company should develop, implement and maintain a Safety Management System (SMS) which includes instructions and procedures to ensure safe operation of ships and protection of the environment in compliance with relevant international and flag State legislation. Furthermore, the Final Report – Croatia (p. 6) states that “the prevailing causal factor of the marine casualty is considered to be the incomplete understanding of the design and technical characteristics of the bow ramp system, which is a consequence of the lack of instructions and more detailed documented information on the associated hydraulic system of the bow ramp, due to which the crew was not fully familiar with the capabilities and limitations of this system and the associated risks when operating the bow ramp.”

tor whether the ships comply with the accepted standards lies primarily with the State whose flag the ship flies.⁸⁴

If, due to any negligence on the part of the shipowner, a member of the ship's crew suffers damage on the ship itself or in its vicinity, the shipowner shall be liable.⁸⁵ He cannot limit his liability for obligations towards the ship's crew. According to the Art. 145 (1) of the CMC, shipowner is liable for damages – injury,⁸⁶ death or sickness of a crew member, which a crew member suffered while working or in connection with the work.⁸⁷ If the shipowner succeeds in proving that the damage to the ship's crew member was caused without the shipowner's guilt (therefore, he must prove his innocence), he will be released from liability for the damage incurred. This is the subjective liability of the shipowner based on a presumed guilt.

The shipowner shall be liable under special regulations for damage caused by: a) injury, death or sickness of a crew member caused by a dangerous object⁸⁸ or dangerous activity;⁸⁹ as well as for b) injury, death or sickness of a crew member if it was suffered at work or in connection with the work on board due to the lack of

⁸⁴ Polić-Ćurčić, V., *Uloga i odgovornost klasifikacijskih društava*, Uporedno pomorsko pravo, Vol. 37, No. 1-4, 1995, p. 186.

⁸⁵ See more Vio, I., *op. cit.*, note 3, p. 389. More about the fact that a claim for compensation for damage caused by bodily injury and/or impairment of health falls under a contractual relationship, and a claim for compensation due to the death of a seafarer – a non-contractual relationship, see: Kragić, P.; Jerolimov, D., *Odgovornost za smrt i tjelesne ozljede člana posade – razvoj hrvatskih pravnih rješenja*, Poredbeno pomorsko pravo, Vol. 54, No. 169, 2015, p. 174.

⁸⁶ The employer cannot terminate the employment contract of a seafarer who has suffered an injury at work during the period of incapacity for work during treatment or recovery, and after the seafarer's treatment and recovery, based on the decision of the authorised body or authorised physician who determines that the seafarer is fit for work, the seafarer has the right to return to the jobs he previously worked on, or to other appropriate jobs (Art. 27(1 and 3) of the Collective Agreement from 2023).

⁸⁷ It is important to note that it is not necessary for the damage to have occurred on board the ship, but the damage can also occur outside the ship if a member of the ship's crew left the ship with the approval of the master within the framework of the obligations under the employment contract, and in order to perform a task related to the ship and the voyage. Šimac, S., *Naknada štete zbog tjelesne ozljede ili smrti člana posade broda*, magistarski rad, Pravni fakultet u Splitu, 1999, p. 27.

⁸⁸ A ship as a whole is not considered a dangerous thing, but individual parts of it may be considered a dangerous thing (e.g. a ship's crane that fell on a ship's crew member and injured him).

⁸⁹ Certain actions of a ship's crew member in the engine room may be considered hazardous work on board, but their assessment depends on each case. This is best illustrated by the judgment of the Supreme Court of the Republic of Croatia VSRH Revt 365/2016-2, 25 October 2016 which explains that "the mere correct lifting of a load of 20 kg is not the cause of the injury to a ship's crew member who worked in the engine room as a first engineer officer." Therefore, the damage in question is not considered damage resulting from a hazardous work. At the same time, in the proceedings before the lower courts it was determined that "the work performed by the injured party and the means of work used did not involve increased danger", so the damage caused cannot be characterised as damage resulting from a dangerous thing.

safe working conditions.⁹⁰ Specifically, in these cases the shipowner shall be liable under the general regulations on liability for damage caused by dangerous objects or dangerous activities (Art. 1063-1064 Croatian Civil Obligations Act).⁹¹ This is the objective (strict) liability of the shipowner.

For damages caused by injury, death or sickness of a crew member, the shipowner, ship operator, manager, company and employer are jointly and severally liable (Art.145 (3) of the CMC). This provision is in favorem of seafarers.⁹² This concerns a wider circle of liable persons (passively legitimated persons) who are directly or indirectly involved in the exploitation of the ship, and whose fulfilment of civil law obligations includes the payment of the awarded amount of money as a form of participation in repairing the damage. For damages caused by death⁹³ of the crew member, the family members of the deceased crew member may file a claim for compensation for this type of damage against one, all or only some of the jointly and severally liable entities listed in Art. 145(3) of the CMC. This authorisation is also given to a crew member who suffered health impairment (injury or sickness).

According to the provisions of Art. 988 (a) of the CMC, for disputes involving compensation for damages resulting from physical injury or death of a crew member or due to damage to health suffered by a crew member at work or in connection with work on board a ship, the Croatian court has international jurisdiction if the claimant has his/her domicile in the territory of the Republic of Croatia. This provision protects Croatian seafarers, as they are enabled to file a claim for compensation before Croatian courts, regardless of the nationality of the ship, shipowner, company or employer.

2.2.2. Normative legal framework of insurance coverage

According to the provisions of the Standard A4.2.1(1) of the Maritime Labour Convention from 2006,⁹⁴ each member state shall adopt laws and regulations

⁹⁰ Art. 145(2) of the CMC.

⁹¹ Croatian Civil Obligations Act, Official Gazette, No. 35/2005, 41/2008, 125/2011, 78/2015, 29/2018, 126/2011, 114/2022, 156/2022, 155/2023.

⁹² Bolanča, D., *Hrvatsko plovidbeno upravno pravo*, Pravni fakultet u Splitu, Split, 2015, p. 165.

⁹³ In case of the death of a seafarer, the employer or insurer (where applicable) will pay compensation to his heirs, which does not prevent the heirs from making a claim for compensation due to the death of the seafarer (Art. 28(1,4 and 5) of the Collective Agreement from 2023).

⁹⁴ Maritime Labour Convention from 2006 (further: MLC) entered into force on August 20, 2013, and was ratified in the Republic of Croatia by the Law on Ratification of the Maritime Labour Convention from 2006 (Official Gazette, No., International Agreements, No. 11/2009) which entered into force on November 28, 2009. MLC convention had 4 amendments in 2014, 2016, 2018 and 2022 see

requiring that shipowners of ships that fly its flag are responsible for health protection and medical care of all seafarers working on board the ships. Furthermore, the following minimum standards which are shipowners responsibility are prescribed:⁹⁵ a) to bear the costs for seafarers working on their ships in respect of sickness and injury of the seafarers occurring between the date of commencing duty and the date upon which they are deemed duly repatriated, or arising from their employment between those dates; b) to bear the costs for of medical care, including medical treatment and the supply of the necessary medicines and therapeutic appliances, and board and lodging away from home until the sick or injured seafarer has recovered, or until the sickness or incapacity has been declared of a permanent character; and c) to bear the costs of burial expenses in the case of death occurring on board or ashore during the period of engagement.⁹⁶

The CMC did not prescribe compulsory liability insurance of shipowner for death or bodily injuries of a crew member. However, according to the provision of the Standard A4.2.1(1)(b) of the MLC convention it is prescribed in more detail that shipowners shall provide financial guarantee to assure compensation in the event of the death or long-term disability of seafarers due to an occupational injury, illness or hazard, as set out in national law, the seafarers' employment agreement or collective agreement.⁹⁷ The 2014 amendments to the MLC convention prescribe that ship must have a special certificate or other document of financial guarantee, issued by the financial guarantee provider.⁹⁸ Moreover, according to Standard A4.2.1(8) of the MLC⁹⁹, provisions on contractual claims¹⁰⁰ have been implemented which regulate the duty of shipowners to maintain in force insurance or

International Labour Organization, Maritime Labour Convention, 2006 as amended [https://www.ilo.org/sites/default/files/2024-10/NORMES_MLC%20Amendments-EN_2022_Web_1.pdf], Accessed 6 March 2025. In relation to the questions in this chapter, the most important are the 2014 amendments to the MLC Convention, entered into force on January 18, 2017. The solutions in question have been implemented into the Croatian legal system by the Ordinance on the implementation of the Maritime Labour Convention 2006 (Official Gazette, No. 122/2016, 42/2019), further: Ordinance MLC.

⁹⁵ Standard A4.2(1)(a, c and d) of the MLC convention.

⁹⁶ See more Standard A4.2.1(2-7) of the MLC convention.

⁹⁷ See more Nwokedi, T. C., *Sustainable Compensation Strategies for Ship Owners Liability for Occupational Injury and Death Costs Affecting Seafarers in Nigeria*, Journal of ETA Maritime Science, Vol.11, No.1, 2023, p. 28.

⁹⁸ See more Petrinović, R.; Lovrić, I., *Novo pravo o pravu pomoraca za slučaj napuštanja i repatrijacije*, Book of Proceedings - 1st International Scientific Conference „Modern Challenges of Marine Navigation“, Split, 2016, p. 295.

⁹⁹ These provisions were implemented by the 2014 amendments to the MLC convention.

¹⁰⁰ Contractual claim means any claim which relates to death or long-term disability of seafarers due to an occupational injury, illness or hazard as set out in national law, the seafarers' employment agreement or collective agreement (Standard A4.2.2(1) of the MLC convention; Art.7 of the Ordinance MLC).

other financial guarantee to cover the costs for contractual compensation. The provisions in question prescribe that contractual compensation: a) shall be paid in full and without delay;¹⁰¹ b) there shall be no pressure to accept a payment less than the contractual amount; c) where the nature of the long-term disability of a seafarer makes it difficult to assess the full compensation to which the seafarer may be entitled, an interim payment or payments shall be made to the seafarer so as to avoid undue hardship; d) the seafarer shall receive payment without prejudice to other legal rights, but such payment may be offset by the shipowner against any damages resulting from any other claim made by the seafarer against the shipowner and arising from the same incident; and e) the claim for contractual compensation may be brought directly by the seafarer concerned, or their next of kin, or a representative of the seafarer or designated beneficiary.¹⁰²

It is important to emphasise that the Croatian maritime legislator allows that in the case of liability for the death and bodily injury of a ship's crew member and impairment of the health of a ship's crew member, the injured party may claim an indemnity directly from the insurer for the damage suffered for which the insured is liable, but only up to the insured amount.¹⁰³ Therefore, in the above case, the claims of the ship's crew members for death, injury or sickness - direct action (*actio directa*) against the insurer of the insured party in case of liability - will be allowed.¹⁰⁴ However, this applies only to physical damages occurred to seafarers so other seafarers' rights could not be claimed directly from the insurer.¹⁰⁵

It is important to note that meeting safety requirements has a significant impact on the provision of insurance coverage. Namely, in part 4 "Conditions, Exclusions, Limitations and Warranties", Rule 29 "Classification and Statutory Requirements" of the NorthStandard P&I Rule Books (2023-2024)¹⁰⁶ it is prescribed that

¹⁰¹ According to the provisions of the Art. 30(1) of the Collective Agreement from 2023, to cover damage caused by the death or disability of a seafarer, which may occur during the term of the employment contract, the employer is obliged to take out appropriate insurance and in the event of the insured event of disability or loss of life of a seafarer - is obliged to pay compensation to the seafarer or his heirs in the minimum amount of 23,000.00 euros (for death due to an accident); 8,000.00 euros (for death due to illness) or 23,000.00 euros for permanent 100% disability.

¹⁰² See more: Petrinović, R.; Lovrić, I.; Perkušić, T., *Role of P&I Insurance in Implementing Amendments to Maritime Labour Convention 2014*, Transactions on Maritime Science – TOMS, Pomorski fakultet Split, Vol. 6, No.1, 2017, p. 42.

¹⁰³ Art. 743(3) of the CMC. See more Pavić D., *Ugovorno pravo osiguranja*, Tectus, Zagreb, 2009, pp. 621-625.

¹⁰⁴ See more Vio, I., *op. cit.*, note 3, p. 407.

¹⁰⁵ Petrinović; Lovrić; Perkušić, *op. cit.*, note 102, p. 46.

¹⁰⁶ *NorthStandard P&I Rule Books (2023-2024)*, available at: [<https://www.nepia.com/latest/all-publications/rule-books-and-recommended-clauses/>], Accessed 15 January 2025.

a member shall not be entitled to any recovery from P&I Club in respect of any claim arising in respect of the Entered Ship during a period when that Member is not complying with or has not complied with: a) all statutory requirements of the flag state of the Ship relating to the manning, construction, adaptation, condition, fitment and equipment of the Entered Ship; b) all statutory certificates as are issued by or on behalf of the flag state of the Ship in relation to such requirements and in relation to safety management systems and maritime security.¹⁰⁷ The objectives of the safe management and operation of the ship prescribed by the ISM Code are the criteria by which the court or arbitration will assess the responsibility of the shipowner in the implementation of the ISM Code, and any failure of the shipowner in this regard may have a negative effect on issues of liability for damage, exercising rights from marine insurance.¹⁰⁸

We can conclude that although the requirements according to the ISM Code represent obligatory requirements, it is important to point out that according to *Hodges*, a company which has for whatever reason failed to obtain the necessary documents (Document of Compliance - DOC and Safety Management Certificate - SMC) would commit a breach of the ISM Code and may be penalised by the relevant authority with whatever sanction the law of the flag State may deem fit to impose.¹⁰⁹ But, even if the documentary demands of the ISM Code are complied with, in that the ship has been issued with the necessary certificates, certification alone is not in itself proof that the ship is in actual fact safely managed and operated.¹¹⁰ In that case, it will be necessary to determine whether all prescribed procedures according to the ISM Code have been established and, if so, what was the reason for not implementing them in daily work.

3. CONCLUSION

Pointing to the system of liability and insurance in cases of death of passengers (in the case of the maritime accident of the passenger ship “Estonia”) as well as for damage caused to the ship’s crew members - physical injury or death of the crew members (in the case of the maritime accident of the passenger ship “Las-tovo”), the authors pointed to decisive issues that include determining the ship’s seaworthiness, i.e. fulfilling the requirements according to the ISM Code. It is

¹⁰⁷ Rule 29(b)(i) of the *NorthStandard P&I Rule Books (2023-2024)*.

¹⁰⁸ Pavić, D., *Pravni učinci primjene ISM kodeksa na ograničenje odgovornosti brodara*, op. cit., p. 68.

¹⁰⁹ Hodges, S., *The ISM Code and the Law of Marine Insurance*, p. 6, available at: [<http://www.nadr.co.uk/articles/published/shipping/ISMMarineInsurance.pdf>], Accessed 15 January 2025.

¹¹⁰ *Ibid.*

unquestionable that ensuring maritime safety, safe operation on ship and safety of people on board (prevention of injury or loss of life - passengers and crew members) are objectives of the ISM Code. The authors of the paper indicate to what extent the 30-year period between two maritime accidents (“Estonia” in 1994 and “Lastovo” in 2004”) have influenced changes in international and European maritime safety regulations, which include the improvement of existing legal norms (SOLAS Convention, ISM Code) and the formation of new ones (Council Regulation (EC) No 3051/95, Regulation (EC) No 336/2006, Council Directive 98/18/EC, Directive 1999/35/EC, Directive (EU) 2017/2110, Protocol of 2002 to the Athens Convention, MLC). These are legal provisions that improve the safety of maritime navigation (including the safety of passengers and their better legal position in view of the stricter system of liability of the maritime carrier for damages that may arise from the death or bodily injury of passengers, i.e. the introduction of the obligatory insurance of the maritime carrier in relation to the aforementioned damages) by introducing more international standards in terms of ship management. Analysing the national legal framework and the provisions on liability for damage caused to crew members of the passenger ship “Lastovo”, the authors pointed out to the specifics of the labour law status of seafarers (with regard to the decisions of the MLC, CMC and Collective Agreement from 2023), the importance of conducting a safety and administrative investigation of a maritime accident (according to the Regulation, Ordinance), shipowners’ responsibility for safe working environment (MLC, CMC), shipowners’ liability for injury or death of crew members (CMC) and questions on specifics of the insurance cover for these types of damages (MLC, CMC) including the right to direct action (CMC). Considering the extremely wide scope of operational safety standards and standards on safe management which are set in the ISM Code, and the fulfilment or non-fulfilment of which will be taken into account when determining the circumstances and causes of a maritime accident, the authors analysed the issues of application/non-application of the procedures prescribed by the ISM Code (complying with ISM Code) with regard to determining liability for damage caused to ship crew members, but also a significant factor in obtaining insurance coverage for shipowners according to the provisions of the P&I Clubs Rules.

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