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Dealing with big casualties in foreign jurisdictions - Poland

Casualties and dealing with casualties are broadly regulated in Polish law. So, it is impossible to at least brief even on few pages on that. Thus, this paper will concentrate on pollutions from ships, which seem to be the most potential casualty which one may expect and deal with in Poland.

Poland is internationally orientated state. Needless to say that it is in IMO and a member of the European Union. Regarding the subject of the Seminar, it is worth noting that Poland is a contracting state to:

- 1) the 1982 Montego Bay convention (the UN Convention on the Law of the Sea);
- 2) the 1969 CLC convention (the International Convention on civil Liability for Oil Pollution Damage) as amended by the 1992 Protocol;
- 3) the 1971 ITOPF convention (the International Convention on the Establishment of an International Fund Compensation for Oil Pollution Damage) as amended by the 1992 Protocol;
- 4) the 2001 Bunker convention (the International Convention on Civil Liability for Bunker Oil Pollution Damage);
- 5) the 1976 LLMC convention (the Convention on Limitation of Liability for Maritime Claims), but not the 1996 Protocol (but it will change soon due to the Third Maritime Package adopted by the EU).

Poland is not a contracting state to the 1996 HNS convention (the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea).

In case of a pollution from a ship on Polish waters (Polish waters, and not only Polish territory, because according to Polish law, regulations on an environment protection apply also within the exclusive economic zone) ("pollution"), 4 areas would be involved:

- (i) administrative;
- (ii) civil;
- (iii) procedural;



(iv) criminal.

Re.: (i) above – administrative.

The main handler of the pollution on this area is the Maritime Administration. The Administration consists of Maritime Offices and the competent Ministry, as the second instance to the Offices. If one is not happy with a decision of the Ministry, he may complain to administrative courts, where proceeding is also two instances.

On the administrative area, the ship operator plays the main role, and not the ship owner. The ship operator is a person who runs a business activity by using his own or foreign ship. In Polish we call the ship operator: “*armator*”. In practice, the ship operator will be the b/b charterer who employs the ship master and the rest of the crew.

In case of the pollution, all actions are conducted by the competent Maritime Office. So, all assessments, investigations, preventions, cleanings and other activities are dealt by the Office. For the purpose of conducting the actions, the Maritime Office may detain the ship, however no longer than it is necessary for the actions.

In case of the pollution, the competent Maritime Office shall impose on the ship operator a pecuniary fine up to 1.000.000 SDR, and the Office has a full discretion as to setting up the precise amount of the fine.

Moreover, a pecuniary fine up to 20 times of the average monthly remuneration, which is now approx. up to 20.000 USD, shall be imposed on the ship master or other crew member who was in breach of his obligation and caused the pollution.

In order to secure the payment of the fine, the Maritime Office is entitled to demand from the ship operator a performance guarantee, and, if the guarantee is declined, is entitled to demand an arrest of the ship. Before the ship has been arrested, the Maritime Office is entitled to detain the ship, however no longer than for 48 hours.

Re.: (ii) above – civil.

On the civil area, there are 3 separate fields:

- (a) pollutions from ships carrying oils;
- (b) pollutions with bunkers;
- (c) other pollutions.

The main handler of the pollution on this area are civilian courts. The courts are competent in deciding claims of persons who suffered damages as a result of the pollution (“damages”). The courts are also competent in establishment of limited liability funds, either under the LLMC or



CLC conventions. Proceedings before the courts are two instances, however in certain circumstances a special appeal, which we call: “*kasacja* (cassation)”, is allowed to the Supreme Court.

Depending on a field, the ship owner or the ship operator plays the main role.

The ship owner is the main person in pollutions from ships carrying oils. In pollutions with bunkers both, the ship owner and the ship operator, are the main persons. The ship operator is the main person in other pollutions.

Because Poland, by reference in the Maritime Code, incorporated the 1969 CLC convention and the 2001 Bunker convention to the Polish law with respect to pollutions from ships carrying oils and pollutions with bunkers, this paper will not deal with them, as the two conventions are well known internationally. It is only noteworthy that according to the Maritime Code, the two conventions apply also to ships which are not registered in nor fly a flag of a contracting state, if the damage resulting out of the pollution which took place on the Polish waters.

Regarding other pollutions, it is the ship operator who is responsible for any damage caused to anyone by pollution from the ship in connection with carriage of goods, operating of the ship or flooding of wastes.

The ship operator will be released from the responsibility, if the damage resulted out of:

- (d) a force major;
- (e) exclusively a deliberate fault of a third person; or
- (f) wrongful doing of authorities in charge of navigating lights or other navigating installations.

If the damage resulted out of a deliberate fault of the person who suffered the damage – the ship operator will be released from the responsibility towards the person. However, if the damage resulted out of a gross negligence of the person who suffered the damage – responsibility of the ship operator may be excluded partially or wholly.

So, the responsibility of the ship operator is based on a risk of operating of the ship and not on a guilt.

If the damage was caused by pollution from two or more ships, their operators will be responsible jointly and severally.

The damage is not only the damage by polluting substances coming out of the ship but also by deliberately used substances for the purpose of prevention after pollution.



Compensation of the damage includes incurred loss and lost profits. The compensation also includes costs of substances for the purpose of prevention after pollution as well as costs and expenses spent or which will be spent in the future for the purpose of prevention after pollution.

Anyone, who suffered the damage may seek security from the polluter. If the polluter declines providing the security, the creditor may apply for the ship arrest and, until the arrest is granted, may apply to the Maritime Office for temporary detention of the ship, however no longer than for 72 hours (Sundays and holidays excluded).

It is also worth noting that the Maritime Authorities may demand from the ship operator to restore the polluted environment to a situation as it was before the pollution. However, if the ship operator is unable to do that, he may release himself from that obligations by payment of costs and expenses spent or which will be spent in the future for that purpose.

As the responsibility for pollutions is in tort and not contractual, to all pollutions taking place on Polish waters or on open sea – when the damage was caused or resulted on Polish waters, Polish law will apply. However, the situation may differ, if the pollution took place on foreign territory, but the damage by the pollution was caused or resulted on Polish waters. Most of the doctrine is that still Polish law would apply to the extent of the damage in Poland, as in such a case not the place of pollution but the place of the damage should decide. Nonetheless, it is still debatable.

Re.: (iii) above – procedural.

There are three venues which would be competent in case of pollution from a ship. The administrative courts and the civilian courts have been already mentioned.

The third one, being the most original and unusual venue, are the Maritime Chambers existing by the Regional Courts in Gdansk and Szczecin and the Appeal Maritime Chamber existing by the Regional Court in Gdansk. The Chambers are for the purpose of deciding in marine accidents. Because, according to Polish law, pollution of an environment as a result of damage or lost of a ship is the marine accident, the Chambers are competent in respect of pollutions taking place on Polish territory or anywhere if are from Polish ships. The Chambers consists of judges experienced in shipping and juries, also experienced in shipping. Decisions of the Chambers should contain exact establishment of the causes of the accidents, indicating, if possible, the vessel and persons whose fault caused the accident, and determining the degree in which they contributed to the accident. Furthermore, the Chamber's decision can be utilized in civil proceedings aimed at recovery of any damages caused by an accident. So, different from marine accident investigation offices, as operating in UK or other countries, the Chambers are to find a person whose fault caused the accident and apportion the fault, where appropriate. Moreover, decisions of the Chambers may be utilized before civilian courts in proceeding claiming damages, but the courts are not bound by the decisions, so may reach different conclusions.

Re.: (iv) above – criminal.

Directive 2005/35 of the European Parliament and Council obliged the EU members to provide in domestic laws criminalization of seafarers for pollution from ships. Poland, however, has not



yet complied with that. So, if at all, general rules of the criminal code could apply to seafarers who were causative to the pollution.

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