



POLISH MARITIME LAW ASSOCIATION

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Mr Stuart Hetherington
President
Mr Frank Nolan
Chair of the IWG
Comite Maritime International

by e-mail (swh@cbp.com.au; fnolan@vedderprice.com; admin-antwerp@comitemaritime.org) only

Dear Mr Hetherington, Dear Mr Nolan,

re.: Vessel Nomenclature.

Reference is made, with thanks, to Mr Hetherington's e-mail of 08th March, 2016, attaching a questionnaire.

Please find below responses of the Polish MLA to the questionnaire.

- 1. Is there a statutory, regulatory or other definition in your legal system which conveys a meaning similar to the above definition of either 'vessel' or 'ship'? If so, which is/are the terms and their corresponding definitions?**

Polish law provides multiple definitions of a vessel or ship – all of them adopting similar Polish term 'statek'. Definitions' content vary depending on the subject matter of the legal act in question (what will be developed further in answer to the question 2).

Main definition is found in the Polish Maritime Code, according to which a seagoing vessel is any floating structure appropriated for or used in, maritime shipping. Above definition indicates that it is enough for the floating structure to fulfil one of mentioned prerequisites to be qualified as a ship. Qualification therefore depends either on intention and will of the ship's operator to exploit a ship on the sea or the fact that a ship is used in such way. By such Polish definition of a vessel contained in the Maritime Code is more closely connected with understanding of vessel than ship as indicated by the authors of questionnaire, however not the same.

The Maritime Code furthermore divides vessels into three categories, depending on their purpose: merchant seagoing vessels, seagoing vessels employed exclusively for scientific research, for sports or recreation and seagoing vessels used solely in special state service. The first category is the central object of the maritime code's norms. A merchant seagoing vessel is defined as a vessel appropriated for or employed in economic activity, in particular: carriage of cargo or passengers, sea fisheries or exploitation of other maritime resources, towage, salvage, recovering sunk property, exploitation of the seabed mineral resources or resources of the inside of the Earth below the seabed. Above enumeration is only of the exemplary character, what means that economic activity in which a merchant seagoing vessel maybe employed is not limited to those kinds. However above examples give an interpretative clue how to understand conducting economic activity in maritime environment. Example of bunkering or dredging activities are also



suggested. On the other hand seagoing vessels used exclusively in special state service are in particular: hydrographic, supervising, firefighting, telecommunication, customs, sanitary, training, pilot ships, as well as ships used only for the saving of life at sea or for ice braking. To this category of vessels the Maritime Code is applied in limited respect, i.e. with the exclusion of norms on carriage of goods, carriage of passengers, general average and maritime lines. Similarly limited applicability concerns vessels employed exclusively in sports, recreation or scientific research since norms on carriage of goods and passengers and general average are inapplicable. In this instance particular attention should be applied to the word “exclusively”. If otherwise seagoing recreational vessel carries passengers for commercial benefit it is considered as a merchant seagoing vessel by the Maritime Code. For the purposes of hypothecation and/or mortgage a concept of a seagoing vessel under construction has been introduced to the Maritime Code, understood as a vessel which keel has been laid or similar construction work has been made in the place of launching, until the end of construction.

It ought to be underlined that ratified international agreements are universally binding law in the Republic of Poland. An international agreement ratified upon prior consent granted by statute (ustawa) entertains precedence over statutes in case of collision. By such, maritime conventions with their ship’s and vessel’s definitions, after proper promulgation, become a part of domestic legal order and are to be applied directly (unless its application depends on the enactment of a statute). Thus, definitions contained in the conventions are binding.

Worth noting is also, that the Polish Maritime code adopts a legislative method of incorporation of an international convention consisting in the regulation of certain matters by referring in the domestic legislation to rules of international treaties. Technicalities of such method include indicating the title of the convention and place of its publication in the Polish Journal of Laws, but without reproducing its text in the code. Implementing provisions are added if necessary. The incorporation method provides for optimal convergence with the international law. Such a method has been adopted in respect of the Convention on Tonnage Measurement of Ships of 1969, CLC/FUND 1992, London Protocol 2003, BOPC 2001, LLMC 1996 and Athens Convention of 1974. Thus, in those cases also definitions as adopted in the international conventions are binding.

On basis of above, it is clear that in areas regulated by the conventions vessel definition from the SALVAGE convention (art 1b) and ship’s definition from the MARPOL convention are present in the Polish legal order.

Art. 5 of Polish Maritime Safety Act defines ship as a vessel of any type operating in the marine environment and includes hydrofoil boats, air-cushion vehicles, submersibles, floating platforms – as long as the definition is not contrary to any found in the international conventions. Article 4.1 of the Prevention of Pollution from Ships Act defines ship as a vessel of any type operating in the marine environment and includes hydrofoil boats, air-cushion vehicles, submersibles, fixed or floating platforms.

It is also important to mention that for registry purposes, small ships up to and including 15 metres in length and all ships without mechanical drive are not legally considered to be ships. Also, leisure boats/yachts up to and including 24 metres in length are registered in the Polish Yachts Register. Consequently, only yachts longer than 24 metres can be registered in the Polish National Register, which is known as the ‘Rejestr Okretowy’ in Polish. Small vessels, up to and



including 5 metres in length and not operating abroad, are not obligated to register in any Polish ship register.

Lastly, worth mentioning is the fact that Polish Codification Commission for Maritime Law is in the course of preparing proposal for new maritime code. In respect of the vessel's definition it proposed a definition allowing for clearer differentiation between vessels and floating structures, since on basis of the current definition such differentiation was not straightforward, especially when considering f.ex. floating crane actually used in maritime shipping, even if not predominantly intended for. The proposed definition defines a seagoing vessel as a floating structure intended for *and* used in maritime shipping. New definition differs from current code's regulation as both prerequisites, intention for and usage in maritime shipping, have to be fulfilled. Floating structures that do not fulfil both conditions are treated under the proposal as maritime floating facilities, for which a separate definition is intended. It is envisaged in the proposal that code's norms will be applicable also to maritime floating facilities, unless otherwise prescribed. A separate book of ship's registry is intended for maritime floating facilities.

- 2. In your system, does the definition of 'vessel' (or the equivalent term) vary depending on the subject of a particular law? For example, does the definition differ for purposes of documentation, registry, flagging and mortgaging or when applied to seagoing labour, environmental, casualty, insurance or taxation law?**

As indicted above, the definition of vessel in the Polish legal system depends on the subject of particular law. The meaning of a 'vessel' is varied in the Polish Maritime Code, Safety Law, Marine Protection Law and Labour Law. Different understanding of 'vessel' is driven by different aims of the regulation at stake. Some of the definitions have been presented above, nonetheless they will also be recalled in this part. The Maritime Code defines ship as: "any type of vessel intended to use (designed for) or be used in shipping. This basically presumes, that the Maritime Code is written for commercial shipping.

For safety standards and the purposes of environmental protection, Polish legislators, as mentioned above, gave wider definitions according to whether the ship is a vessel of any type operating in the marine environment and including hydrofoil boats, air-cushion vehicles, submersibles, floating platforms. The legal implications and obligations connected with labour at sea are regulated by the Maritime Labour Act. They are only relevant to commercial ships, although the aforementioned act does not contain the definition of either a ship or a vessel.

- 3. Does your legal system provide for a unique process of seizure, foreclosure, forced sale or ranking and priority of claims against vessels that is different from such processes for other types of property? If so, please explain.**

The process of seizure, forced sale, ranking and priority of claims against vessel is different from such a process for other types of property under the Polish law. There are special rules in the Civil Procedural Code (CPC) on the seizure and forced sales of ships. It is necessary to note that Poland is a party to the International Convention Relating to the Arrest of Sea-Going Ships, signed in Brussels in 1952. The Polish Maritime Code does not contain specific provisions on the arrest of vessels. As regards the arrest of vessels, the judicial procedures securing claims as laid out in the provisions of the CPC are used, including pecuniary claims on sea vessels or sea vessels under construction (Article 747⁴ of the CPC).



Polish legislation allows for two different ways of carrying out a levy of execution against ships. It can be carried out in accordance with the rules governing the execution of movables, or in accordance with Article 1014 of the CPC, according to the rules on execution against real estate. The implementation of an appropriate method of a levy of execution depends entirely on whether the ship is already registered in the register of ships. The entry of a vessel into the aforementioned Register entails the application of the rules on execution against real estate, taking into account some specific amendments to Articles 1015-1022⁴ of the CPC. Vessels not registered in the register of ships, in accordance with Article 1021 of the CPC, are subject to execution in line with the rules of execution against movables. In the scope of a levy of execution involving foreign ships, the indications are that the method of execution depends on whether the vessel has been entered into the respective foreign register of ships. If this is the case, the CPC provisions concerning execution against real estate with the amendments in Articles 1022-1022⁴ of the CPC will be appropriate for use; if this is not the case, the rules governing the execution of movables are used (Article 1021 of the CPC).

As mentioned earlier the current regulation leaves judicial enforcement proceedings outside the Maritime Code. The execution proceedings against ships are governed specifically by a separate Section VII of the Part III of the CPC on Executory Proceedings in general. Section VII is of rather modest size, consisting of only a dozen or so Articles that define some of the specific elements of a levy of execution against ships. Unlike other provisions of execution, the following issues relating to the levy of execution from ships have been regulated specifically in Section VII of the CPC: property of bailiff (Article 1015); manner of seizing entities (Article 1017, 1018); and manner of the carrying out of the notice of auction (Article 1020). Additional amendments have been made on the levy of execution against foreign vessels within Poland's territory (Articles 1022-1022⁴). The other elements of the regulatory scheme are the general provisions on execution from immovable property or movables in case of ships entered into the register of ships and those not entered, respectively. Both procedures also apply the provisions of the Maritime Code in the scope of provisions governing the issue, as *lex specialis*.

In relation to ranking priority, generally claims secured with maritime hypothecation burdening ships registered under the Polish law, entertain priority before other personal creditors of the shipowner. However, there are some privileged claims, that ought to be satisfied in the first place from the sums obtained within enforcement proceedings. Among those privileged claims chronologically are: cost of enforcement proceedings, alimonies, claims for wages (limited to 3 months period). Fourth place in ranking is prescribed for maritime liens, which supersede maritime hypothecation¹. They take priority before claims satisfied by other limited proprietary rights burdening other types of property: hypothecation, pledge and registered pledge.

4. Has the 1993 Convention on Maritime Liens and Mortgages ("MLM-93") been adopted or followed in your jurisdiction?

MLM 93 has not been ratified by Poland, neither followed in Polish law. Poland has ratified and adopted the Brussels 1926 convention.

¹ Currently CPC provides in art. 1025 that claims secured with maritime liens and maritime hypothecation entertain the same place in ranking priority. That mistake will be amended in order to provide maritime liens with higher place in the ranking priority.



5. **In your jurisdiction is the acceptance by a registrar or other governmental body of property as a “ship” or “vessel” or equivalent term dispositive of its status under your law?**

Under the Polish law the acceptance of property as a ship by registered body (Izba Morska) is dispositive of fulfilment the requirements prescribed by the Maritime Code and other legal acts relating to maritime safety (f. ex. measurement, tonnage, construction, composition of crew). It is possible to appeal against such a decision to the higher instance court. In relation to levy of execution proceeding, as it was describe in answers to question 3 and 6, the situation is different. For the levy of execution purposes, according the Polish Civil Procedure Code, Polish Court recognizes property as a ship if the vessel has been entered into the respective foreign register of ships.

6. **If property is categorized as a ‘vessel’ in another jurisdiction and is so registered and flagged, but would not be a vessel under the definition in your jurisdiction, would the courts or relevant authorities in your jurisdiction treat that property as a vessel for all purposes, including arrest and foreclosure? Or would the Courts in such a circumstance decline to enforce an asserted claim or mortgage if the subject is not a vessel under your jurisdiction?**

We are not aware of any court judgement or reported decision considering the treatment of vessels categorized as ships according to any other jurisdiction, which would be treated as a ship or vessels by Polish courts for the purposes of arrest and foreclosure. Such a decision however would be possible according to the Polish Civil Procedural Code in reference to the international convention, which has been ratified by Poland.

The matter of a ship’s arrest is not regulated in the Polish Maritime Code. Yet we still we have relevant regulation in the Polish Civil Procedural Code, which corresponds with the International Convention Relating to the Arrest of Sea-Going Ships, signed in Brussels, on 10th May, 1952. This convention offers the legal guidelines, according to which the Polish civil procedure is applied.

According to Polish Civil Procedural Law, the foreclosing procedure can be applied to ships registered in the Register of Ships, kept by the Maritime Chamber, which is responsible for the vessel’s home port. For such a procedure the regulations of foreclosing from real estate are applied correspondingly (according to Article 1014 of Polish Civil Procedure Law). For the ships not registered in the Register of Ships, kept by the Maritime Chamber, regulations of foreclosing from movable are applied (according to 1021 of Polish Civil Procedural Code). However, according to Article 1022, execution proceedings can be applied to a foreign vessel located in Poland. This can be reduced to the following simple formula: if the foreign ship is registered in a foreign Vessel/Ship Register and according to foreign law can be categorized as a vessel or ship, it is possible that such a vessel will be treated as a ship for mortgage claims procedures, ship arrest and foreclosure, during the time it is located in Poland.

7. **Are there any reported decisions in your jurisdiction which address the legal classification of any of the following property.**



There are not many court judgements or reported decisions which address the legal classification of vessels. Those relevant are listed below, categorise according your proposition:

- 1) non-self propelled barges -
there are no such a reported decisions;
- 2) self-propelled barges -
there are no such a reported decisions;
- 3) accommodation barges -
there are no such a reported decisions but according to Polish Maritime Code definition of ship, if they are moored to the shore, they would not be assumed as a ship;
- 4) mobile offshore drilling units -
there are no such a reported decisions;
- 5) wind turbine towers -
there are no such a reported decisions;
- 6) jack up drill rigs -
there are no such a reported decisions;
- 7) construction barges -
there are no such a reported decisions;
- 8) submarines -
there are no such a reported decisions;
- 9) seaplanes -
there are no such a reported decisions;
- 10) hydroplanes (air cushion) -
there are no such a reported decisions;
- 11) vessels under construction -
the relevant case concerned the hull of a motorway yacht, which was towed by a tug. The Polish Court set up for resolving maritime accidents, found that the hull of yacht under tow was *not* a ship. The proceedings went through three instances. The court of first instance ("Izba Morska") found the yacht's hull under tow was a ship. That was also a decision on the part of the second instance court ("Odwoławcza Izba Morska"). The third instance court ("Sąd Apelacyjny") decided that the said hull was not a ship, and consequently closed the case. Analyses carried out by the Polish court were done so for the purposes of recognising the responsibility for damaging the towed hull and were based on the Polish definition of a shipping accident. If such a yacht's hull under tow was accepted to be a ship, the Polish court would be justified in the ruling (investigating) of an accident of a yacht's hull. If it was not recognised as a ship, therefore the Polish court would not have jurisdiction over the above the



accident. This presumption is a consequence of the Polish legal definition of a maritime accident contained in The State Commission on Maritime Accident Investigation Act. According to the aforementioned act, we can divide maritime accidents into: very serious casualties, serious casualties and maritime incidents. These definitions are based on the International Maritime Organisation's definitions contained in the document: MSC-MEPC.3/Circ.3 dated 18th December 2008². To establish the hull's status the court had to refer to the vessel's definition contained in art. 2 of the Polish Maritime Code (any floating structure indented appropriated to or used in shipping). The Polish Appeal Court decided that a hull under tow could be considered as a "ship under construction" but not a ship under the Polish Maritime Code's definition. According to the Court, such a hull could not be considered a ship until the construction work was finished, sea trials were passed and the safety certificate was issued by the flag state administration. Consequently, such an accident – in the Court's view – could not be considered as a maritime casualty, because the harm had been done to the towed hull, not to a ship;

- 12) unmanned vessels -
there are no such a reported decisions;
- 13) vessels devoted temporarily or permanently to storage of bulk commodities -
there are no such a reported decisions;
- 14) vessels in "cold layup" -
there are no such a reported decisions
- 15) derelict Vessels or "dead ship" -
the case concerns the 'dead ship', which sank while under tow on 31st May, 2013, near the Gulf of Gdańsk, on the Baltic Sea. The Georg Büchner was a 'dead ship', when being towed by the Polish tug "Ajaks" from the Port of Rostock, in Germany, to the breaking yard in Lithuania when it sank. The wreck was located in Polish Territorial Seas. Also, in this case, the Polish State Commission on Maritime Accident Investigation, based on the Polish definition 'maritime accident', rejected possibility of recognising it as a ship. After this case, the scope of competences of The State Commission on Maritime Accident Investigation Act has been change. At the moment, mentioned Commission has the competence to investigate also very serious casualties involving ships and any other structures during the towage operation. Mentioned legal changes concerns only the competences of

² Very serious casualties **are casualties to ships** which involve total loss of the ship, loss of life, or severe pollution. Serious casualties **are casualties to ships** which do not qualify as very serious casualties and which involve a fire, explosion, collision, grounding, contact, heavy weather damage, ice damage, hull cracking, or suspected hull defect, etc., resulting in: - immobilization of main engines, extensive accommodation damage, severe structural damage, such as penetration of the hull under water, etc., rendering the ship unfit to proceed*, or
- pollution (regardless of quantity); and/or
- a breakdown necessitating towage or shore assistance.

Less serious casualties are casualties to ships which do not qualify as very serious casualties or serious casualties and for the purpose of recording useful information also include marine incidents which themselves include hazardous incidents and near misses.



The State Commission on Maritime Accident Investigation, not Polish courts. That is why it is difficult to consider if maritime accident during the tow operation and involving structure not being a ship, would be considered as a ship casualty by Polish court (Izba Morska). Georg Büchner's accident is under investigation by the Polish Izba Morska at the moment;

- 16) vessels under conversion or renovation -
there are no such a reported decision.

Furthermore, a subject of the Polish judgments were also the banana boats. In three judgments, the court stated that banana boat was not a ship according to the Maritime Code's definition³. Similar decision was made by Polish second Instance Odwoławcza Izba Morska in reference to water scooter/personal water craft in 1994, which found water scooter not designed or used for shipping⁴.

The above descriptions of Polish regulations, finally brings us to the following conclusion: the Authors are not aware of any reported decisions which would have recognised the property mentioned in a question No. 7, as a ship.

8. Please identify any of the Convention usages and limitations which are at variance with equivalent terms in your national system and explain the variations.

As indicated in answer to question 1, ratified international agreements are universally binding law of the Republic of Poland. Moreover, an international agreement ratified upon prior consent granted by statute (ustawa) entertains precedence over statutes in case of collision. By such, maritime conventions with their ship's definitions, after proper promulgation, become a part of domestic legal order and are to be applied directly (unless its application depends on the enactment of a statute).

Thus, what could be compared only are definitions as adopted by the international conventions with definitions under national law, which concern areas not regulated by ratified conventions. In that respect a comparison may be drawn between definition of a vessel in art 1b of the SALVAGE convention and definition of seagoing vessel as states in the Polish Maritime Code, art 2. According to SALVAGE, 'vessel' means "any ship or craft, or any structure capable of navigation", where the latter is understood as capacity to move or to be moved. On the other hand art. 2 of the Polish Maritime Code defines a vessel as any type of floating structure intended to use (designed for) or used in shipping. It is understood that a cargo vessel used as a warehouse or a passenger ship used as a hotel (examples provided by Prof. B. Sözer in comments to the CMI questionnaire) would not satisfy vessels definition under the Maritime Code.

³ The 'Banana boat' cases however were resolved in the "old", wider legal definitions of maritime accidents. Judgment dated 26th of August 2009, WMG 23/09. The banana boat accident was also investigated earlier, and found as not a ship. Judgment dated 21st of February 1996, WMG 57/95 and judgment dated 13 of May 1997, WMG 16/97.

⁴ Judgment dated 24th of October 1994, WMG 63/94.




9. Are there any instances involving your jurisdiction in which inconsistent or conflicting definitions of “vessel”, “ship” or equivalent term have impacted results in any legal proceedings of which you are aware? If so, please provide details.

We are not aware of such a legal proceedings.

The responses were contributed by: Ms Justyna Nawrot (Dr) and Mrs Zuzanna Peplowska-Dąbrowska (Dr) – Members of the Polish MLA.

In case of any doubts or questions, please feel free to ask anytime.

With Best Regards,



MAREK CZERNIS
Vice-President



PAWEŁ MICKIEWICZ
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