

UDC 34

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Miroshnichenko, Natalya, Radkovska, Iryna (2022). Subjects of criminal offences in the field of traffic safety and operation of water transport. *Entrepreneurship, Economy and Law*, 1, 80–88, doi: <https://doi.org/10.32849/2663-5313/2022.1.13>

## SUBJECTS OF CRIMINAL OFFENCES IN THE FIELD OF TRAFFIC SAFETY AND OPERATION OF WATER TRANSPORT

**Abstract. Purpose.** The article is devoted to the research of peculiarities and kinds of subjects of criminal offences in the field of traffic safety and operation of water transport, as well as differences in the composition and the place of this group of criminal offences in the current Criminal Code of Ukraine (hereinafter – CC of Ukraine), the Criminal Code of the USSR of 1960 (hereinafter – CC of the USSR) and the draft Criminal Code of Ukraine (hereinafter – draft CC of Ukraine). **Research Methods.** The paper is executed by applying methods of classical, non-classical and post-non-classical methodology.

**Results.** General characteristic of criminal offences in the field of traffic safety and operation of water transport, included into the CC of Ukraine, is provided. Description of general subjects of criminal offences in the mentioned field is studied. Features of special subjects are analyzed. The following is determined: the reference to a special subject may be contained as at the title (article 285 of the CC of Ukraine), as at the disposition (article 284 of the CC of Ukraine). It is illustrated, that determination of features of special subjects of the present kind of criminal offences requires research of significant volume of legal acts (international treaties, laws of Ukraine, as well as subordinate legislation), governing public relations in the field of traffic safety and operation of water transport, as well as respective judicial practice and scientific literature. The significance of the category of special (professional) sanity is considered. Particular attention is drawn to the issues of criminal liability of a master as a person, who bears increased liability for ensuring traffic safety and operation of vessels.

**Conclusions.** The following tendency is discovered: criminal infractions provide liability, as a rule, of special subjects, whereas crimes, majorly, do not contain additional requirements regarding subjects, namely provide liability of general subjects. Discovered tendency is grounded, obviously, by increased degree of public danger of this category of crimes. Available scientific approaches to the definition of the term "water transport worker" are analyzed, and it is proposed to define it for the purposes of criminal legislation as a natural person, who conducts activity regarding ensuring traffic safety and operation of water transport.

**Key words:** general subject of a criminal offence; special subject of a criminal offence; criminal offences in the field of traffic safety and operation of water transport; special (professional) sanity; water transport worker; master of a vessel.

### 1. Introduction

**Relevance.** Water transport is a crucial component of contemporary life, one of the main arteries of the global economy. The importance of this field can be proved by acknowledge of seafarers as "key workers" (International Maritime Organization, 2021) within COVID-

19 pandemic conditions, along with medical personnel. At the same time, water transport, as any other means of transport, is the source of increased danger to life, health and property of persons (Kostadinova, 2011, p. 29), and criminal offences in the present field, as a rule, are resulted in human deaths and millions of dam-

age worth. Criminal offences in the field of traffic safety and operation of water transport are contained in the distinct Section XI of the Special Part of the current Criminal Code of Ukraine (hereinafter – CC of Ukraine). For comparison, the Criminal Code of the USSR of 1960 (hereinafter – CC of the USSR) did not unify criminal offences against traffic safety and operation of transport into the separate group.

**Purpose.** The article aims to research peculiarities and kinds of subjects of criminal offences in the field of traffic safety and operation of water transport, as well as to determine differences in the composition and the place of the mentioned group of criminal offences in the CC of Ukraine, the CC of the USSR as well as the draft Criminal Code of Ukraine (hereinafter – draft CC of Ukraine). To reach the purpose, the following **goals** shall be achieved: 1. To provide general description of criminal offences in the field of traffic safety and operation of water transport. 2. To characterize general subjects of the mentioned criminal offences. 3. To analyze special subjects of the present group of criminal offences. 4. To pay attention to some other criminal offences relating traffic safety and operation of water transport.

**Methodology.** Both methods of classical, non-classical and post-non-classical methodology were used during the research. Thus, hermeneutics and Aristotelian methods were used at interpreting the texts of legislative acts. Method of analysis was used to research judicial practice. Historical and comparative methods were used to determine the development of the system of criminal offences in the field of traffic safety and operation of water transport. The tendency of dependence of the kind of subject of criminal liability on the degree of public danger was discovered by mathematical method.

**Presentation logic of research material.** Results of the research are presented in general-to-specific order. Firstly, general characteristic of criminal offences in the field of traffic safety and operation of water transport is provided. Secondly, issues regarding general subjects of criminal offences are presented. Finally, special subjects of the mentioned group of criminal offences are researched.

General characteristic of criminal offences in the field of traffic safety and operation of water transport

Section XI of the Special Part of the CC of Ukraine includes 19 articles, and 7 of them relate to traffic safety and operation of water transport (Verkhovna Rada of Ukraine, 2001). It shall be noted, that articles 276 of the CC of Ukraine, 277 of the CC of Ukraine, 278 of the CC of Ukraine, 279 of the CC

of Ukraine, and 280 of the CC of Ukraine provide liability for the violation of rules of traffic safety and operation of different modes of transport, including water, while articles 284 of the CC of Ukraine and 285 of the CC of Ukraine relate to water transport only.

Comparing the list of criminal offences in the field of traffic safety and operation of water transport, contained in the CC of Ukraine, with the list, included into the CC of the USSR as well as in the draft CC of Ukraine, the following shall be noted. Firstly, the CC of Ukraine for the first time provides liability for piracy (article 446 of the CC of Ukraine), which is significant step forward considering its international character.

Meanwhile, the CC of the USSR contained a range of important articles, which were not included into the current law of Ukraine on criminal liability (Verkhovna Rada of the Ukrainian Soviet Socialist Republic, 1960). For instance, article 205 of the CC of USSR provided liability for damage to marine telegraph cable. It is notable, that Special Part of the draft CC of Ukraine as of 18 January 2022 includes article 5.4.7. providing liability for damage to submarine cable or pipeline.

Criminal offences, provided by clause 1 of article 276 of the CC of Ukraine, clause 1 of article 279 of the CC of Ukraine, clause 1 of article 280 of the CC of Ukraine, article 284 of the CC of Ukraine, as well as article 285 of the CC of Ukraine, are criminal infractions, and all other criminal offences belong to the category of crimes. Herewith, criminal offences, provided by clause 1 of article 277 of the CC of Ukraine, and clause 2 of article 280 of the CC of Ukraine, belong to minor crimes. Grave crimes include criminal offences, prescribed by clauses 2 and 3 of article 276 of the CC of Ukraine, clause 2 of article 277 of the CC of Ukraine, clauses 1 and 2 of article 278 of the CC of Ukraine, and clause 2 of article 279 of the CC of Ukraine. Especially grave crimes are those provided by clause 3 of article 277 of the CC of Ukraine, clause 3 of article 278 of the CC of Ukraine, clause 3 of article 279 of the CC of Ukraine, as well as clause 3 of article 280 of the CC of Ukraine.

Concluding general characteristic of criminal offences in the field of traffic safety and operation of water transport, it is noteworthy that one of the features of the present category of criminal offences is blanket character of dispositions of the respective articles, which cause the necessity to research and analyze significant volume of legislative acts, such as: international treaties (for instance, International Convention for the Safety of Life at Sea, 1974 (SOLAS 1974); International Convention

for the Prevention of Pollution from Ships, 1973 (MARPOL); International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW 1978); United Nations Convention on the Law of the Sea, 1982 (UNCLOS); Convention on the International Regulations for Preventing Collisions at Sea, 1972, (COLREG 1972); national laws (for example, the Merchant Shipping Code of Ukraine; the Laws of Ukraine "On transport", "On Ukrainian Sea Ports", "On Environmental Protection", "On Transportation of Dangerous Cargos", "On Inland Waterway Transport"), as well as subordinate legislation (for example, the Decrees of the Cabinet of Ministers of Ukraine "On Approval of the Rules for the Protection of Inland Waters and the Territorial Sea against Pollution and Clogging" No. 269 dated 29 February 1996; "On Approval of the Procedure for the Elaboration of the Standards of Maximum Permissible Discharge of Pollutants to Water Objects, and the List of Pollutants Discharge of Which to Water Objects is Regulated" No. 1100 dated 11 September 1996; Orders of the Ministry of Infrastructure of Ukraine "On Approval of the Procedure for Determination of the Minimum Vessel's Crew Composition" No. 575 dated 10 November 2014, "On Approval of the Regulation on the Procedure of a Small/Small Size Vessel Navigator Certificate Issue" No. 283 dated 07 May 2013).

As of subject's composition of the above-mentioned criminal offences, generally, Ukrainian and overseas citizens, as well as stateless persons bear liability for the criminal offences, committed within the territory of Ukraine. Moreover, citizens of Ukraine, as well as stateless persons, permanently living in Ukraine, who committed criminal offences abroad, are subjects of criminal liability under the CC of Ukraine, unless otherwise expressly stated in international treaties, approved by the Verkhovna Rada of Ukraine (clause 1 of article 7 of the CC of Ukraine). Hence, taking into consideration the mentioned, this article is useful not only for Ukrainian audience, but also for international community.

### 3. Characteristic of general subjects of criminal offences in the field of traffic safety and operation of water transport

*Considering features of general subjects of criminal infractions in the field of traffic safety and operation of water transport*, it may be concluded that criminal infractions, provided by clause 1 of article 279 of the CC of Ukraine, and clause 1 of article 280 of the CC of Ukraine may be committed by a general subject, namely a natural sane person, who has reached the age of criminal liability. Thus, from

all criminal infractions in the mentioned field the quantity of infractions which may be committed by a general subject is 40 %.

As of *general subjects of crimes in the present field*, the following shall be noted. Firstly, attention should be drawn to the circumstance, that crimes prescribed by articles 277 of the CC of Ukraine and 278 of the CC of Ukraine provide liability from the age of 14. Such legislative solution is, obviously, based on the possibility to realize socially dangerous character of the mentioned actions prior to the attainment of the general age of criminal liability.

Clause 1 of article 277 of the CC of Ukraine and clause 2 of article 280 of the CC of Ukraine constitute minor crimes and provide criminal liability of general subjects. Thus, all minor crimes in the field of traffic safety and operation of water transport are committed by general subjects.

With respect to criminal liability of general subjects for grave crimes in the mentioned field, such liability is provided by clause 2 of article 277 of the CC of Ukraine, clauses 1 and 2 of article 278 of the CC of Ukraine, and clause 2 of article 279 of the CC of Ukraine. Thus, from 6 corpus delicti of grave crimes, 4 of them provide liability of general subjects, which is equal to 66.7 %.

It is remarkable fact that especially grave crimes in the field of traffic safety and operation of water transport provide liability for general subjects only, omitting any additional requirements in dispositions. So, all 4 corpus delicti, namely: clause 3 of article 277 of the CC of Ukraine, clause 3 of article 278 of the CC of Ukraine, clause 3 of article 279 of the CC of Ukraine, and clause 3 of article 280 of the CC of Ukraine, provide liability of general subject of a criminal offence.

*Therefore, the revealed tendency regarding the increase of a percent of general subjects of criminal offences with the increase of the degree of public danger allows presuming that the legislature thoroughly considered social danger at definition of the subject's composition of criminal offences in the field of traffic safety and operation of water transport.*

*As to the subject's composition of criminal infractions, it is noteworthy that the majority of infractions with a special subject in the mentioned field are contained in the Code of Ukraine on Administrative Offences (Verkhovna Rada of the Ukrainian Soviet Socialist Republic, 1984).*

### 4. Characteristic of special subjects of criminal offences in the field of traffic safety and operation of water transport

In the context of special subjects of criminal offences in the mentioned field the category

of special (professional) sanity is commensurate. It is not fixed in the criminal legislation, however is actively used in the scientific literature. Appearance of this term is connected with the name of M.S. Greenberg, who defined it as an ability of a person to ensure conscientiously-volitional control over own actions in specific, extreme conditions, requiring skills, abilities, experience, and sometimes even inborn abilities for particular activity. L.P. Brych and V.O. Navrotskyi proposed an idea that “a sanity of a special subject of a crime shall be determined not only on the basis of those volitional and intellectual criteria, which shall be used to define a sanity of any person, but taking into consideration additional features, which determine the ability of such person to realize factual and social aspects of the behavior with consideration of additional assigned duties” (Brych, Navrotskyi, 2001, p. 61). Thus, a special (professional) sanity is connected with the peculiarities of realization and operation of actions by persons, whose profession or activity is connected with the necessity to withstand significant psychoemotional and nervous pressures, to make critical decisions within such conditions and short time.

Scientific and technical progress, the development and improvement of transport, including water, require particular changes in understanding and legislative regulation of some issues, connected with a sanity. At the same time, within the contemporary conditions, when all fields of social life are in crises due to COVID-19 pandemic, a great deal of attention is drawn to mental health of “key” professions representatives, including water transport workers. International Maritime Organization (IMO) and the International Transport Workers' Federation (ITF) numerous times expressed their concern regarding the mental health of seafarers, for a long time working on board the vessels due to the impossibility to conduct repatriations in time, caused by the cancelation of flights and borders closing by the majority of countries (Luchenko, Georgiievskiy, 2021, p. 8). The given circumstances led to significant increase of suicide cases, caused by mental disorders due to fatigue. Thus, within such conditions, it has become more difficult to water transport workers, first of all seafarers, to withstand psychoemotional and nervous pressures and make balanced and critical decisions, which, in its turn, lead to increased amount of accidents involving water transport. On 11 March 2021 one of the last tragedies in the Black Sea near the Romanian Port of Constanța happened, namely an accident of the vessel “Volgo Balt 179”, with 13 crew members – citizens of Ukraine onboard, two of them (the

master and the electrician) were not survived. Adverse weather conditions, the age of the vessel (which was built in 1973) and possible violation of the vessel operation rules are among possible causes of the accident (Vozmozhnye prichiny korablekrushenija Volgo-Balt 179 [Possible reasons of Volgo Balt 179 accident], 2021). However, in our opinion, it is obviously that human factor, namely fatigue and increased level of psychoemotional and nervous pressures, also played the part.

Determining criminal liability for particular criminal offences, the legislature narrows down the range of possible subjects. This solution is based on the fact, that some criminal offences may be committed not by every sane person, who has reached the age of criminal liability, but by the persons who perform special functions caused by the character of their profession or occupied position. Corpus delicti of criminal offences, which provide liability of the mentioned persons, are corpus delicti with a special subject. The peculiarity of a special subject is his/her official position or profession (water transport worker, a soldier, an official), demographic data (but not innate features of a person, not psychological qualities, created during the life). Herewith, the recognition of particular categories of persons as special subjects is caused not by their position (the principle of equality excludes unequal liability for similar criminal offences), but by the fact that those persons, due to occupied position, may commit such criminally wrongful acts which cannot be committed by other persons. Corpus delicti with a special subject emphasizes a close relationship between an object, objective side, and a subject of a criminal offence.

Narrowing down the range of liable persons in corpus delicti with a special subject, the legislature usually indicates it in the disposition of an article. Otherwise, the content of an article reveals that a subject of a criminal offence is special.

Nonconformity between the features, characterizing a subject of a criminal offence, with ones, provided by the disposition of an article, excludes liability under the present article. For instance, disposition of article 284 of the CC of Ukraine precisely defines that liability for failure to provide assistance to a vessel or persons in peril may bear only a master of a vessel. Thus, any other person may not be brought to criminal liability on the basis of the mentioned article. Liability of other persons for failure to provide assistance to a person who is in a condition dangerous to life shall arise on the basis of article 136 of the CC of Ukraine.

The mentioned is the evidence that legal significance of general and special features

of a subject of a criminal offence are not equal. The absence of at least one of general features of a subject means the absence of a *corpus delicti*. The features of a special subject are limiting to some extent, since they define that particular criminal offence may be committed not by any person, but by a person with particular features. Thus, persons who do not have such features, may not bear liability under the particular law, since they are not subjects of this criminal offence. Those persons either do not bear criminal liability at all, or are liable for criminal offence, which may be committed by any person, namely a general subject.

Only persons with additional features (special subjects) may be liable for criminal offences, provided by article 276 of the CC of Ukraine, article 284 of the CC of Ukraine, as well as article 285 of the CC of Ukraine. They shall be considered thoroughly.

A subject of the criminal offence, provided by article 276 of the CC of Ukraine, is a railway, water or air transport worker. Currently, there is no legal definition of the term “water transport worker”. N.G. Orlova, who researches peculiarities of the legal regulation of labor relations of water transport workers, proposes wide and narrow approaches to the definition of the mentioned term. Thus, according to the wide approach, “water transport worker” means a natural person, who engages in labor activities at an enterprise, an establishment, an organization, or a structural subdivision in the field of water transport. In accordance with the narrow approach, “water transport worker” means a natural person, who conducts activity on ensuring traffic of vessels on seagoing and river transport (that is to say the person engaged in the main activity of water transport) (Orlova, 2019). While generally agreeing with the proposed definition, we would like to offer one small, but crucial remark, which is that water transport worker means a natural person, who conducts activity on ensuring traffic *safety* and *operation* of water transport.

Notwithstanding the fact that there is no legal definition of the term, the judicial practice in this regard is quite unified. Courts convict navigators of respective vessels being in accident regardless of the presence of written employment agreement, concluded between a navigator and a ship-owner. The fact of the actual work on board the vessel subject to the presence of respective qualification documents is sufficient to declare a respective person to be “water transport worker”.

Within the context of criminal liability for criminal offences, provided by article 276 of the CC of Ukraine, the following two cases shall be analyzed.

On 07 December 2004 the person, who is a citizen of Ukraine, being the master of cargo vessel “G-Lubica”, flying the flag of Serbia, violated the rules of safe navigation of the ship at the territory of the port of Belgrade, which resulted in sinking of the vessel. On 03 September 2010 the case was considered by the court of Ukraine, following which the master was absolved of criminal liability due to the expiration of the term of the prosecution (Izmailskiy District Court of Odesa Region, 2010). This case is a vivid example of the application of the principle of a citizenship.

The following case shows grave effects, which may be caused by violations of the rules of safe navigation and operation of water transport. On 17 October 2015 the boat “Ivolga” (which according to registration documents may place only 12 passengers and 3 crew members) being occupied by 40 passengers put out for fishing during the storm and overturned, which resulted in deaths of 20 passengers and millions of hryvnias of damage. The investigation established violation of 27 rules related to traffic safety and operation of water transport. On 18 October 2019 (four years after the tragedy) the court of the first instance convicted the navigator of the mentioned vessel and sentenced to 9 years of imprisonment (Suvorovskiy District Court of the City of Odesa, 2019). On 03 July 2020 the court of appeal altered the verdict of the previous court as of the punishment and sentenced the convicted to 10 years of imprisonment (Odesa Court of Appeal, 2020). As for material and moral damage, caused to survived passengers and relatives of deceased, the mentioned persons filed claims against the ship-owner (a legal entity, registered in Ukraine) within the criminal proceedings, which were sustained by the court.

Criminal offences, prescribed by articles 284 of the CC of Ukraine and 285 of the CC of Ukraine, may be committed only by masters of respective vessels. Article 58 of the Merchant Shipping Code of Ukraine (hereinafter – MSC of Ukraine) obliges a master to conduct operation of a vessel, including navigation, taking all measures which are necessary to ensure safe navigation, marine pollution prevention, maintaining order on a vessel, prevention any damage to a vessel, persons or cargo on board. Articles 59 of the MSC of Ukraine and 60 of the MSC of Ukraine particularly provide master’s obligations, violations of which lead to liability prescribed by articles 284 of the CC of Ukraine and 285 of the CC of Ukraine. Besides, article 61 of the MSC of Ukraine obliges a master to provide emergency medical care to a person on board a vessel who needs such care, which cannot be provided at sea. In such case a master



is obliged to enter the nearest port, inform the ship-owner, and in case of entry into a foreign port – to inform a consul of Ukraine (Verkhovna Rada of Ukraine, 1995). Failure to perform this duty, entrusted to a master of a vessel, leads to the liability prescribed by article 136 of the CC of Ukraine.

##### **5. Some other criminal offences relating traffic safety and operation of water transport**

Besides Section XI, Special Part of the CC of Ukraine contains other criminal offences, which also relate to the present field subject to their additional optional objects include social relations in the field of traffic safety and operation of water transport. Piracy and marine pollution are among them.

Currently, the judicial practice of Ukraine has only one, but meaningful case regarding the prosecution of a person committed piracy. Thus, on 06 September 2021, Shevchenkivskyi District Court of the City of Kyiv considered guilty a person to have committed criminal offences provided by clause 1 of article 446 of the CC of Ukraine; clause 5 of article 27 of the CC of Ukraine, clause 3 of article 358 of the CC of Ukraine; clause 4 of article 358 of the CC of Ukraine, and sentenced him to 5 years of imprisonment without forfeiture of property, and discharged from punishment on probation (Shevchenkivskyi District Court of the City of Kyiv, 2021). A person who is not acquainted with the text of the verdict, may have quite significant doubts regarding the objectiveness and equity of the court. However, upon familiarization with the verdict, the judgement becomes clear. During the trial it was established that on 03 October 2019 Subject\_1 concluded a contract with “Alphard Marine Pte. Ltd” according to which this Subject undertakes to provide services on vessel guard at High Risk Area. However, upon Covid-19 spread and lockdown establishment, the ship-owner began to delay payment of wages, did not pay it for the last 5 months. Herewith, all his requests addressed to the employer were ignored. At that time the person was on board unarmed vessel “Grey Palm”, belonging to “Alphard Marine Pte. Ltd”, in inhuman conditions, since the mentioned vessel is equipped for placement of 50 persons, but actually there were approximately 200 persons. People slept on deck and ate rotten meal. Such conditions were unchanged for 2 months. All mentioned has taken him to breaking point. Thus, being driven to despair, at the group of three guardians with weapons, namely Browning Bar Match 308, and ammunition, on 21 July 2020 the Subject\_1 boarded on vessel “Jaeger”, flying the flag of Marshall Islands, which was at the Western Indian Ocean region.

At the bridge, the Subject\_1 informed a master of the vessel, a citizen of Ukraine, on hijacking the vessel and required to stop movement (“drifting”), clarified the circumstances with unpaid wages by the “Alphard Marine Pte. Ltd” and asked the master to contact the company and informed the situation. Thus, the Subject\_1 aimed to attract “Alphard Marine Pte. Ltd” attention and obtain payment of wages.

Subsequently, negotiations with the representatives of the ship-owner lasted till 25 July 2020, when there was agreed to pay remuneration for vessel release in the amount of USD 6,000.00 (which is equal to unpaid wages for 5 months). The mentioned funds were handled by the master to the Subject\_1, upon which the latter transferred weapons and ammunition to the master, and on 30 July 2020 boarded on “Golden Palm” vessel, which is used as depot ship and arsenal of “Alphard Marine Pte. Ltd”.

The verdict indicates that civil claim was not filed, and there are not victims within the criminal proceedings. Thus, taking into consideration circumstances which led to the commitment of the criminal offence, provided by clause 1 of article 446 of the CC of Ukraine, the court finds it possible to reform the person without isolation from society.

Obviously, no circumstances may justify actions of a person committed a piracy, however, in our opinion, there are two crucial lessons, that may be learned from this case. Firstly, circumstances, in which seafarers are placed due to Covid-19 pandemic, especially when they are going hand in hand with inhuman treatment by an employer, may significantly involve distortion of lawful conduct of seafarers. Secondly, considering cases, a court shall establish not only the form of the guilt, but motives and aims of a person, committed an offence. As it can be seen, in the particular case namely the motive and aim played the role at the imposition of punishment, since there is almost unprecedented case when a person, committed especially grave crime, is reasonably discharged from punishment on probation!

In respect to the issues of the marine pollution, the following shall be mentioned. Firstly, the attention shall be drawn to the construction of article 243 of the CC of Ukraine. The content of the dispositions of clauses 1 and 2 does not contain any direct references to a special subject, however, sanctions of these clauses provide such additional kind of a punishment, as deprivation of the right to occupy certain positions or engage in certain activities, which in addition to the reference to the special rules provides the opportunity to affirm that liability under the present article may be borne by a special subject. Clause 3 of the present article contains direct reference to the subject, who is

especially responsible persons on seagoing vessels and aircraft or other facilities or constructions, situated at sea.

As regards the judicial practice concerning criminal offences provided by article 243 of the CC of Ukraine, there are few convictions, thus it is quite complicated to establish particular tendencies. However, there is criminal proceeding No. 42020161330000015 dated 06 May 2020 regarding the criminal offence, prescribed by clause 2 of article 243 of the CC of Ukraine. Pre-trial investigation established that on 30 April 2020 at the water area of the commercial seaport "Pivdennyi" the fact of pollution of internal sea waters of Ukraine was established. As a result of unloading operations more than 8 (eight) tones of contaminant (palm oil) were released from the vessel "Stavander", flying the flag of Tuvalu, that caused grave consequences. On 14 May 2020 a prosecutor applied to the court with the motion to arrest the vessel, grounded the arrest by the necessity to protect evidence, to conduct inspection of the vessel as well as sampling of substance, release of which occurred at the water area of the commercial seaport "Pivdennyi". On 15 May 2020 an investigating judge granted the motion and arrested the mentioned vessel, which belongs to the oversea company, registered under the legislation of the Republic of Singapore, by the prohibition to leave the anchorage No. 357, berth No. 12 at the roadstead, without the permission of an investigator or a prosecutor in the case. It is crucial that the judge, granting the motion, "takes into consideration that the master of the mentioned vessel was brought to administrative liability, however simultaneously states that this fact does not exclude the possibility to reveal other guilty person whose actions or inaction caused overflow of containment and pollution of maritime waters during the pre-trial investigation and who further may be brought to criminal liability under clause 2 of article 243 of the CC of Ukraine" (Kominternivskiy District Court of Odesa Region, 2020). In the light of the mentioned two important conclusions may be made. Firstly, the CoAO of Ukraine and the CC of Ukraine are in close cooperation regarding the protection of public relations in the field of traffic safety and operation of water transport, thus thorough examination of legislative acts in this field is crucial for precise

distinction of duties of authorized persons and, respectively, definition of the grounds for administrative and criminal liability. Secondly, as it can be seen, the present proceeding is prime example of the realization of territorial principle of criminal liability.

#### 6. Conclusions

Given the above-mentioned, it can be concluded that the importance of public relations in the field of traffic safety and operation of water transport can be proved by the presence of the distinct XI Section of the Special Part of the CC of Ukraine. Both general and special subjects may bear liability for criminal offences in the present field. Thereby, the reference to a special subject may be contained as at the title (article 285 of the CC of Ukraine), as at the disposition (article 284 of the CC of Ukraine). In any case, determination of features of special subjects of this kind of criminal offences requires research of significant volume of legal acts, regulating public relations in the field of traffic safety and operation of water transport, as well as respective judicial practice and scientific literature.

The following tendency is also noteworthy: criminal infractions in the mentioned field provide liability, as a rule, of special subjects, whereas crimes, majorly, do not contain additional requirements regarding subjects, namely provide liability of general subjects. Discovered tendency is grounded, obviously, on the increased degree of public danger of this category of crimes.

The significance of the category of special (professional) sanity is analyzed on the basis of the examples of special subjects of criminal offences in the field of traffic safety and operation of water transport.

Available scientific approaches to the definition of the term "water transport worker" are analyzed, and it is proposed to define it for the purposes of criminal legislation as a natural person, who conducts activity regarding ensuring traffic *safety* and *operation* of water transport.

Further researches in this field will be connected with the aim, motive and emotions of persons committed criminal offences in the field of traffic safety and operation of water transport.

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## **СУБ'ЄКТИ КРИМІНАЛЬНИХ ПРАВОПОРУШЕНЬ У СФЕРІ БЕЗПЕКИ РУХУ ТА ЕКСПЛУАТАЦІЇ ВОДНОГО ТРАНСПОРТУ**

**Анотація. Мета статті** – дослідження особливостей та різновидів суб'єктів кримінальних правопорушень у сфері безпеки руху та експлуатації водного транспорту, а також встановлення відмінностей у складі та місці даної групи кримінальних правопорушень у чинному Кримінальному



кодекси України (далі – КК України) порівняно із Кримінальним кодексом УРСР 1960 року (далі – КК УРСР) та проектом нового Кримінального кодексу України (далі – проект КК України). **Методи дослідження.** При написанні даної роботи використовувалися методи як класичної, так і неklasичної та постнеklasичної методології. **Результати.** Надано загальну характеристику кримінальних правопорушень у сфері безпеки руху та експлуатації водного транспорту, наявних у чинному КК України. Охарактеризовано загальних суб'єктів кримінальних правопорушень у даній сфері. Проаналізовано особливості спеціальних суб'єктів кримінальних правопорушень. Встановлено, що вказівка на спеціального суб'єкта може міститися як у назві статті (стаття 285 КК України), так і в диспозиції (стаття 284 КК України). Проілюстровано, що встановлення ознак спеціального суб'єкта даної категорії кримінальних правопорушень потребує вивчення значного масиву нормативно-правових актів (міжнародних договорів, законів України та підзаконних актів), які регламентують суспільні відносини у галузі водного транспорту, а також відповідної судової практики та наукової літератури. Досліджено значення категорії спеціальної (професійної) осудності. Окрему увагу приділено питанням кримінальної відповідальності капітана судна як особи, на яку покладено підвищену відповідальність за забезпечення безпеки руху та експлуатації судна. **Висновки.** Встановлено таку тенденцію: за кримінальні проступки передбачена відповідальність, як правило, спеціальних суб'єктів, у той час як склади злочинів, в основному, не ставлять додаткових вимог до суб'єктів, тобто передбачають відповідальність загальних суб'єктів. Виявлена тенденція обґрунтована, очевидно, підвищеним ступенем суспільної небезпечності даної категорії злочинів. Проаналізовано наявні в науці підходи до визначення поняття «працівник водного транспорту» та запропоновано трактувати його для цілей кримінального законодавства як фізичну особу, яка здійснює діяльність із забезпечення безпеки руху та експлуатації суден на водному транспорті.

**Ключові слова:** загальний суб'єкт кримінального правопорушення, спеціальний суб'єкт кримінального правопорушення, кримінальні правопорушення у сфері безпеки руху та експлуатації водного транспорту, спеціальна (професійна) осудність, працівник водного транспорту, капітан судна.

*The article was submitted 14.02.2022*

*The article was revised 09.03.2022*

*The article was accepted 29.03.2022*