

The Legal Dimension of the Formation and Function of the Hellenic Supremes Councils for Marine Accidents

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Abstract

Shipping is perhaps the largest industry globally, transporting more than 90% of the world's trade efficiently and safely. Ships, given their activity on a global scale, are subject to different legal regimes. However, marine accidents with adverse consequences for the environment and people still occur. Hellas, as a country with a strong maritime tradition and with one of the largest shipping companies in the world since the 70s, has established a special legislative framework for the investigation of marine accidents with the Act Decree (A.D.) 712/1970 (A' 237). This special legislative process will be critically examined in this brief study.

Keywords: Marine Accident, Hellenic Supremes Councils for Marine Accidents (S.C.M.A.), Hellenic Coast Guard (H.C.G), Hellenic Service for Marine Accidents Investigation (S.M.A.I.), Ministry of Mercantile Marine (M.M.M.)

Introduction-Analysis

Supreme Councils for Marine Accidents (S.C.M.A.) (Note 1) [hereinafter S.C.M.A.] which are responsible for the administrative control of marine accidents, were established in order, due to the peculiarity of

marine accidents and the special knowledge that their investigation requires, to contribute with the executives who participate to them, to the more complete investigation of the conditions under which a marine (Note 2) happened.

As a maritime accident according to article 1 of the A.D. 712/1970 (A' 237) is considered:

- 1.- total real or presumed loss of a Hellenic ship or floating building,
- 2.- abandoning this to the insurers,
- 3.- permanent or temporary abandonment of the ship by the crew,
- 4.- loss or damage of the cargo carried on board the ship or floating building by a percentage higher than a quarter of it,
- 5.- serious damage resulting in permanent unruliness of the ship and
- 6.- loss of life or serious injury to a crew member or passenger.

It is noted that the Hellenic S.C.M.A. are three (3) A', B' and C', they are equivalent and operate in accordance with the provisions of the A.D. 712/70 (A' 237) "On administrative control of marine accidents" and Act 2575/98 (A' 23 A) "Regulation of matters under the competence of the Ministry of Mercantile Marine" with article 9 paragraph 10 of which paragraph 2 of article 3 was replaced, item d of paragraph 4 of article 3 and paragraph 6 of article 3 of the aforementioned A.D. and Ministerial Decisions (M.D.):

- a) no. 68108/14/70/5.2.71, "Regulation on the function of the Marine Accident Investigation Council (M.A.I.C.) [hereinafter M.A.I.C.]",
- b) no. 68777/2/79/7.6.79, "Determining the seat of the M.A.I.C.",
- c) no. 68108/81/15.7.81, "Establishment of a third M.A.I.C." and
- d) no. 14145/5/92/24.7.92 "Amendment of the M.A.I.C. functioning regulation".

It is noted that all the mentioned M.D. have not been published in the Government Gazette as provided for regulatory acts, they are therefore characterized as non-existent and do not produce legal effects (Note 3).

The S.C.M.A. is established every two years by the decision issued by the Minister of Mercantile Marine (Note 4) [hereinafter M.M.M.], are seven members and consists of the President and six members, as well as a corresponding number of their deputies. A quorum is present if the Chairman and four of the members are present. The authority to establish S.C.M.A. as well as the modification – replacement of their members, based on no. 1141.1/01/20 M.D. (B' 114) has been transferred to the General Secretary of M.M.M.

The provisions for the administrative control of the marine accident as mentioned are defined in A.D. 712/70 (A' 237), as amended by Article 9 par. 10 of Act 2575/98 (A' 23). At the same time, the administrative control of marine accidents is also provided for by the international convention on

the safety of human life at sea (Safety of Life At Sea - SOLAS 74 Reg. 21 Ch. A part C), which was ratified by Hellas with Act 1045 /1980 (A' 95), [On the ratification of the signing in London of the International Convention "on the safety of human life at sea 1974" and on other such provisions].

It is emphasized that this investigation is independent of the safety investigations of marine accidents carried out in accordance with the provisions of Act 4033/2011 (A' 264), "Adaptation to the provisions of Directive 2009/18/EC of the European Parliament and of the Council of 23 April 2009 for the determination of the fundamental principles governing the investigation of accidents in the maritime transport sector and for the amendment of Directive 1999/35/EC of the Council and Directive 2002/59/EC of the European Parliament and of the Council – Incorporation of regulations, implementing measures and other provisions» (Note 5).

As is known, the criminal preliminary investigation constitutes a completely different investigation from the administrative investigation, in the specific case of a marine accident. Bearing in mind this diversity, the following concerns are formulated:

The use of the term preliminary investigation which is carried out in the A.D. 712/70 is inadmissible, as the wording of the said term can very easily be misinterpreted by the executive who carries out pre-investigation criminal acts and creates confusion based on its meaning as defined in the Code of Criminal Procedure (C.C.P.).

From the provision of Article 2 paragraph 1 of the A.D. 720/1970, a question arises whether the notification of the M.M.M. is parallel to the notification of the competent Prosecutor or only the Minister of M.M.M. is informed. If paragraph 7 of article 2 and the provision of article 6 are taken into account, it is concluded that the notification is made only to the Minister of M.M.M. by passing the appropriate notification of the competent Prosecutor's Officer.

This is inferred from the fact that if the competent Prosecution Officer has been informed, there is no need to notify him/her of the case file, as logically it will have been submitted to him/her by the competent Port Police Authority (Domestic or Foreign) (Note 6) [hereinafter means the H.C.G. which conducts a preliminary investigation under its direct supervision].

Upon completion of the preliminary investigations on marine accidents by the H.C.G. or Maritime Attaché Authorities or by an H.C.G. officer designated by the minister of M.M.M. in exceptional cases (article 2 par. 2 A.D. 712/70), the case files after the end of the preliminary investigation are submitted to the M.M.M. without the conclusion of the person who conducted the preliminary investigation.

The minister of M.M.M. refers the file to the S.C.M.A., which

proceeds under the direction of their presidents, in the action of jury regular investigations, if the Councils judge that the conducted preliminary investigations are insufficient. Minister of M.M.M. if he/she decides with a reasoned opinion, he/she may not submit the file to the S.C.M.A. (article 2 paragraph. 6 of A.D. 712/70).

If from the preliminary investigation there are indications of the commission of a punishable offense or a subpoena is submitted against everyone responsible, the person who carried out the preliminary investigation if he/she is an officer of the H.C.G. and in the other cases the M.M.M. forwards the case file with all the information to the competent Misdemeanor Prosecutor (article 2 paragraph 7 of A.D. 712/70).

In every case of a marine accident, one of the members of the S.C.M.A. is designated by the president as rapporteur, who studies the case and makes a recommendation on it, before the Council, then the S.C.M.A. decides with its report, on the causes, conditions, those responsible for the marine accident and their degree of responsibility, unanimously or by majority (in case of a tie, the vote of the president prevails).

Those before the S.C.M.A. procedures must be completed within the deadlines set by the A.D. 712/70 and which must not exceed a total of seven (7) months from the delivery of the marine accident files to the S.C.M.A.

In practice, these deadlines are usually met, except for some exceptional cases where the Councils must carry out a regular investigation and the deadlines are impossible to meet (calling witnesses, receiving witness statements, correspondence with Authorities, Organizations, Services, private individuals, etc).

The report of S.C.M.A. with the marine accident file is forwarded by the president to the minister of M.M.M. (Note 7) to the competent Prosecutor for criminal prosecution. If there is evidence of disciplinary liability of Captains or crew members, these Reports are also referred to the competent Merchant Marine Disciplinary Council (M.M.D.C.) for the imposition of legal disciplinary sanctions (Article 6 of A.D. 712/70).

The exhibitions of S.C.M.A. do not bind the judges and are freely evaluated by them together with the rest of the evidence of the cases (Article 7).

Noteworthy in this particular A.D., is the fact that the Minister of M.M.M., after the report of the Consular or Port Police Authority, if he/she deems that there is a case for further investigation, orders the holding of a jury preliminary investigation as well as the Authority that will conduct it. Similarly, the minister designates in extraordinary circumstances (without specifying what they are) an officer of the H.C.G. to conduct a preliminary investigation.

Furthermore, the possibility is given to the Minister of M.M.M., with

his reasoned judgment (but who will evaluate it?) not to refer the file to the S.C.M.A. In this particular case, without defining anything related to the provisions of the A.D., it is concluded that if the minister of M.M.M. did not forward the file to S.C.M.A. apparently he/she will not forward it to the competent Misdemeanor Prosecutor's Office either, taking for granted that the competent Port Police or Consular Authority has only informed the M.M.M. (Article 2 paragraph 1). Consequently, the collected pre-investigative material will not be forwarded to a competent Prosecuting Authority and the Minister's Decision will not be judged by the Judicial Function.

It is also stipulated that if the preliminary investigation reveals evidence of the commission of a crime or a subpoena is submitted then either the officer of the H.C.G. if the preliminary investigation or the M.M.M. forwards the case file to the competent Misdemeanor Prosecutor (the allegation of failure to inform the competent Prosecution Authority is affected).

In Article 5 paragraph 5 it is defined that the minister of M.M.M. in serious and urgent cases *ex officio* or at the request of anyone with a legal interest, he/she may order the direct under the S.C.M.A. regular investigation in the event that no preliminary investigation is carried out by the Port Police or Consular Authority and the one that has started ceases (the claim of not informing the competent Prosecutorial Authority is valid).

Also noteworthy is the administrative practice followed by the competent directorate of the M.M.M. namely the Directorate of Maritime Safety, which evaluates the preliminary investigation material submitted by the Port Police Authorities in the event of a maritime accident, in order to assess whether the relevant conditions for a maritime accident are indeed met, in order to subsequently forward the collected for further evaluation pre-investigative material to S.C.M.A.. It is noted that the competent Port Police Authority (Domestic or Foreign) has submitted the same pre-investigative material at the same time to the competent Prosecution Authority for criminal assessment/assessment.

In fact, it is found many times that the said department orders the Port Police Authorities to carry out additional criminal acts, in order, in its opinion, to complete the original pre-investigative material, before it is forwarded to the S.C.M.A. and its orders to communicate them to the competent Prosecution Authority that has been submitted by the Port Police Authority with the pre-investigative material that has been collected.

These actions of the aforementioned M.M.M. are based on article 21 of the P.D. 13/2018 (A' 26), "Organization of the Ministry of Shipping and Island Policy" entitled "Navigation Safety Directorate" and specifically in par. 2.d) where the following are stated: ".....The monitoring of

international developments in matters of maritime accidents and the coordination of actions to investigate maritime accidents of ships under the Hellenic flag and ships in which Hellenic sailors work or Hellenic citizens are on board, including the formation and operation of the S.C.M.A. and other maritime accident investigation bodies..." as well as in no. 68108/14/70/5.2.71 M.D., on the subject of "Regulations for the operation of the Marine Accident Investigation Board S.C.M.A.", which, however, is unpublished in the Government Gazette as it should be as a regulatory act and consequently it is non-existent and produces no legal effect at all.

The question that arises is whether the specific procedure followed as described above is legal in the sense that it is provided for by the legal texts. Specifically, the following two questions raised:

1.- Has the authority, as claimed by the competent directorate of the M.M.M. to evaluate the pre-investigative material that the competent Port Police Authority has collected and submitted to it and to the Prosecution Authority, if it is a marine accident before transmission of S.C.M.A. in order to establish that all the conditions that constitute the concept of a maritime accident are met according to the provisions of the A.D. 712/1970;

2 Has the authority to issue orders to the Port Police Authorities to competently complete, in its opinion, the said pre-investigation material which are communicated to the Prosecution Authorities, the content of which includes the order for parallel submission to the Prosecution Authorities as well for his criminal assessment substituting the judicial judgment of the Prosecuting Authority without its knowledge?

The answer to both the aforementioned two questions is clear based on the legislative texts, and specifically, the answer is negative.

Specifically, for every event or incident that occurs in the area of jurisdiction of the H.C.G. as determined by the relevant provisions of the C.P.P., the Prosecution Authority is inevitably informed and proceeds with a criminal assessment. From the combination of the provisions of articles 33, and 43 of the C.P.P. with article 19 par. 1 of the M.D. 040/2014 (A' 3212) [Regulation of Port Police Authorities Functioning], is very clear that the officers of the H.C.G. as general pre-investigation officers who carry out a preliminary investigation in the context of the criminal prosecution initiated by the competent Prosecution authority and under its direction, report and receive instructions and orders only from them. The aforementioned framework of action constitutes the so-called Judicial Police in which other hierarchical levels cannot under any circumstances intervene to issue instructions-orders-hints [articles 158-159 of the Code of Public Marine Act, A.D. 187/1973 (A' 261), article 33 par. 8 of Act. 4256/2014 (A' 92) (Tourist vessels and other provisions) and articles 31-33-36 and 43 of the C.P.P.].

The administrative control of the maritime accident (A.D. 712/70)

constitutes another procedure by special councils, which are composed of members who have similar experience and know-how, and in each case, a judicial officer also participates. These councils have the authority as provided for in article 5 of the A.D. 712/70 as applicable to proceed under the direction of their president to conduct a regular preliminary jury investigation if they consider the conducted preliminary jury investigation to be insufficient (Note 8).

From the existing legislative framework, namely the A.D. 712/70 as applicable, article 21 of the P.D. 13/2018 and no. 1000.0/35289/2015 M.D. (B' 2582), it is very clear that nowhere is the competence of the Directorate of Safety Navigation to evaluate collected pre-investigative material and recommendations competently.

A careful study of the provisions in question reveals the authority of the said department for actions of an administrative nature, i.e. the coordination of various administrative bodies and units as well as procedural arrangements that refer to the way cases are processed in a specific organizational unit, for the purpose of its efficient operation only, which is influenced by a teleological interpretation of the relevant wordings "monitoring of international developments.....the coordination of actions to investigate maritime accidents.....including the establishment and operation of" [see article 21 par. 2 of the P.D. 13/2018].

The coordination of actions in no way means the evaluative judgment of submitted pre-investigative material, but bureaucratic actions of an administrative nature, something that is inferred from the relevant wordings at the beginning and end of the above-mentioned relevant provision.

If the legislator wished, he/she would use different wording such as "e.g. evaluation of collected pre-investigative material before sending it to the S.C.M.A. issuing instructions-orders to the Port Authorities for the additional completion of the case file after its evaluation, etc.

However, such wording would replace the responsibilities of the above directorate of the M.M.M. with the jurisdiction of the Prosecution Authority or the competencies of preliminary investigations according to C.P.P. employees. In addition, from a careful study of article 15 of the M.D. 1000.0/35289/2015, there is a transfer of the right to sign regarding "documents and acts by which maritime accident files are competently transmitted".

It is emphasized again that M.D. which refers to the operation and constitution of S.C.M.A. and has been issued under the authority of the A.D. 712/70, have not been published in the Gazette of the Government, are non-existent and do not produce legal consequences (articles 42 par. 1, 35 par. 1 of the constitution as well as the opinions of the Council of State (Plenary) 87/2011, 1609 /2012, 1080/2013, Supreme Court 33/2009, 256/2007,

3/2006, 1788/2004, 2200/2003, Supreme Court No. 3136/1989).

The expediency of the existence of S.C.M.A. can also be raised as a concern after the publication of Law 4033/2011 (A' 264), "Adaptation to the provisions of Directive 2009/18/EC of the European Parliament and of the Council of April 23, 2009 for the determination of the fundamental principles governing the investigation of accidents in the sector of maritime transport and for the amendment of Directive 1999/35/EC of the Council and Directive 2002/59/EC of the European Parliament and of the Council - Incorporation of regulations, implementing measures and other provisions".

In Article 4 of the aforementioned act (Note 9) the independence of the investigations from the criminal, disciplinary, and civil investigations and from the administrative control of the marine accident carried out pursuant to the A.D.712/70 carried out in accordance with Act 4033/2011.

But could the State make use of the specific mechanism of S.M.A.I. and the reports on the maritime accidents that it examines, to transmit them competently either for a criminal assessment or for any disciplinary assessment since in any case the purpose is to establish the causes and conditions that occurred a maritime accident, supplementing where necessary the legislative framework in order to there is only one mechanism saving resources in manpower and material.

Conclusion

The above provisions, I believe, go beyond the judicial authority they provide to the minister of M.M.M. (instead of the administrative which should have been clear from the wording of the relevant provisions), contradict the provisions of the current C.P.D. in which the duties and obligations of both the Prosecution Authorities and the pre-investigation officers are defined.

In particular, the provisions of the A.D. 712/70 described above are indicatively in conflict with the following articles of the Hellenic Criminal Code: 31 "Rights of the prosecutor", 33 "General investigative officers", 36 "Ex officio prosecution", 37 "Obligation to announce criminal conduct", 43 "Initiation of criminal prosecution", 239 "Purpose of the interrogation", 243 "When and by whom it is acted upon", etc. of the C.P.P.

In any case, the procedural framework defined in A.D. 712/70 for the administrative control of the maritime accident, does not mean a substitution of the Prosecuting Authorities. The latter, according to the procedural system of Hellas, are the only ones to assess the maritime accident incident(s) after receiving knowledge, to give relevant orders to the pre-investigation officers at the pre-investigation stage, who report first and foremost to them as mandated by the C.P.P.

The latter, with the consent of the competent Prosecutorial

Authorities, may appoint experts, etc., and not for the pre-investigation procedure to be carried out outside the provisions of the Code of Criminal Procedure, by first informing the Minister of Justice.

In this way, each minister is provided with powers to handle and evaluate pre-investigative material, which should clearly fall outside of his/her institutional powers, bypassing the initial mandatory notification of the Prosecuting Authorities in the event of a marine accident.

In addition, all the provisions of the said A.D. cause conceptual confusion in terms and procedures such as preliminary investigation, and administrative investigation which in procedural practice are clear and delimited.

The administrative control for the performance of any disciplinary responsibilities (article 6), if this is the request of the A.D. 712/70, could be carried out by requesting a copy of the relevant case file from the competent Prosecution Authority and its further disciplinary evaluation by the competent Departments of the M.M.M. according to the applicable procedures.

Finally, it is noted that M.D. which have been issued under the authority of the A.D. 712/70 and refer to the operation and constitution of S.C.M.A. have not been published in the Government Gazette as provided for in the regulatory acts, consequently they are characterized as non-existent and do not produce legal results with what this implies regarding the credibility of the institution in question.

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Notes

Note 1: In Presidential Decree (P.D.) 13/2018 (A' 26), "Organization of the Ministry of Shipping and Island Policy" in article 21 entitled "Navigation Safety Directorate" the following are defined:

1. The Directorate of Navigation Safety ensures the determination of

safe navigation conditions, to protect human life and property at sea, the establishment of a national regulatory framework on safe navigation issues, including those concerning technical issues of ship construction and equipment, as well as the adaptation of the national legislation in accordance with the International Conventions ratified by the Country and the Union legislation, the organization of the implementation and the exercise of quality controls of the inspections of Hellenic-flagged ships as well as foreign-flagged ships sailing in the Hellenic ports in accordance with Paris Memorandum of Understanding (Paris MoU), the recognition and authorization of the Recognized Organizations, the administrative control of maritime accidents, the formation and support of positions and the coordination of actions on navigational safety issues at an international level. It also plans, develops, enacts and implements the legislative framework, and operationally organizes the marine traffic monitoring and coastal surveillance systems of the sea area that the H.C.G. has or uses and related to the tracking of ships, through the following Departments: a) Department of Safe Navigation and Marine Accidents b) Department of Legislation and International Cooperation c) Department of Maritime Surveillance and Ship Traffic Management d) Department of Organization and Supervision of Ship Inspections (Paris MOU). 2. The responsibilities of the Safe Navigation and Maritime Accidents Department are the following:

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- d) The monitoring of international developments in matters of maritime accidents and the coordination of actions to investigate maritime accidents of ships under the Hellenic flag and ships in which Hellenic sailors work or Hellenic citizens are on board, including the formation and operation of the Supremes Councils for Marine Accidents (S.C.M.A.) and other maritime accident investigation bodies. e) The cooperation with the Hellenic Service for Marine Accidents Investigation (S.M.A.I.), for the implementation of its work, as well as with corresponding Services or Authorities and Agencies of technical and administrative investigation of maritime accidents of other states as well as Recognized Organizations and Registries for maritime accidents of ships under the Hellenic flag. f) Taking preventive and corrective measures based on the results of marine accident investigations. 3. The responsibilities of the Department of Legislation and International Cooperation are the following: a) the monitoring of the formation of legislation at the EU level. and International Organizations in the field of navigation safety and the care for the adaptation of the Hellenic legislation as well as the formation of the national legislation in the whole range of the above sector which includes issues of construction and equipment of ships.
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 Note 2: See Tsouris G., "The Administrative Control of Maritime Accidents", PhD, Panteion University of Social and Political Sciences, Athens, 1978 and Korontzis T., "Administrative Control of Maritime Accidents", 'Limeniki Rota', issue 14, October-November -December 2013, p.p. 60-62.

Note 3: The specific category is characterized as: (b) incomplete acts, i.e. those that lack the constituent type necessary for their legal completion. Thus, acts whose production process has not been completed are non-existent. In particular, the non-existence of the deed implies the lack of recording in a document, the lack of signature, as well as the lack of publication, in the appropriate manner [Act 3469/2003] in the case of normative acts and published individual ones [The Constitution requires the full publication not only of formal laws, but also of all normative administrative acts, as a constituent element of their validity (The Council of State (Plenary Session) 87/2011)]. See in detail "Jurisprudential developments in the judicial control of non-existent deeds (on the occasion of the decisions of the Council of State 2649/2017 and Council of State 3151/2017)" by Eugenia V. Prevedourou available on the website <https://www.prevedourou.gr/%CE%BD%CE%BF%CE%BC%CE%BF%CE%BB%CE%BF%CE%B3%CE%B9%CE%B1%CE%BA%CE%AD%CF%82-%CE%B5%CE%BE%CE%B5%CE%BB%CE%AF%CE%BE%CE%B5%CE%B9%CF%82-%>

Note 4: For the evolution of the Ministry of Mercantile Marine (M.M.M.) and for its administrative transformations, see Korontzis Tr., "The Ministry of Merchantile Marine as an autonomous administrative government institution during the period 1971-2016", p. 231, BOOKSTARS ed., Athens, 2016, ISBN: 978-960-571-198-6, of the same "The Hellenic Ministry of Mercantile Marine, as an autonomous administrative governmental institution in the period 1971-2011. A descriptive and critical approach", International Journal of Business and Social Science Vol. 3, issue 8, special issue, April 2012, p.p.61-75, of the same "Administrative Government Reforms. The case of the Ministry of Commercial Shipping, Aegean and Island Policy (YENANP)" Administrative Update (quarterly review of administrative science), vol. 52, October- November- December 2009, pp. 31-57, of the same "The Administrative Government Evolution of the former Ministry of Mercantile Marine in the period 2009-2011", 'Limenika Chronika', issue 90, April - May-June 2012, p.p. 14-15, of the same "Hellenic Coast Guard and Administrative Experiments", 'Public Sector', issue 269, January 2010, p.p. 33-35, of the same "Ministry of Mercantile Marine and Coast Guard. Critical approach of the organizations M.M.M. -

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Note 5: See Report of the law in question available on the link https://www.hellenicparliament.gr/UserFiles/2f026f42-950c-4efc-b950-340c4fb76a24/p-sea-eis_XPress_Hamster_temp.pdf

Note 6: General about the Hellenic Coast Guard see Korontzis Tr., "The institutional role of the Coast Guard", p.411, BOOKSTARS ed., Athens, 2017, ISBN: 978-960-571-266-2, of the same "The Hellenic internal security system in combating organized crime. The case of the Hellenic Coast Guard", The HELLENIC OPEN BUSINESS ADMINISTRATION Journal, Vol. 1-2015 No. 2, p.p. 23-48 (ISBN 2407-9332), of the same "The role of the Hellenic Coast Guard in the Hellenic internal security and in combating the phenomenon of organized crime", International Review of Social Sciences and Humanities, Vol. 3, issue 1, April 2012, p.p. 210-227.

Note 7: With No. 71/1979 opinion issued by the Legal Council of the State (L.C.S) which was accepted by the Minister of M.M.M. with his/her decision No. 68587/79/20.8.79, there is a possibility of referral to the S.C.M.A. (under the conditions mentioned in the opinion) for a new judgment cases of marine accidents, which have been referred to the criminal and disciplinary courts, but for which final decisions have not yet been issued by these courts. In practice, the interested parties, through the Directorate of Maritime Safety/Department 1), submit to the minister of M.M.M. new elements which were not taken into account during the initial hearing of the case by the S.C.M.A. and if these are accepted by the minister of M.M.M. the referral cases are forwarded to the same S.C.M.A. who had issued the initial report and the chairman of the council charged the case to another reporter (for obvious reasons, without committing to charge it to the same person who had initially reported the case). For the rest, the same adjudication procedure is followed in accordance with the current [question arises why these elements should be brought to the attention of the S.C.M.A. and not before the Judicial Authorities].

Note 8: In article 9 of the specific A.D. is determined:
«SCMA when it receives a maritime accident preliminary investigation file, it will proceed, under the direction of this president, to a regular jury investigation, if it deems the conducted preliminary investigation to be insufficient».

Note 9: Article 4
«Status of safety investigations»

1. Member States shall define, in accordance with their legal systems, the legal status of the safety investigation in such a way that such investigations can be carried out as effectively and rapidly as possible.

Member States shall ensure, in accordance with their legislation and, where appropriate, through collaboration with the authorities responsible for the judicial inquiry, that safety investigations are: (a) independent of criminal or other parallel investigations held to determine liability or apportion blame; and (b) not unduly precluded, suspended or delayed by reason of such investigations. 2. The rules to be established by the Member States shall include, in accordance with the permanent cooperation framework referred to in Article 10, provisions for allowing: (a) cooperation and mutual assistance in safety investigations led by other Member States, or the delegation to another Member State of the task of leading such an investigation in accordance with Article 7; and (b) coordination of the activities of their respective investigative bodies to the extent necessary to attain the objective of this Directive.