



Circular N^o CH 43-10

To: All Shipowners of Swiss Flagged Vessels, Masters, Shipboard Safety Committee, Recognised Organisations and Approved Inspectors

Sub.: Examining Magistrate

Ref.: Federal Law on Navigation under the Swiss Flag (Navigation Act)

PURPOSE:

Guidelines regarding the functions granted to the master on board Swiss seagoing vessels, acting as examining magistrate (published by the Public Prosecutor Office of Basel-Stadt)

1. In case a crime is committed deliberately or by negligence on board a Swiss seagoing vessel, the master **acting as examining magistrate** has to carry urgent investigations, which might be difficult or impossible to undertake later by the competent authority (Public Prosecutor Office of Basel-Stadt). This investigation is made according to article 57 of the Federal Law of 23 September 1953 on Navigation under the Swiss Flag (hereafter Navigation Act, NA).
2. In using the power granted by art. 57 NA, the master has the same competence as granted an examining magistrate by the Federal Law of 15 June 1934 on Criminal Procedure (hereafter Swiss Criminal Procedure, SCP).
3. The master is in particular competent to order the following **coercive measures**:
 - a) Arrest of suspects (see art. 57, par. 2 NA as well as art. 44 ff and 62 SCP).
 - b) Thorough **search** of passengers or seafarers (see art. 57, par. 2 NA and art. 5 to 70 SCP).
 - c) Confiscation of objects of all kinds produced as evidence (stolen items, tools, documents, log books, calculations of routes and positions, maritime charts, etc.) in accordance to art. 57, par. 2 NA and art. 65 to 70 SCP
4. Furthermore the master is authorized - and he is expected to make use of his power - to question the **accused** as well as possible **witnesses** in order to gather the necessary evidence. All the interrogations shall be registered in direct **speech** in the minutes.
5. There shall be mentioned **the place, the date and the time** of the interrogatory. The minutes are to be signed by the master, by the questioned person as well as by possible third persons (for example the interpreter). Interrogatories in the form of simple statements signed by the master are not sufficient for the criminal procedure!
6. The accused shall be questioned about his person and about the case (see art. 39 to 43 SCP). Before the interrogatory is carried out, he has to be informed on his right to refuse to make a statement. If he refuses to give any statement, the minute must clearly state this fact, confirmed by at least one witness.
7. Before being signed, the full minutes are to be brought to the knowledge of the accused or witnesses who shall have the opportunity to make complements or rectifications.

The interrogatory on the accused shall contain in particular the following indications:

- Exact personal status (family name, first name, name of parents, civil status, name of his wife, place of birth, date of birth, place of origin, occupation, present place of residence, military status, name and address of possible tutor).
- Education and school attended
- Apprenticeship
- Previous places of work (exact addresses)
- Previous places of residence (exact addresses)
- Situation of fortune and income
- Special family situation
- Serious illnesses
- Criminal record

When being questioned on the fact, the accused has to be informed of the representations made; he shall have the opportunity to express himself about the facts he is accused of.

For the interrogatory of **witnesses** the provisions of art. 74 ff of SCP are applicable. This implies particularly:

Before the interrogatory starts, the master has to establish the personal status of the witness and to clarify his relationship with the accused or with the injured party.

At the beginning of the interrogatory the witness has to be explicitly informed, under minutes reporting status, that he has to tell the truth in good faith and that false statements are prosecuted. Furthermore the witness has to be informed on his right to refuse to testify, as well as the possible duty to confirm his statement under oath or by official attestation.

As a general rule, everyone is obliged to testify (see art. 74 and 88 SCP). Derogations to this rule, governed by the **right to refuse to testify**, are listed in art. 75 and 77 to 79 SCP (principally family members, priests, physicians). The witness report should clearly distinguish between what the witness has observed and what he has heard from third parties. If necessary, additional questions are to be asked to the witness.

Each witness has to be first heard separately. Later, however, he can be confronted with other witnesses or with the accused person.

A **prosecuting** witness has to be confronted with the accused, giving the accused the possibility of asking questions to the witness.

The master shall issue a report on the particular circumstances prevailing during the crime (local or meteorological conditions, etc.), with some explanatory rough drawings if necessary.

In conclusion the master shall write a short summary about the way the inquiry went on as well as on the results of his investigation (art. 57, par. 3 NA).

Swiss Maritime Navigation Office SMNO

p.p.

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