

Powers of the Ship Captain Between the Specific Requirements of Maritime Navigation and the Necessity of Representing Public Authority

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Abstract:

The study is concerned with the specificity of the ship captain's powers during maritime navigation under Algerian legislation. It highlights the powers related to the specific requirements of maritime navigation in the marine environment, alongside examining the provisions concerning powers linked to representing public authority.

Keywords: Ship Captain, Maritime Navigation, Algerian Legislation, Marine Environment, Public Authority Representation, Captain's Powers.

Introduction:

Maritime navigation is considered one of the most important topics in maritime law, as well as one of the main operations carried out by the ship as a tool of maritime navigation¹. Today, maritime law has become characterized by universality due to the increasing global utilization of navigation. Maritime navigation no longer stops at the borders of a single state; rather, it has expanded to include multiple countries, making nations partners in the rules and provisions of maritime law². Its protection has become a duty not only for one state but for all countries worldwide. Hence, there arose an urgent need for international regulation to protect maritime law in general and maritime navigation in particular.

Operating and managing a ship at sea requires the involvement of a set of human elements, with the captain being one of the most important key figures in maritime navigation, alongside the

¹ The ship, as a tool for maritime navigation, is any floating structure or construction made by humans, designed to operate in maritime navigation in the usual manner. It enjoys legal personality, carries the nationality of a specific state, and is subject to the control of the flag state. See:

- TIGHILT-FERHAT Kamal, *Le contrôle des navires par l'Etat du pavillon dans le cadre de la Convention des Nations Unies sur le droit de la mer de 1982*; ELBAHITH d'études Académiques, volume: 10, N°: 02, 2023, p.836.
- Doudidar Hani, *Transport Law*, Dar Al-Jami'a Al-Jadida, Egypt, 2014, p.142.

² This has led to the emergence of what is known as the unification of maritime law rules. See:

shipowner, the provider, and the sailors³. The captain navigates based on the wishes of the shipowner or provider, who grants him the powers and authorities necessary to perform his duties. However, this will alone is not sufficient, as the law intervenes to regulate and sometimes restrict these powers.

Most international⁴ and national⁵ legislations have recognized and regulated the provisions of maritime navigation as an effective means to develop maritime commercial exchanges between states, assigning the management and command of the ship to a person known as the captain, who is the central figure around whom maritime navigation revolves. The safety of the voyage depends on the captain's precision and skill. The proper performance of the captain's duties depends on his personality, abilities, and qualifications. The success of maritime navigation and the achievement of its goals are tied to the captain's effectiveness, competence, and understanding of his duties. The advantages of maritime transport are realized only through a capable captain who possesses leadership, management skills, experience, and good conduct.

³ Article 384 of Order 76-80, which includes the maritime law (see previous source), stipulates that: "Seafarers: every person working in the service of the ship registered in the seafarers' record, including the captain."

⁴ International legislation's interest in maritime navigation is evident through the conclusion of several international conventions, such as the 1924 International Brussels Convention concerning the unification of the bill of lading system, amended by two protocols: the first signed on 23/02/1968 in Brussels, including the Visby Rules, which entered into force on 23 June 1977, and the second signed on 21 December 1979, which entered into force on 14 February 1984. Algeria acceded to the Brussels Convention by Decree 64/71 dated 1964 but did not accede to its amended protocols. See: Jabara Noura, *The Carrier's Exemption Regime for Maritime Goods: A Comparative Study*, Doctoral Thesis in Law, Private Law Department, University of Algiers, Ben Aknoun, 2007/2008, pp.1-2.

⁵ For example, in Algerian legislation, the legislator issued the Maritime Law under Order No. 76-80 dated 23 October 1976, which includes the Maritime Law, Official Gazette No. 29, issued on 10 April 1977, amended and supplemented by Law No. 98-05 dated 25/06/1998, Official Gazette No. 47, issued on 27 June 1998, and further amended and supplemented by Law No. 10-04 dated 15 August 2010, Official Gazette No. 46, issued on 18 August 2010.

The maritime transport facility was established in the Algerian legal system by Executive Decree No. 63/489 dated 31/12/1963, establishing the National Company for Maritime Navigation, Official Gazette No. 6. See: Benseghir Shahrazad, "The Reality and Present of the Privilege of Exploiting Maritime Transport Services in Algerian Law," *Algerian Journal of Maritime Law and Transport*, University of Tlemcen, Vol. 4, No. 01, 2017, pp.91 ff.

The research problem is defined as follows: How serious is the approach taken by the Algerian legislator in organizing the provisions concerning the powers of the ship captain under Algerian law?

To address this issue, the study cannot rely solely on a single methodology. The nature of the topic requires the comparative method to highlight similarities and differences, as well as to observe positive aspects in legal regulation, identify shortcomings both materially and formally, and alongside the comparative method, the analytical method is necessary, focusing on relevant legal texts, analyzing them, and identifying the issues they raise. Additionally, the study employs a critical method to highlight the researcher's opinions.

Based on the above, the study first addresses the captain's powers related to the specific requirements of maritime navigation in the marine environment (First Section) and, secondly, the necessity of the captain's representation of public authority (Second Section).

Chapter One: Powers of the Captain Related to the Specific Requirements of Maritime Navigation in the Marine Environment

The captain enjoys several competencies and powers. The ship is away from the state's authority and from the continuous supervision of the provider, so it is not surprising to consider the captain as the registrar and custodian of order on board, responsible for investigations and inquiries, as well as the legal representative of the provider in carrying out the necessary tasks for the voyage.

Therefore, in studying the captain's powers linked to the specific requirements of maritime navigation, the focus will first be on the technical powers of the captain in managing the ship as a subordinate to the provider (Subsection 1), followed by the study of his commercial powers as the provider's representative (Subsection 2).

Section One: Technical Powers of the Captain: Original Competences and Manifestation of Powers as a Subordinate of the Provider

The ship captain has a special legal status that grants him several powers and authorities. The technical powers he enjoys are both a manifestation of his authority as a subordinate to the provider (Branch 1) and original powers of the captain (Branch 2).

Subsection One: Technical Powers as Manifestation of the Captain's Authority as a Subordinate to the Provider

The captain is one of the most important subordinates of the provider, as indicated in Article 411 of the Algerian Maritime Code, which stipulates that the ship's crew consists of the captain, officers, sailors, and personnel serving the ship. Article 412 confirms that the crew is under the direct authority of the captain, appointed by the provider according to legal provisions.

As a subordinate of the provider, the captain must ensure that the provider prepares suitable conditions for completing the voyage, including ensuring the safety of personnel on board and safeguarding cargo through proper loading, stowing, and unloading in accordance with Articles 590 and 591 of the Algerian Maritime Law.

Subsection Two: Technical Powers of the Captain: Original and Absolute Powers

The captain's technical powers are original competences, granting him full independence in performing his duties⁶. The captain's authority in navigating the ship is absolute, and he may refuse the provider's orders if they contradict technical standards⁷. He must adhere to the principles of navigation, international maritime rules and customs, as well as national provisions applicable to territorial waters.⁸

A key aspect of the captain's authority is that he must remain on board for the entire voyage and personally command the ship, except when disembarking in ports for official or customary reasons⁹. In cases of danger, he must safeguard money, ship documents, and valuable cargo if possible, and be the last to leave the ship.¹⁰

Even with the provider's resources and easy communication at sea, the captain alone is responsible for managing and commanding the ship, maintaining its seaworthiness, and ensuring sufficient supplies and all necessities for the voyage.¹¹

Section Two: Commercial Powers as Manifestation of the Captain's Authority as Representative of the Provider

The captain has legal powers regarding the commercial exploitation of the ship, including entering contracts, receiving cargo from shippers, supervising stowage, delivering cargo upon arrival, repairing the ship, and purchasing necessary tools.¹²

These commercial powers are exercised by the captain as the provider's representative¹³, especially outside the main premises or branch of the company regarding ordinary ship and voyage needs. The captain may borrow on behalf of the provider and conclude credit operations in emergencies, such as covering repair costs, completing crew or supplies, or safeguarding cargo, particularly when communication with the provider is impossible or instructions are not provided.¹⁴

However, these powers are limited by certain conditions:¹⁵

- The ship's need for money during the voyage.
- Absence of the provider or his agent.

⁶ Youssef Ben Hassan Meshnoui, "The Legal Responsibility of the Ship Captain in the Saudi System," *Academic Journal of Research and Scientific Publishing*, No. 36, 2022, p.123.

⁷ Taleb Hassan Moussa, *previous reference*, p.78.

⁸ See Article 592/2 of Order 76-80, including the Maritime Law, *previous source*.

⁹ Article 581 of Order 76-80 including the Maritime Law, *previous source*.

¹⁰ Taleb Hassan Moussa, *previous reference*, p.79, p.242.

¹¹ P.242

¹² Youssef Ben Hassan Meshnoui, *previous reference*, p.123.

¹³ Borrowing in the name of the shipowner must be carried out according to purely legal controls, and within the limits allowed by Article 583 of the Algerian Maritime Code, so that borrowing occurs outside the locations of the main establishment or branch, and is related to the ordinary needs of the ship and the voyage.

¹⁴ See in this regard Articles 583 and 584 of Order 76-80, including the Maritime Law, *previous source*.

¹⁵ Taleb Hassan Moussa, *previous reference*, p.80.

- Inability to sell cargo unless borrowing is impossible and without the owners' objection. Thus, commercial powers are limited compared to the broader technical powers of the captain.

Chapter Two: Powers of the Captain Related to General Requirements of Maritime Navigation and the Necessity of Representing Public Authority

The captain represents public authority on board at sea, representing the state whose flag the ship flies. Accordingly, he holds powers of investigation and discipline (Subsection 1), as well as powers related to documentation, order, and security (Subsection 2).

Section One: Powers of Investigation and Discipline

As a state representative, the captain has the authority to investigate and impose disciplinary measures on board.

Subsection One: Power of Investigation

The law grants the captain the authority to investigate any violation committed on board¹⁶. He may interrogate the offender, hear witnesses, and after the investigation, impose disciplinary measures or exonerate the accused¹⁷.

If the ship is at sea or in foreign ports, the captain may place the offender under supervision on board until the ship docks at an Algerian port. The captain must report the incident to the senior maritime official, who then informs the competent public prosecutor according to Article 565 of the Algerian Maritime Law.¹⁸

Subsection Two: Power of Discipline

As the on-board authority, the captain can discipline any crew member¹⁹ for actions disrupting the voyage²⁰ or services on board or ashore, in accordance with Articles 468, 469, 471, and 472 of the Algerian Maritime Law.

Accordingly, the captain's powers in the maritime environment are not limited to investigating and inquiring into various offenses committed on board the ship; they also extend to judicial authority, although this is restricted in terms of time and place to certain disciplinary and maritime violations, and does not include misdemeanors and offenses, for which the captain is limited to conducting initial investigations and forwarding the reports to the competent authorities.²¹

¹⁶ According to the text of Article 562/1 of Order 76-80, including the Maritime Law, *previous source*.

¹⁷ Al-Muqaddadi Adel Ali, *Maritime Law according to the Omani Maritime Law No. 35/1981*, Modern University Press, Egypt, 2011, p.143.

¹⁸ According to the text of Article 563/6 of Order 76-80, including the Maritime Law, *previous source*.

¹⁹ Youssef Al-Toumi Ahmed, "The Powers of the Ship Captain in Algerian Legislation," *Scientific Research Notebooks*, No. 02, Vol. 10, 2022, p.551.

²⁰ The captain enjoys exceptional powers that enable him to fulfill all the obligations imposed upon him. See: Ariout Wasila, "The Legal Status of the Ship Captain," *Journal of Law and Political Sciences*, No. 02, Vol. 4, 2018, p.519.

²¹ Ahmed Al-Toumi Youssef, *Captain's Powers*, *previous reference*, p. 554.

Thus, the captain's powers at sea extend beyond investigation to include limited judicial authority over disciplinary maritime violations, while criminal offenses are referred to competent authorities. Exercising these powers does not make the captain a public official; he acts as a representative of public authority under maritime conditions, remaining ultimately subordinate to the provider.

Section Two: Powers of Documentation and Maintaining Order and Security on Board the Ship

In addition to the powers of investigation and discipline, the ship captain enjoys some purely administrative authorities, represented by the power of documentation (Branch 1) alongside the authority to maintain order and security on board the ship (Branch 2).

Subsection One: Power of Documentation

The captain holds the authority of documentation, which is considered an administrative power. The captain is obliged to record civil status data, including births and deaths that occur during the maritime voyage²², whether on board the ship or during its journey. He may register these in the ship's logbook when the ship is at sea or in a foreign port. He is also responsible for recording powers of attorney, approvals, authorizations, and accepting wills.

It is noteworthy that the Algerian legislator began Article 596 of the Algerian Maritime Code with the term "is entitled" while also using the term "must," which creates some confusion regarding the captain's documentation powers. Are they rights granted to the captain or obligations imposed on him? The prevailing view is that they constitute obligations that the captain must fulfill, such as recording civil status data (births, deaths, etc.). Therefore, it is necessary to amend Article 596 by removing the term "is entitled" and starting the text as follows: "The captain must record civil status data... and accept wills."

Subsection Two: Authority to Maintain Order and Security on Board the Ship

The captain holds presidential authority over the crew²³, thereby confirming his powers to maintain order and security on the ship. Additionally, this authority extends to all persons present on board.²⁴

The ship captain must ensure order and security on the ship and supervise the proper execution of the voyage, using all necessary means stipulated by applicable legislative and regulatory provisions.²⁵

The captain, when exercising powers to maintain order and security under Article 454 of the Algerian Maritime Code, is authorized to temporarily detain any person on board who poses a danger to the ship, its passengers, or its cargo.

The captain is permitted to use physical coercion or temporary detention if other measures prove insufficient²⁶, such as when a person's behavior on board threatens the ship's order or safety or

²² According to Article 596 of Order 76-80, containing the Maritime Law, previous source.

²³ Ahmed Al-Toumi Youssef, previous reference, p. 551.

²⁴ Article 452 of Order 76-80, containing the Maritime Law, previous source.

²⁵ Article 453 of Order 76-80, containing the Maritime Law, previous source.

²⁶ Paragraph 1 of Article 455 of Order 76-80, containing the Maritime Law, previous source.

obstructs the proper execution of the captain's duties²⁷. The temporary detention may not exceed the time until the ship reaches the first Algerian port or the port of the detainee's country of origin. The detainee must be handed over to the competent authorities, along with a report of the detention on board, in accordance with the third paragraph of Article 455 of the Algerian Maritime Code.

Conclusion:

This study addressed one of the issues no less important than the various challenges affecting the powers of the ship captain in the maritime environment, given its connection to the specificity of maritime navigation and the autonomy of maritime law. The study examined the captain's specific powers related to maritime navigation, as well as the various powers he holds as a representative of the state. The study reached several conclusions, which can be summarized as follows:

1. The personal element of maritime navigation governs the success of the entire voyage; the status attained by the captain can rival, and sometimes exceed, that of the ship provider.
2. The captain is one of the most important persons in maritime navigation on board, enjoying a special and distinguished position due to his broad powers. This is due to the particular nature of the voyage, with the ship far from state control and continuous supervision by the provider. Thus, the captain is considered the registrar and custodian of order on the ship, responsible for investigations, and the legal representative of the provider in carrying out various tasks necessary for the voyage.
3. The captain's multiple roles in the maritime environment include technical powers (navigating the ship and managing the voyage and crew), commercial powers (concluding certain legal transactions), and powers linked to public authority.
 - The technical powers of the captain are original powers he enjoys as a subordinate of the provider.
 - The commercial powers constitute a form of agency between the captain and the ship provider. These powers are limited compared to the technical powers, which are original to the captain.
 - General administrative powers, including investigation, documentation, discipline, and maintaining order and security on board, are granted by law; however, this does not make the captain a public official.

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