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Legal basis of sailing development within 1989-2012

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Key words: law, sailing, development, years 1989-2012

Abstract

Motivation: This article is dedicated for presenting legal regulations concerning sailing in Poland. In chronological attribution the period covered are years between 1989 and 2012. The start caesura is 1989, connected with system transformation, which started several changes in organizational structure of the country as well as in the structures of widely perceived physical culture. The end caesura is 2012, which was the year of the Olympic Games in London. In the article methods and research techniques used included source materials analysis, which was basic information resource under the research process. **Aim:** Legal acts presented within the article are only the fragment of documents of varying significance, regulating any legal ground for practicing sailing. Detailed and full analysis is not possible in the article. However, the choice of some key acts and regulations and the attempt to compare the present state with the law binding in previous years, allows forming an idea about the direction of changes in legal situation of sailing in general. It has to be stated that the trend in legislation concerning recreational sailing started to be visible at the beginning of 21st century. Within earlier periods these issues were treated as marginal in regard to economical aspects of navigation. **Results:** Within years 1989 to 2012 there were deep changes in the area of legal regulations, evolution of sailing and training qualifications. These changes substantially adjusted contemporary legal grounds in Poland to the demands included in rights and regulations of European Union. The enhancement was especially in the area of safety and rules of assigning various licences and registering floating objects. The changes were concerning also rising numbers of regulations and legal acts connected with sailing as well tourist or recreational as sport.

INTRODUCTION

The year of 1989 had originated a number of changes in Poland that touched all the social life spheres. Restrictions concerning civil and economic freedom had been lifted. The liberalization of life had enforced the creation of new institutional structure. As far

as physical culture is concerned, the state had started to withdraw its coordinating role which slowly had been replaced by the free market. In case of Poland, it was easier to shift from the central management system to more free-market one than it was in the countries that used to be a part of the structure (also in regards to functioning of physical culture) from the beginning (Lithuania, Latvia, Estonia, Ukraine and others). In spite of this, the state in Poland still had coordinating role in both physical education as well as in some forms of professional sport, the youth's and children's sport or rehabilitation¹.

The changes originating in 1989 have also involved sailing and Polish Sailing Association (further referred to as PZŻ) that coordinated its organisation. Along with the new economic system, PZŻ stopped to be a sailors' organization controlled by the state and the process of evolving into an organization for sailors began, which meant the complete change of philosophy behind the association's activity. A huge obstacle in sailing development, especially maritime sailing, was department's laws that were often contrary to sailors' affairs, additionally made access to free sailing more difficult².

LITERATURE REVIEW

The main source of information used in this thesis were bills, decrees, acts, pieces of information, announcements and reports regulating law aspects of sailing in Poland. Moreover, the analysis of literature concerning the subject has been conducted.

Sailing, similarly to other sport disciplines, was reporting to General Committee of Physical Culture and Tourism (further referred to as: GKKFiT). The basic law acts regulating sailing in Poland were the Cabinet's decrees, which were executive laws of the bills. Along with the beginning of a system change, the current bill regulating physical culture (physical education, motor recreation sport and motor rehabilitation) was the Bill about physical culture of 1984.

¹ P. Świder, A. Szybisty, M. Czech, *Normy prawne w zakresie kształcenia kadr instruktorskich i trenerskich sportu i rekreacji w latach 1989–2015* [in:] *Struktury zarządzania kulturą fizyczną w Polsce i ich uwarunkowania prawne*, ed. A. Rejman, M. Janusz, Rzeszów 2016, p. 80.

² R. Poturaj, *Żeby było oknem na świat*, „Żagle”, 1989 no. 10, pp. 7–8.

LEGAL BASIS

Until 1989 the legislative system of Polish sailing's supervision was based on the Bill of 1st December 1961³, which was called Maritime Law. It was a basic document regulating sailing in Poland. It has been prepared for the needs of professional sailing while in reality the maritime sailing in Poland was even symbolic. Its bills concerned also recreational sailing⁴ which resulted in applying the rules of gainful sailing to sailing in general⁵. The decree of the Ministry of Sailing in 1968 concerning the safety of nautical sport ships was of equal importance⁶.

The main decree regulating the issues of inland sailing was the Decree of the President of GKKFiT dated on 15th September 1965. It concerned the sailing by touristic and sport ships on inland waters⁷.

Polish sailing based on old-fashioned laws had to make numerous changes which were a necessary condition of adjusting sailing to system solutions used for years in other democratic countries.

As a result of actions intending to improve situation of Polish sailing, on 8th August 1992 the Presidium of Main Board of PZŻ introduced the proposal of changes and extension of laws that involved real, factual possibilities, and more importantly, regulations resulting from the needs of maritime character of the state. The request of ordering and updating the sailing laws has been made, including:

- adjusting the laws to currently existing situations in other areas of life and predicted direction of changes in the law system of the country;
- standardisation of solutions and maintaining cohesion with other laws that concern sailing;
- termination of laws which solutions did not meet the requirements of modern world or were even stopping the development of both inland and maritime sailing;
- maximum of universality and creation of short, clear, simple laws based on codex solutions or convention.

³ Journal of Laws 1961 no. 58 position 318.

⁴ Including leisure yachting in professional yachting's law and rules required the whole process of registration, specialist technical supervision, introduced the requirement of professional yachting equipment, aiding, navigational, signaling means, etc. In reality the equipment of Polish yachts had to be in accordance with the International Convention of Safety of Life At Sea SOLAS

⁵ PZŻ information, *Jakie zmiany, „Żagle”*, 1992 no. 10, p. 6.

⁶ Journal of Laws 1968 no. 30 position 202.

⁷ *Zarządzenie Przewodniczącego Głównego Komitetu Kultury Fizycznej i Turystyki z dnia 15 września 1965 r. w sprawie uprawiania żeglugi przez statki turystyczne i sportowe na śródlądowych drogach wodnych*, „Monitor Polski”, 1965, no. 53, position. 27.

Moreover, creation of new rules of sailing, especially maritime one, was also suggested, concerning among others:

- further liberalisation of sailing in general, also concerning spheres of territorial sea and Polish continental shelf;
- termination of so-called clauses;
- change in boarder and port laws in order to create better sailing conditions;
- allowing more ships to sail particular sea reservoirs as well as inland ones;
- the possibility of free sailing in case of Polish ships on the basis of certain rules of territorial sea, along the shoreline with the ability of landing;
- restricting the amount and reach of so-called closed reservoirs and unapproachable shoreline so there are unrestricted possibilities of free sail along the coastline;
- termination of captains' list and the list of ships sent to boarder services and maritime administration in favour of the list of sailors announced in docks;
- creating a new system of security in sailing;
- termination of 72-hour requirement in order to qualify the voyage in favour of 48-hour requirement;
- possibility of sailing in the area of territorial sea by maritime and yacht helmsmen holding full permissions (p.u.), according to 1974 directive concerning ranks⁸.

PZZ was in favour of updating the rules of receiving ranks that would include⁹:

- the change in number of ranks – restricting them to 4 basic ones, that yacht captain, yacht helmsman, yacht sailor, land sailor;
- upgrading captains;
- increasing of role and responsibilities of outfitters;
- increasing the level of trainings, especially in case of quartermaster and higher ranks, verification of exam committees and creating new rules of their functioning.

In order to discuss the law basis of sailing development in Poland in-depth, the whole range of legal acts concerning this field needs to be underlined. It needs to be remarked that the issues concerning broadly defined sailing are discussed in legal acts dealing with many different legislative areas. Among others, laws concerning water management, maritime laws, sport and recreation can be distinguished. However, simultaneously, laws concerning some of the sailing aspects can be found in law acts such as the Bill of 6th September 2001 about the

⁸ Zarządzenie Przewodniczącego GKKFiT z dnia 27 sierpnia 1974 r. zmieniające zarządzenie w sprawie sportowych stopni żeglarskich i motorowodnych, „Monitor Polski”, 1974, no. 31, position. 189.

⁹ R. Poturaj, *Żeby było...*, quoted work, p. 7–8.

access to public information, the Bill of 7th April 1989 about the associations' law, the Bill of 7th October 1999 about Polish language or in the Polish Constitution. Obviously, the records concerning sailing are of marginal importance. They need to be mentioned, however, in order to show the factual scope of sailing acts of law.

The changes that were introduced, adjusted contemporary legal basis in Poland to the international requirements of broadly defined sailing as well as to the evolution of legislature acts concerning this topic. Obviously, due to the nature of speculation about the holistic approach towards sailing in Poland, the analysis of legislature acts' evolution will be greatly restricted and focused on a few most important bills and acts regulating the issues connected to sailing law (both maritime and inland sailing). The changes introduced in legal acts regulating sailing in Poland were of particularly great significance in years 1989–2012.

One of the most important legal acts creating factual basis for using water reservoirs in sailing is the Maritime Law. This document comprehensively regulates all the aspects concerning reservoirs, in the context of proprietorship, duties of reservoirs' owners, using the reservoirs, their protection, construction, protection against natural disasters as well as the management of bodies of water. In the context of sailing, the records concerning rules of reservoir usage seem to be crucial. Currently operating Bill of the Maritime Law has been passed on 18th July 2001. This act replaced the Bill of the Maritime Law of 1974 which had been in operation before.¹⁰

The bill of 21st December 2001 concerning inland sailing has replaced a legal act that had been in operation since 1974. It needs to be underlined that in many fields the 1974 bill was different from the solutions adapted by the law makers at the beginning of 21st century. It was far less extensive, which can be signalled by far lower amount of articles (220 in the 2001 bill, 145 in 1974 one). Additionally, it needs to be mentioned that the records concerning sailing (direct and indirect ones) in the previous version were rare comparing to its contemporary version.

Comparing the legal solutions before 2001 it needs to be said that the Maritime Law regulated sailing issues to far less extend than it does now.

Another important legal act about issues connected to sailing is the Bill about Inland Sailing of 2000¹¹. As soon as in article 1 it is said that the law written in the bill is used also for sport and recreation. The subject concerning sailing directly has been discussed in chapter

¹⁰ The bill of 24th October 1974 Sailing law [Journal of Laws 1974 no. 38 position. 230 2002.01.01 with later amendments].

¹¹ The bill of 21st October 2000 about inland sailing [Journal of Laws 2001 no 5 position 43, with later amendments].

4 of the bill, concerning administrative register and the measurement of ships. Article 18 says that *Polish ship used only for sport or recreation (...) measuring 12 meters in helm or having an engine with the strength of more than 15kW is a subject to registration as ships used only for sport or recreation...*¹². The register, according to the bill, is supposed to be kept by particular sport associations determined in the Bill concerning sport. The Bill about inland sailing describes also the crew's qualifications. In case of crews of ships used only for sport and recreation, the rules of qualification concerning other sailing units are not applicable.

What is worth mentioning, the bill of 2001 introduced a few new solutions, absent in the previous legal act which was the Bill about sailing and floating on inland waters of 1950¹³. The bill did not distinguish sport and recreational ships from other sailing units, requiring, in spite of the usage, the registration in the same ship register. Usually the bill required the steering person to have a sailing license giving the right to steer a ship of a particular kind. This requirement was not applicable in case of those steering sport ships ... *if their surface resulting from multiplication of the largest length and the largest width is no more than 20m*¹⁴.

In the practical aspect, an important legal act is also the Decree of Infrastructure Minister of 28th April 2003 concerning the sailing law on the inland waters. This decree is the executive act of the bill of inland sailing discussed above. The decree consists of law concerning identification signs, visual signalling of ships, audio signalling of ships, sailing signs and the rules of sailing manoeuvres (passing, overtaking, intersecting courses and other)¹⁵.

Another legal act regulating the issues connected to broadly understood sailing is the Maritime Law of 2001¹⁶ which regulated the requirements of participation and organisation of maritime sailing. This bill replaced the previous Maritime Law passed in 1961¹⁷. Clearly, the law included in the Maritime Law of 1961 concerning recreational and sport sailing was very similar to the one used nowadays. For instance, article 4 is virtually repeated in the 2001 Law (although, adding recreational ships, in addition to sport ships, can be considered a slight change, however it can be regarded as a regulation of factual state in which sport and

¹² In there, article 18, paragraph 2.

¹³ The bill of 7th March 1950 about sailing and rafting on inland waters [Journal of Laws 1950 no. 10 position. 108 with later amendments].

¹⁴ In there, article. 9.

¹⁵ Minister of Infrastructure' of 28.04.2003 concerning sailing law on inland waters [Journal of Laws 2003 no. 212 position 2072].

¹⁶ The bill of 18th September 2001 Nautical Codex [Journal of Laws 2001 no. 138 position 1545].

¹⁷ The bill of 1st December 1961 Nautical Codex [Journal of Laws 1961 no. 58 position. 318].

recreational sailing in certain sense are interpenetrating). The solutions of 1961 Law were again repeated (and slightly more detailed) in the Law of 2001 in case of sport and recreational ships' registration.

One of the most significant legal acts regulating the matters connected with sailing is the Bill about safety of people present in water reservoirs passed in 2011¹⁸. It needs to be said that the introduction of solutions concerning the safety in water reservoirs was a new, previously absent in Polish law making, idea of law makers. Before 2011 these issues were regulated by other acts of law (for example by the Bill about sport).

While analysing the most important from sailing point of view records, the attention should to be drawn to article 1 in which adequateness of the bill to the rules and *procedures of removing, storing, releasing and announcing the forfeit of a ship or different sailing unit intended to or used for sport or recreation...*¹⁹. What is more, the bill stated the rules of aiding in water reservoirs, also in terms of people practicing sailing (which should be connected, according to this bill, to the records concerning sport and recreation).

While talking about the safety on water reservoirs, the bill about safety on the sea passed in 2011²⁰ needs to be analysed as well. It changed the bill of the same name from 2000. In the past, the issues of safety on the sea were regulated by the acts of minor importance. In the context of records directly connected to sailing, the lack of state-required inspections of the recreational ships needs to be noted²¹.

The bill about safety on the sea defines also basic sailing units in article 5, including the most important in the context of sailing yachts, distinguishing:

- sea yacht – recreational or commercial yacht intended or used for sport or recreation on the sea;
- recreational yacht – ship intended or used only for sport or recreation; different than commercial yacht
- commercial yacht – intended sport or recreation, used for paid transport of no more than 12 passengers;
- inland yacht – inland sailing ship of sail or engine propulsion intended or used only for sport or recreation²².

¹⁸ Bill of 18th August 2011 concerning safety of people on water reservoirs [Journal of Laws 2011 no. 208 position 1240].

¹⁹ In there, article 1, paragraph 5.

²⁰ Bill of 18th August 2011 concerning marine safety [Journal of Laws 2011 no. 228 position 1368].

²¹ Bill of 21st December 2000 concerning sailing ..., quoted work., article 37a, paragraph 15.

²² Bill of 18th August 2011 concerning safety ..., quoted work, article 5, paragraphs 7–10.

The bill of 2000 concerning the records of maritime sailing was not much different than the bill of 2011²³

Another significant event for legal regulation of sailing was passing the Bill about sport in 2010²⁴. It replaced the bill concerning physical culture of 1996²⁵, which was the basis for Decree of sailing in 2006²⁶

In addition to the bills mentioned beforehand, legal issues connected with sailing are discussed also in a whole series of lower-level acts. Not operating since 2012 the Decree about sailing had an important legal role²⁷. In terms of legal basis of sailing, the record concerning sailing licensing was particularly important. The Decree defined documents confirming sailing qualifications. According to the decree, license was supposed to be issued by a particular Polish sport association²⁸.

While analysing the newest legal acts connected to sailing (or more broadly speaking, maritime transport on both inland waters and the sea), attention needs to be drawn to a tendency of regulating issues concerning, broadly speaking, safety.

Referring to the legal state before 2012, it needs to be said that safety issues were not regulated directly by the law in operation. On the other hand, before the bill of 2000 became valid or during operation of 1950 bill²⁹, the only legal act regulating safety issues was the decree concerning yachting and rafting on inland waters of 1967³⁰. It regulated a broad range of issues connected with requirements towards sailing units, also towards people steering them (that is people who are responsible for safety on ships). Moreover, the decree regulated also the rules of sailing traffic. In this context, it is also a legal act discussing issues regulated currently by the Decree of 2003 about sailing law on inland waters.³¹

One of the legal acts discussed above was the bill of maritime safety of 2011³². The key executive act referring to it is the decree about safe sailing by maritime yachts of 2012.³³

²³ Compare: bill of 8th November 2000 r. concerning marine safety [Journal of Laws 2000 No. 109 position. 1156].

²⁴ Bill of 25th June 2010 concerning sport [Journal of Laws 2010 no. 127, position 857 with later amendments].

²⁵ Bill of 18th January 1996 concerning physical culture [Journal of Laws 2001 no. 81, position 889 with later amendments].

²⁶ Minister of Sport's Decree of 9th June 2006 concerning sailing [Journal of Laws 2006 no. 105, position 712].

²⁷ In there.

²⁸ In there, § 2. 1.

²⁹ Bill of 7th March 1950 concerning sailing... quoted works

³⁰ Ministry of Sailing's Decree of 1st February 1967 concerning sailing and rafting on inland waters [*Monitor Polski* 1967 no.14 position 71]

³¹ Minister of Infrastructure' Decree of 28.04.2003 concerning sailing law..., quoted works.

³² Bill of 18th August 2011 concerning safety... quoted works.

³³ Minister of Marine Transport, Construction and Economy of 28th February 2012 concerning safe sailing by marine yachts [Journal of Laws 2012, position 326].

The most important role of this legal act is determining the conditions of safe sailing of maritime yachts depending on their length and the region of sailing. It needs to be added that the decree is not applicable in case of racing yachts, sailing units up to 5 meters in length sailing only during daytime as well as recreational yachts up to 15 meters in length which were not inspected voluntarily³⁴. The decree defines, among others, the safety requirements in terms of state of repair. It needs to be said that the decree of 2002³⁵ regulating the same issues differed from factual legal state in some areas. According to the 2002 decree these included³⁶:

- sport ships,
- inland ships sailing on sea waters,
- ships not being subject to ship registry or sea ship registry. Except for the issues discussed above, the decree regulated also requirements regarding crew's safety and living on sea.

Between 1989 and 2012 the requirements concerning current sailing ranks' levels were updated through legal regulations. The original source of Sailing Ranks Regulations was the bill about physical culture of 3rd July 1984³⁷. It is significant as one of the phenomena of Polish law was keeping requirements of previous ranks and their qualifications (after introducing new ranks). Between 1996 and 1997 there was no legal basis for ranks' existence. Not sooner than 24th September 1997³⁸ new ranks, requirements and qualifications were introduced by the Decree of the Cabinet from 12th September. 4 sailing ranks were created: yacht sailor, yacht helmsman, yacht marine helmsman, yacht captain, as well as full qualifications of yacht sailor. It needs to be underlined that these changes made marine sailing easier. Sailors gained the right of unassisted steering of a yacht on sea waters as soon as with the second rank in hierarchy.

In April 2005 the bill changing the previous bill about physical culture started to operate, effecting in the termination of sailing ranks created by the Minister's Decree of November 1997. Between 1st December 2005 and 24th June 2006 again there was no legal basis for sailing ranks' existence.

³⁴ In there § 2. 1.

³⁵ Minister of Infrastructure' Decree of 13.12.2002 concerning detailed conditions of safe sailing by marine ships [Journal of Laws no.222, position 1867].

³⁶ In there, § 2. 1.

³⁷ Bill of 3rd July 1984 concerning physical culture.

³⁸ The Council of Ministry's Decree of 12th September 1997 concerning sailing [Journal of Laws 1997, no.112, position 729].

On 9th June 2006, together with new bill concerning physical culture³⁹ new changes in sailing licensing and qualifications have been introduced. They involved a large scope of ‘no licensing’, enabling unrestricted sailing for people without licensing on boats up to 5 meters in hull. The amendments to the bill of 2007⁴⁰ did not introduce any significant changes to qualification system and requirements concerning sailing ranks. What was significant, though, the ‘no licensing’ was extended which enabled steering yachts of no more than 7,5 meters in hull by people without any sailing qualifications. On 25th June 2010 a new bill about sport has been introduced, resulting in expiration of all previous laws concerning sailing qualifications. New qualifications and requirements are not significantly different from the ones in the previous years. Still, there were 4 ranks in operation: yacht sailor, yacht helmsman, yacht marine helmsman, yacht captain, as well as full qualifications of yacht sailor. Additionally, it was settled that people without sailing qualifications have to present the documents confirming proper safety on the waters training while chartering a yacht.

SUMMARY

The situation shown enables the understanding of problems existing in the sailing society before and in the first years after the change of economic situation in 1989.

The legal acts described above are only a fraction of documents from different levels that regulate the legal basis for sailing. In this thesis there is no possibility of their full and thorough analysis. The choice of a few significant bills and decrees as well as the attempt of comparing the current situation with sailing law operating in the previous years, enables creating an opinion about the direction of changes in legal part of broadly speaking sailing. Certainly, the attention needs to be drawn to the extending of the regulations’ range, especially in the area of safety and rules of issuing various permissions and registrations of sailing units. The crucial changes regard also the increasing number of law records or even separate law acts considering sailing in touristic, recreational and sport sense. It needs to be stated that the tendency of this sailing section’s legal development is noticeable especially at the beginning of 21st century. Before that, these issues were treated by law makers more like secondary problems in terms of law regulating economic side of sailing. What is more, the attention needs to be drawn to extensive chaos in internal law of PZZ concerning the issue of sailing ranks. It should be blamed partially on frequent changes in general law (on the level of bills

³⁹ Journal of Laws 2006, no.105, position 712, changed by the decree Journal of Laws 2006, no.151, position 1088].

⁴⁰ Journal of Laws 2007, no.171, position 1208.

and decrees). Simultaneously, it needs to be marked that the lack of well-organised sailing environment was also a problem.

In terms of both legal regulations and evolution of sailing and instructional ranks, there have been significant changes. These changes crucially adjusted contemporary legal basis in Poland to the requirements set by EU law.

In the years between 1989 and 2012 the requirements concerning system of sailing ranks in operation has been updated by legal regulations.