



Research Article

THE NAVAL POLICE REPORT: STANDARDISATION OF INITIAL PROCEDURES REGARDING THE SMUGGLING OF MIGRANTS BY SEA

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Daniel Cortes Villanueva

First Sergeant of Guardia Civil

Master's Degree in Legal Practice

Researcher in training and PhD candidate at the UNED's

Doctoral School of the UNED

dcortes124@alumnos.uned.es

ORCID: <https://orcid.org/0009-0007-3135-1849>

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THE NAVAL POLICE REPORT: STANDARDISATION OF INITIAL PROCEDURES REGARDING THE SMUGGLING OF MIGRANTS BY SEA

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Abstract: This article examines the systematisation of the initial procedures carried out during maritime interventions in response to the smuggling of migrants, based on the technical and operational framework of the so-called Naval Police Report. The study analyses the regulatory, doctrinal and case-law framework governing the actions of the Judicial Police in the maritime environment, within a context characterised by a lack of specific doctrinal development and the predominance of operational procedures focused on rescue; factors which have limited the development of a technical and procedural framework adapted to this environment. Attention is paid to the collection, organisation and preservation of evidence in an environment characterised by mobility, urgency and the irreproducibility of certain actions during the procedural phase, as well as to the initial procedures of detection, monitoring, close-range reconnaissance, identification of those responsible, police intervention and disembarkation. It is noted that the report drawn up on board a naval vessel does not constitute a separate legal category, but rather a functional organisational framework useful for reinforcing the operational and procedural coherence of police actions at sea against these criminal phenomena.

Resumen: Este artículo examina la sistematización de las primeras diligencias practicadas en intervenciones marítimas frente al tráfico ilícito de migrantes, a partir de la propuesta técnico-operativa del denominado Atestado Policial Naval. El estudio analiza el marco normativo, doctrinal y jurisprudencial que condiciona la actuación de la Policía Judicial en el medio marino, en un contexto marcado por la escasa elaboración doctrinal específica y por el predominio de dispositivos operativos orientados al rescate, factores que han limitado una sistematización técnico-procedimental adaptada a este entorno. Se presta atención a la obtención, organización y preservación de indicios en un espacio caracterizado por la movilidad, la urgencia y la irrepitibilidad de determinadas actuaciones en fase procesal, así como a las diligencias iniciales de detección, monitorización, reconocimiento de proximidad, identificación de responsables, intervención policial y desembarco. Se observa que el atestado instruido a bordo de un medio naval no constituye una categoría jurídica autónoma, sino una fórmula de ordenación funcional útil para reforzar la coherencia operativa y procesal de las actuaciones policiales en la mar contra estos fenómenos delictivos.

Keywords: Naval Police Report, Maritime Interdiction, Judicial Police, Smuggling of Migrants, Evidential Value.

Palabras clave: Atestado Policial Naval, Interdicción Marítima, Policía Judicial, Tráfico Ilícito de Migrantes, Valor Probatorio.

ABBREVIATIONS

APN: Naval Police Report

Art.: Article

BOE: Official State Gazette

CE: Spanish Constitution

CP: Criminal Code

LECrim: Criminal Procedure Act

LOFCS: Organic Law on Security Forces and Corps

LOPJ: Organic Law on the Judiciary

FFCCSE: State Security Forces and Corps

SEMAR: Maritime Service of Guardia Civil

SIVE: Integrated External Surveillance System

CNP: National Police Force

UOPJ: Judicial Police Unit

NGOs: Non-Governmental Organisations

AEMET: State Meteorological Agency

NIE: Foreigner's Identification Number

LO: Organic Law

LORPM: Organic Law on the Criminal Responsibility of Minors

SASEMAR: State Maritime Rescue and Safety Agency

STC: Constitutional Court ruling

STS: Supreme Court ruling

SOLAS: International Convention for the Safety of Life at Sea

1. INTRODUCTION.

The Judicial Police's operations in the marine environment in relation to the smuggling of migrants present specific challenges that affect the collection and preservation of evidence, the immediate protection of those on board, and the coordination between rescue operations, the securing of evidence and criminal investigations. In this context, the police report takes on particular significance as a tool for documenting initial proceedings and for the procedural framework of police action, within the framework of the provisions of Article 126 of the Spanish Constitution, Organic Law 2/1986 and the Criminal Procedure Act (LECrim).

On this basis, this paper proposes the technical-operational designation 'Naval Police Report' (APN) as a means of functionally organising the report in maritime interventions relating to the offence under Article 318 bis of the Criminal Code (CP), without seeking to establish a separate legal institution distinct from that already provided for in the legal system. The value of this proposal lies in systematising the initial investigative procedures that can be carried out in the marine environment, determining their evidential purpose, and specifying the operational precautions that should be observed in a setting characterised by the fluid nature of the scene, the urgency of the response, and the fact that certain procedural actions in court are often unrepeatable.

The significance of the issue is heightened by the fact that maritime interdictions relating to the smuggling of migrants typically take place in a context where the requirements of humanitarian assistance, the securing of evidence and the identification of potential perpetrators converge, often in connection with criminal organisations and other concurrent offences. Although case law has recognised the procedural importance of non-reproducible proceedings and legal doctrine has acknowledged the concept of *flagrante delicto* in cases of interception by competent officials, operational practice appears to prioritise rescue operations and the administrative management of migration, which apparently hinders the pre-trial phase of the criminal investigation¹.

Added to this is the fact that, at the operational level, the absence of sufficiently specific doctrinal elaboration on the practice of police procedures at sea, combined with the functional prominence of operational mechanisms primarily geared towards the rescue of migrants, appears to have limited the development of a procedural framework adapted to this environment. From this perspective, the aim is to provide a clearer and more useful framework for understanding the relationship between police action at sea and its subsequent procedural implementation, based on an analysis of legislation, case law and legal doctrine, supplemented by the author's professional experience.

2. METHODOLOGY AND SCOPE.

The aim of this study is to systematise the initial investigative steps carried out in maritime interventions relating to the smuggling of migrants, with a view to proposing technical and operational criteria that facilitate their proper integration into the criminal justice process. The study is based on an analysis of Spanish legislation and international maritime law, as well as legal doctrine, relevant case law and technical tools related to

¹ See the General Operating Procedure for Cooperation between the Directorate-General of the Civil Guard and the Maritime Safety and Rescue Society (SASEMAR), signed on 30 September 2022, which is primarily focused on maritime rescue and salvage.

maritime policing practice, together with the author's professional experience. Its scope is limited to the Spanish context and adopts a legal-doctrinal and technical-procedural perspective, without any statistical claims. As a key limitation, it should be noted that this is not a field study; consequently, the conclusions are formulated as policy proposals rather than as results derived from a sample. The method employed consists of classifying each procedure according to its legal basis, its evidential purpose and the recommended operational precautions in the marine environment in the fight against the smuggling of migrants.

3. CONTEXTUALISATION OF THE NAVAL POLICE REPORT IN CRIMES AGAINST THE RIGHTS OF FOREIGN NATIONALS.

Reactive investigations into offences under Article 318 bis of the Criminal Code committed by sea present particular characteristics inherent to the environment in which the initial proceedings take place, frequently on board official vessels or craft carrying out surveillance, rescue and interdiction duties. This practical distinction does not alter the nature of the report as a procedural document addressed to the judicial authority, but it does call for a specific systematisation of its initial procedures due to the environment in which they take place.

At the international level, with regard to the Protocol against the Smuggling of Migrants by Land, Sea and Air (Palermo Protocol), supplementing the United Nations Convention against Transnational Organised Crime, and in accordance with offences against the rights of foreign nationals, the extraordinary power of extraterritorial prosecution is recognised. Mere knowledge of these criminal acts, even outside territorial waters, in accordance with the provisions of Article 23 of the Organic Law on the Judiciary (LOPJ) and the Criminal Procedure Act (LECrin), empowers the judicial authorities to prosecute them. Consequently, police officers may carry out the necessary investigative procedures in accordance with the relevant legal and procedural provisions applicable to this matter, recording the outcome in the police report or statement on the facts under investigation, as provided for in Articles 287, 295 and 297 of the LECrin.

At present, most of these offences are committed using traditional small-scale fishing vessels or recreational craft, the main common characteristics of which are the lack of a deck, that is to say, migrants travel exposed to the elements, and technical deficiencies in shipbuilding, equipment and safety features for navigation in certain maritime areas, such as offshore shipping lanes², which serve as routes for illegal immigration from the African continent to Spain.

The discovery at sea of this type of vessel by officers of the Judicial Police on duty requires a humanitarian response, whilst not overlooking the possible presence on board, and in common, of both the passengers who are victims and the crew members who, whilst the latter may also be migrants, could bear criminal responsibility for this illicit trafficking, as determined, amongst others, by Supreme Court Judgements 405/2015 of 12 March and 673/2014 of 15 October.

² With reference to the areas and types of navigation set out in Article 8.2 of Royal Legislative Decree 2/2011 of 5 September, approving the Consolidated Text of the Law on State Ports and the Merchant Navy. 'BOE' No. 253, of 20 October 2011.

On this point, and in accordance with Ancín and Rodríguez (2021), the police report documents the *notitia criminis* and has the legal status of a criminal complaint, as recognised by Article 297 of the Criminal Procedure Act (LECrim). However, beyond the mere notification to the court, certain actions carried out in that context may introduce into the proceedings objective elements that are difficult or impossible to reproduce at a later stage. Depending on their nature, their proper documentation and their inclusion in the proceedings in accordance with the principles of adversarial proceedings, immediacy and oral proceedings, such actions may acquire evidential relevance as acts of verification or as supporting evidence for subsequent expert or qualified witness testimony and, ultimately, attain the status of pre-established expert evidence, in the terms set out by Gimeno Sendra (2015, p. 255). Furthermore, given the nature of certain procedures contained in the police report, their evidential value is not diminished merely because they lack judicial oversight, as has been repeatedly confirmed by constitutional case law, in particular in Constitutional Court Judgements 182/1989 of 3 November and 217/1989 of 21 December.

On the basis of the aforementioned case-law, for the proceedings to be regarded as technical expert evidence that cannot be reproduced in court, in addition to being free from subjective assessment by the officers involved, they must be introduced at the procedural stage in accordance with the principles of immediacy, oral proceedings and adversarial proceedings, and may be treated as documentary evidence rather than mere witness evidence, therefore, to paraphrase Tomé (2016, p. 386), the report partially regains its individual evidential value when it contains objective and verifiable data, such as fingerprints, marks, traces, photographs or plans, thereby functioning as a record of findings.

Similarly, the part of the report containing the officers' testimony is also attributed evidential value as witness evidence; although this must be confirmed during the oral hearing by the officers involved, this is a common occurrence in reports drawn up in relation to offences under Article 318 bis of the Criminal Code committed by sea, where the officers are direct witnesses to the commission of a flagrant offence. Consequently, when the officers responsible for drawing up the report delegate the conduct of investigative procedures to other officials, it is advisable to record the identity of the latter; otherwise, the evidence could be regarded as circumstantial witness evidence, in accordance with the doctrine of the Constitutional Court³.

4. INITIAL INVESTIGATIVE PROCEDURES IN THE MARINE ENVIRONMENT.

Any criminal investigation aimed at clarifying facts that appear to be criminal in nature requires the collection, recording and preservation of objective evidence of procedural relevance, in accordance with Articles 282 et seq. of the Criminal Procedure Act. In the maritime context, this requirement is heightened by the dynamic and transient nature of the environment, which necessitates immediate action aimed at documenting the facts, identifying those responsible, protecting victims and preserving evidence that is liable to disappear, in accordance with case-law on irreproducible investigative measures and pre-established evidence.

³ SSTC 110/1985, of 3 October; 145/1985, of 28 December; 173/1985, of 16 December; 19/1986, of 23 April; 145/1987, of 23 September; and 5/1989, of 19 January, amongst others.

Knowledge of events potentially falling within the scope of Article 318 bis of the Criminal Code (CP) generally arises through early-warning systems such as the SIVE, as well as through aerial and naval resources of public bodies or third parties (e.g. merchant ships), alongside alerts from non-governmental organisations (NGOs) involved in providing humanitarian support to migration flows. This operational context also falls within the international legal framework defined by the 1982 United Nations Convention on the Law of the Sea (Articles 92 and 110 of UNCLOS), particularly with regard to jurisdiction on the high seas and powers of intervention, as well as within the regulatory framework of the European Union, notably Regulation (EU) No 656/2014 and Regulation (EU) 2019/1896, within the framework of which joint operations are carried out, coordinated by the European Border and Coast Guard Agency – commonly known as FRONTEX – integrating the functions of border surveillance, maritime rescue and the fight against irregular migration networks.

Except in cases of direct detection by units of the Civil Guard's Maritime Service, police intervention would take place upon the arrival of the competent authorities acting in their capacity as the Judicial Police⁴. In this context, it is essential to obtain information at an early stage, such as the geographical position, date and time of detection, course and speed, as well as the seaworthiness of the vessel and the situation of the persons on board. Incorporating this information properly into the initial factual account, together with the identification of the naval units involved and the officers in action, enables the construction of robust case files and strengthens their evidential value in court.

4.1. DETECTION AND MONITORING OF SUSPICIOUS VESSELS.

From a functional perspective, the initial detection and monitoring of a suspicious vessel serves a dual purpose. On the one hand, it enables the activation of a rescue or interdiction response and, on the other, it allows for the early establishment of relevant objective data — position, course, speed, route and environmental conditions — for the subsequent reconstruction of the facts. Given that the mobilisation times of naval assets depend primarily on the type of patrol vessel, the distance to the target and the weather and sea conditions, it is advisable to continue monitoring the vessel until a naval police unit arrives, both to track the progress of the journey and to ensure an appropriate response in terms of the safety of the migrants on board.

This monitoring can be carried out using approved RADAR equipment, supplemented, where appropriate, by electro-optical means or direct visual observation, provided that the source of the data, the time of capture and the identity of the officers or systems involved are properly documented. According to Moreno Torres (2011, p. 380), radar equipment constitutes a valid means and, in scientific terms, is sufficiently reliable for detecting vessels engaged in illicit trafficking, as well as providing information relevant to the investigation, such as geographical coordinates. In this regard, the radars of the Comprehensive External Surveillance System (SIVE), despite their limited range, can provide sufficient coverage for the recording of this data within Spanish territorial waters, whilst the RADAR equipment on the naval units of the Civil Guard's Maritime

⁴ The National Commission for the Coordination of the Judicial Police agreed that jurisdiction over matters relating to the Judicial Police in maritime areas should lie exclusively with the Civil Guard (Minutes of 12 March 2019, item 10 on the agenda).

Service (SEMAR) enables the general circumstances of the suspect vessel to be confirmed and facilitates a situational assessment prior to interception.

According to Estrampes and Domínguez (1997), on analysing the case law of the Supreme Court, records derived from this type of monitoring — whether electronic, audiovisual or in another format — may meet the requirements for circumstantial evidence. Electro-optical monitoring, carried out using cameras or telemetric viewfinders, extends the possibilities for observation and recording as far as the horizon, depending on the characteristics of the equipment and the installation height, and can be extended even further using airborne means. Meanwhile, direct observation from the official naval vessel itself allows this information to be supplemented through immediate visual perception or with the aid of analogue optical instruments.

In addition, the assessment of meteorological and sea conditions in the areas where irregular migration takes place may be relevant both for the adoption of operational measures and for documenting the scene. In this regard, parameters such as wave height or wind strength and direction may be included in the proceedings as descriptive elements of the environment, in terms similar to the ‘features of the terrain’ referred to in the second paragraph of Article 326 of the Criminal Procedure Act. Their inclusion in the report, supported by official forecasts and the direct observations of officers and on-board technical equipment, helps to provide the adjudicating body with an objective basis regarding the state of the sea.

However, the information obtained at this stage should not be presented conclusively as evidence of guilt, but rather as an objective basis for guiding subsequent investigative procedures involving reconnaissance, intervention and identification, as well as for assessing the risk context in which the clandestine navigation took place.

4.2. PROXIMITY RECONNAISSANCE.

Proximity reconnaissance would constitute a direct observation procedure of particular relevance in the marine environment, as it would enable the establishment of circumstances that are difficult to reproduce at a later date regarding the condition of the vessel, the transport conditions of its occupants and the observable behaviour of those who are steering it or assisting in its navigation.

This phase of the operation, carried out through direct visual observation and supported by electro-optical means, would enable the identification and physical description of the crew members, as well as the determination of the vessel’s objective seaworthiness and the conditions under which the passengers were being carried. Such actions would form part of the investigative and evidence-securing procedures for the punishable offence provided for in Articles 282 and 326 of the Criminal Procedure Act (LECrim) and are consistent with the principle of pre-established evidence, particularly where there are sources of evidence that are irreproducible or difficult to reproduce at the oral hearing, as explained by Gimeno Sendra (2018). The examination of the vessel, as the instrument used to commit the offence, and in particular the assessment of its physical and functional condition, would form part of the description of the elements relating to the existence and nature of the offence under investigation; hence the need to record its construction characteristics, materials, propulsion system, seaworthiness and safety features, given their bearing on the legal assessment of maritime transport and the risk

posed to those on board, in line with the approach outlined by Fontestad Portalés et al. (2024).

A distinction must, however, be made between the data that can be objectively verified at this stage — for example, the type of vessel, buoyancy features, the distribution of occupants, apparent safety conditions or the presence of minors — and the legal or criminological inferences that may be drawn from such facts. Such assessments must be made with caution and supported by the body of evidence gathered during the proceedings.

Consequently, and assuming that the helmsman or person in charge of the suspected vessel does not attempt to evade the police's approach manoeuvres, the inspection could be carried out at close range, whilst observing the necessary safety measures to prevent collisions and in accordance with the criteria set out in Article 326 et seq. of the Criminal Procedure Act (LECrim) for visual inspection. This procedure would take on particular significance where there are indications of imminent danger to the life or physical integrity of the occupants, or where the proximity would allow for the documentation of objective circumstances likely to influence both the adoption of rescue measures and the subsequent criminal-law assessment of the facts.

In itself, it would be useful to ascertain the conditions in which the occupants were travelling, including any precariousness, overcrowding or other circumstances, such as the presence of particularly vulnerable persons or minors, as well as their apparent state of health, taking into account the possible existence of any fatalities on board or adrift in the vicinity. Essentially, this would involve ascertaining the presence of any personal safety and flotation equipment that the occupants might be carrying, as this, together with the aforementioned circumstances, would contribute to the classification of the offence, but also to the implementation of appropriate rescue operations in the event of an imminent risk to human life.

4.3. RELEVANT EVIDENCE FOR IDENTIFYING POSSIBLE PERPETRATORS.

In this regard, evidence relating to the role played by certain occupants on board takes on particular significance. Monitoring and close observation can provide information on who is carrying out functions of command, practical leadership or logistical support. The observation of sustained, purposeful and non-erratic navigation, combined with other elements of direct perception, audiovisual records, seized items or subsequent statements, may contribute to the identification of those who assume tasks relating to the control or steering of the vessel.

Elements of interest include behaviour relating to steering, refuelling, engine maintenance, weight distribution, the coercive control of occupants, or the operation of navigational instruments. Other factors that may be assessed include the individual's position relative to the other occupants; the discovery on their person of objects or equipment necessary for navigation—such as GPS navigators or a marine compass; the presence of marks on the hands consistent with the continuous operation of the helm; or the use of gloves, protective straps or specific maritime clothing. To this may be added the collection of latent fingerprints from the helm, fuel cans or the casings of outboard motors, where such surfaces are physically suitable for their collection.

This purely observational assessment is complemented, from a legal perspective, by the requirement for an individualised attribution of liability. As Romeo Casabona (2016) points out, criminal imputation requires a joint assessment of the body of circumstantial evidence in accordance with the categories of imputation and perpetration. Added to this is Supreme Court Judgment 582/2007 of 21 June, which casts doubt on whether participation in any of the many tasks that make the voyage possible can be considered criminally relevant, without this authorising the replacement of individualised evidence with automatic inferences derived from mere presence on board.

Where the observed conduct⁵ reveals even a minimal stable or coordinated functional structure amongst several participants, this may also give rise to the possible involvement of a criminal group or organisation in accordance with Articles 570 bis and 570 ter of the Criminal Code, as systematised by Giner Alegría et al. (2022) on the basis of Supreme Court Judgment 852/2016. However, the police report should focus primarily on the roles, interactions and functions observed, leaving the definitive criminal-law classification to the appropriate stage of the proceedings.

In short, these are technical police criteria for observation and identification that guide the investigation, but whose translation into criminal law requires a joint assessment of the other investigative measures carried out.

4.4. PROCEDURES DURING THE PHASE OF DIRECT POLICE INTERVENTION.

Based on the evidence gathered in the previous phase, direct police intervention marks the point at which the initial practical measures to secure, identify and protect those on board are implemented. At this stage, given their different legal nature, a distinction should be made between measures aimed at the immediate safeguarding of the lives and physical integrity of those on board; the actions of the Criminal Investigation Department aimed at identifying possible perpetrators and securing sources of evidence; and any potential criminal law consequences arising from acts of resistance, disobedience or aggression towards the officers carrying out the operation. This distinction is not merely theoretical but also functional, as in the maritime environment the objectives of rescue, control and investigation occur simultaneously and must be coordinated in a manner consistent with the principles of legality, necessity, proportionality and documentary traceability.

In the event that the ship or vessel to be boarded flies a foreign flag, express record must be made of this fact in the report, as well as of the communications made, the authorisations obtained and, where applicable, the measures adopted under the Palermo Protocol. Similarly, when the intervention concerns stateless vessels or where there are urgent reasons relating to the safety of persons or the need to prevent the thwarting of police action, the orders issued by the unit carrying out the operation, the signals used, the means of transmission employed, the language of communication and the response

⁵ The Supreme Court has clarified that “it is sufficient for illegal immigration to be promoted, encouraged or facilitated by any means for the offence to be committed; which means that the offender’s participation in any of the many tasks involved in carrying out the act is sufficient [...] without it being necessary for the person to actually reach Spanish territory illegally” (Supreme Court Judgment 582/2007, Second Chamber, 21 June 2007, Legal Ground 3). This doctrine is reiterated in the Supreme Court Judgements of 5 February 1998 (RJ 1998/929) and 16 July 2002 (RJ 2002/5534).

observed should be documented as accurately as possible, given their potential relevance both for reconstructing events and as evidence.

From a procedural perspective, the conduct of proceedings at this stage is covered by Articles 13, 282, 284, 287, 295, 297 and 770 of the Criminal Procedure Act, insofar as they impose on the Judicial Police the duty to investigate the offence, identify the offenders, collect the objects, instruments or evidence relating to the offence, and report immediately to the judicial authority or the public prosecutor. Within this framework, direct intervention on the vessel should not be viewed exclusively as a physical rescue or control operation, but also as a particularly sensitive moment for securing perishable evidence and for establishing objective circumstances that would be difficult to reproduce at a later date, in line with the doctrine set out by Gimeno Sendra (2015) and Tomé García (2016) on the procedural significance of properly documented non-repeatable proceedings.

The decision to proceed with boarding, mooring or transfer must be guided, first and foremost, by the protection of human life at sea, in accordance with the SOLAS Convention and the basic principles of action set out in Article 5 of the LOFCS, without prejudice to its prejudicial dimension in terms of securing evidence where there is a risk of evidence disappearing or of those who were exercising functions of command or material control of the voyage concealing themselves. To this end, Article 520 ter of the Criminal Procedure Act (LECrim) provides specific guidance for arrest procedures carried out at sea, although its application must be considered in relation to the detainee's other procedural safeguards and the practical constraints inherent to the maritime environment.

Where, during the operation, evasive manoeuvres, failure to comply with orders, acts of resistance or conduct that objectively increase the risk to the enforcement unit or to the migrants being transported occur, such acts may acquire additional criminal significance. However, it is methodologically more correct to present them as cases whose classification will depend on the maritime area in which the events take place, the concurrent jurisdictional competence and the specific applicable legal provision, thereby avoiding the formulation of automatic subsumption rules. Thus, with regard to the possible application of Article 556(1) of the Criminal Code for serious disobedience, the starting point is the premise that its prosecution is subject to jurisdictional limits outside territorial waters, whilst acts of extreme violence occurring on the high seas could, from an interpretative perspective, give rise to the possible application of Article 616 ter of the Criminal Code, in accordance with the doctrinal approach of Marín Castán (2013), without prejudice to the caution required by this interpretation.

In this latter regard, where crew members attempt to prevent police action through threats, coercion or acts of violence against the persons being transported, such acts could, in conjunction, other criminal offences under domestic law if they take place in areas subject to Spanish jurisdiction; however, this raises issues of classification in high seas cases which judicial practice has not yet resolved in an entirely uniform manner when seeking to categorise acts as piracy. For this reason, it seems preferable for the police report to document in as much detail as possible the facts observed, the chronological sequence of events, the positions of the individuals involved and the material consequences of their conduct, leaving the final legal classification to the competent court.

Finally, once the situation has been brought under control and the protection of the rescued persons has been ensured, it will be appropriate to separate, as far as possible, those who appear, on the face of the evidence, to be linked to the governance or control of the vessel from the rest of the occupants, paying particular attention to minors and particularly vulnerable persons. According to García Magaños (2017), the verification of personal effects, the seizure of items related to navigation or to the commission of the offence, and their proper inclusion in the chain of custody are of particular importance in maritime interdiction operations; therefore, these actions should be accurately recorded in the official report and in the relevant chain of custody forms.

4.5. THE DISCOVERY OF HUMAN REMAINS AND THEIR HANDLING.

The discovery of human remains or a body in the context of a maritime interdiction requires the utmost care to be taken in securing, preserving and documenting the scene, given the particular fragility of the environment and the possible involvement of more serious offences connected with the voyage. From a procedural perspective, there is a functional equivalence between these urgent measures and the provisions of Articles 354, 770(4) and 778 of the Criminal Procedure Act, in that they require the scene to be secured, the position of the body to be documented and, as far as possible, the relevant evidence to be preserved until the subsequent intervention of the judicial authority and the forensic pathologist.

Where the body is found on board the vessel or in its immediate vicinity, the necessary photographic and descriptive records should be obtained, prior to any essential handling, to establish its position, apparent condition, spatial relationship with other elements at the scene, and the conditions of the surroundings. If safety and navigational conditions permit the towing or transfer of the vessel in question to port, it seems legally preferable to preserve, as far as possible, the location of the body and any nearby effects or evidence, in order to avoid alterations that might hinder the subsequent removal of the body and the expert assessment that follows.

Where the body is found adrift, the report should record not only the distance from the suspect vessel, if known, but also the exact geographical position, the time of discovery, the strength and direction of the current, and any other relevant maritime conditions. Such data may be of interest for a subsequent reconstruction of the possible relative trajectory between the body and the vessel, based on the records obtained during the prior monitoring phase, although this does not in itself authorise the drawing of definitive causal conclusions.

It is advisable to proceed with the recovery of the body, taking care, as far as possible, to prevent its loss, and to preserve any personal effects it is carrying, a list of which should also be drawn up. In the absence of a specific protocol, the temporary storage of the deceased on board should preferably take place in a designated area or, failing that, in the area that least compromises the manoeuvrability, health and safety of the vessel, until the body is handed over to the competent authority in port. At this stage, the police intervention would serve primarily a protective and initial safeguarding function, without prejudice to the fact that the medico-legal determination of the cause of death and its possible criminal relevance is a matter for subsequent forensic and judicial proceedings.

Nevertheless, it must be borne in mind that where the body of evidence gathered reveals an objective and sufficiently well-founded link between the death and the conditions of the voyage or the conduct of those who were in command of or in control of the vessel, it would be advisable to include in the police report any evidence pointing to potential criminal liability for homicide or reckless conduct, without prejudice to the final determination by the judicial body. In this regard, Sobrino Heredia and Oanta (2010, p. 770), as well as Supreme Court Judgment 637/2021 of 15 July, demonstrate that, in cases of the smuggling of migrants by sea resulting in death, criminal liability may extend beyond Article 318 bis of the Criminal Code to encompass offences of homicide in a situation of concurrent offences⁶.

4.6. THE FINAL CONDITION OF THE VESSEL AS AN INSTRUMENT OF THE OFFENCE.

The vessel used for the crossing constitutes, in principle, a material element of particular relevance to the criminal investigation, both in its capacity as the instrument used to commit the offence and as a possible scene of the events and a source of physical evidence. Consequently, its treatment must be guided by the provisions of Articles 13 and 282 of the Criminal Procedure Act, which require the collection and preservation of the effects, instruments and evidence of the offence, as well as by the need to preserve, wherever materially possible, a source of evidence whose subsequent reproduction may prove incomplete.

Consequently, where weather conditions, the stability of the hull, the distance from the coast and the technical capabilities of the police vessel permit, the law requires the vessel to be secured and towed to port, in order to enable a more comprehensive and technically organised visual inspection. During this manoeuvre, the custody documentation should record the vessel's identifying details, if any, any incidents occurring during the tow, the identity of the officers in charge, and a list of items recovered on board or in the vicinity, particularly where there is a risk of loss or damage.

Where the vessel lacks a name, registration number or identifiable flag, the report should compensate for this absence of official registration by providing a precise technical description of its construction type, colour, materials, propulsion system, distinctive markings, layout, steering mechanisms, as well as any relevant distinctive features. This type of description, supplemented by photographic or audiovisual evidence, can play an essential role in providing objective verification, in accordance with Article 770 of the Criminal Procedure Act and with the legal doctrine regarding the evidential value of properly documented visual records.

However, where the physical preservation of the vessel proves impossible or inadvisable for objective reasons relating to maritime safety, technical capacity or risks to navigation, priority must be given to compiling a comprehensive prior record of its condition, structure and contents. In such cases, the loss, abandonment or possible controlled sinking of the vessel cannot be presented as standard solutions, but rather as exceptional measures, strictly conditioned by necessity and thoroughly justified in the

⁶ In Supreme Court Judgment 637/2021 of 15 July (ECLI:ES:TS:2021:2953), two individuals were convicted of an offence against the rights of foreign nationals and of thirteen offences of manslaughter by negligence in a case of concurrent offences, as thirteen of the fifty-five people they transported died from drowning or hypothermia.

official report. In such circumstances, the prior photographic and descriptive documentation must aim to compensate, as far as possible, for the impossibility of physically preserving the vessel.

Doubts remain as to the appropriateness of the forced and controlled sinking of the vessel, once its occupants have been evacuated and a technical visual inspection has been carried out. As there is no provision for this in a specific protocol, the measure comes into conflict with the duty to preserve evidence that can be inferred from Articles 13 and 282 of the Criminal Procedure Act, although it may be justified, from a strictly practical standpoint, by the need to avoid the intrinsic risk arising from leaving the vessel adrift and the potential danger this poses to navigation. Precisely for this reason, should such a decision be taken, the grounds for it would need to be particularly well-substantiated, including the relevant technical reasons, the prior documentation procedures and the notification made to the competent maritime authority.⁷

4.7. PROCEDURAL STATUS OF THE ALLEGED PERPETRATORS.

The determination of the procedural status of the alleged perpetrators must be based on the existence of sufficient reasonable grounds obtained from the preliminary procedures of monitoring, proximity reconnaissance, direct intervention and the seizure of objects. Consequently, arrest, the status of a person under investigation but not in custody, or mere initial identification should not automatically result from mere presence on board, but rather from an individualised, documented and legally substantiated assessment of the observed conduct and its connection with the offences set out in Article 318 bis of the Criminal Code, as explained below.

From the perspective of the elements of the offence, the aforementioned provision penalises conduct involving the promotion, aiding or abetting of illegal trafficking or the smuggling of persons from, in transit through or bound for Spain; thus, attributing liability to those manning the vessel requires identifying their functional contribution to the offence. In this regard, the descriptive categories of skipper, captain, helmsman or material collaborator may be useful for organising the factual account, but they do not function as independent categories of criminal liability. Their criminal relevance will depend on effective control over the action, the specific contribution to the success of the crossing and the wilful knowledge of that contribution, as is evident from the analysis already included in the text and from the case law of the Supreme Court on the scope of the offence of aiding and abetting.

In particular, Supreme Court Judgment 582/2007 of 21 June states that it is sufficient to promote, facilitate or assist illegal immigration by any means for the offence to be deemed to have been committed, without it being necessary for the illegal entry into Spanish territory to be achieved. This doctrine, reiterated in subsequent case law, reinforces the idea that the involvement in any of the many tasks enabling the crossing to take place may be criminally relevant, although establishing this in relation to each individual requires individualised evidence and not an accusation based merely on presence or proximity.

⁷ As provided for in Article 29 of Law 14/2014 of 24 July on Maritime Navigation.

Furthermore, where the observed conduct reveals even a minimal stable or coordinated functional structure amongst several participants, this could give rise to the possible involvement of a criminal group or organisation in accordance with Articles 570 bis and 570 ter of the Criminal Code. In this regard, reference is made to Giner Alegría et al. (2022), who analyse Supreme Court Judgment 852/2016 as a doctrinal basis for distinguishing between a criminal organisation and a criminal group on the basis of the stability, hierarchy and duration of the structure. However, from a methodological perspective, it seems advisable for the police report to describe, first and foremost, the observed roles, interactions and functions, reserving the definitive classification under one provision or another for the appropriate stage of the proceedings.

Where the investigations carried out reveal sufficient reasonable grounds to suggest involvement in the criminal offence, arrest may be mandatory under Articles 490 et seq. of the Criminal Procedure Act (LECrim), with the aim of ensuring the person is brought before a court, preventing the destruction of evidence and avoiding the risk of flight, concealment or the influencing of victims. In the marine environment, the reading of rights and the documentation thereof must comply with the provisions of Articles 520 and 520 ter of the Criminal Procedure Act; it is advisable to record the language used, the detainee's understanding and, where applicable, any technical limitations on board that prevent the immediate exercise of any of their rights. In such cases, the practical impossibility of immediately fulfilling certain safeguards should be expressly justified, stating the reasons and the measures taken to remedy the situation as soon as possible.

Having analysed the doctrine of the Public Prosecutor's Office and Instruction 1/2024 of the Secretary of State for Security, both are based on the premise that detention must not be prolonged beyond the time strictly necessary, in accordance with the requirements of the Criminal Procedure Act and the guarantees set out in Article 17 of the Spanish Constitution. In the maritime context, however, this principle should be interpreted with functional flexibility, taking into account the objective particularities of navigation — particularly on the high seas — where time, weather conditions and technical limitations on the conduct of proceedings may have a decisive impact on the actual transfer, hence the provision for mechanisms to bring the suspect before a judge via teleconference when the period exceeds seventy-two hours.

Nevertheless, in cases where the existing evidence gives rise to a well-founded suspicion but does not yet support a sufficiently established attribution of guilt, it seems more prudent to apply the status of a person under investigation who is not in custody, a solution that is legally more appropriate than that of a detainee. This is suggested by the text itself, which refers to constitutional doctrine and Circular 3/2018 of 1 June from the State Public Prosecutor's Office on the right to information of persons under investigation in criminal proceedings, the application of which helps to avoid delays that could potentially undermine the right of defence.

With regard to minors, the issue presents added complexity due to the overlap between the general regime of Article 520 ter of the Criminal Procedure Act (LECrim) and the specific provisions of the Act on the Protection of Minors in Criminal Proceedings (LORPM), in particular Article 17(4) thereof. The text correctly points out the absence of specific and comprehensive regulations on the detention of minors in a maritime context, and it is therefore correct to maintain that, where there is evidence or indications of minority, an interpretation based on safeguards and enhanced protection must prevail, in

accordance with Instruction 1/2017 of the Secretary of State for Security and the requirement to bring the minor before the competent authority as soon as possible. In such cases, detention on board should be limited to what is strictly necessary, with a focus on ensuring separation from adults, providing adequate assistance and ensuring the early involvement of the Juvenile Prosecutor's Office or the competent authority.

4.8. TRANSFER TO PORT AND DISEMBARKATION.

Transport to port and disembarkation constitute a transitional phase between the intervention at sea and subsequent action on land; therefore, their proper documentation is essential to preserve the chain of custody, ensure the traceability of those apprehended and avoid discrepancies between the criminal, health and administrative aspects of the operation. As has been explained, in high-seas operations, the transfer to port may in itself constitute the minimum time strictly necessary for the conduct of proceedings and fulfil the period of deprivation of liberty for those detained; in any event, if pre-trial detention on board has been ordered by a court following their presentation via remote means, the transfer shall be subject to the formalities laid down for the custody of detainees and, in particular, the provisions of Instruction 4/2018 of 14 May, insofar as they apply to the custody record, body search, inventory of personal effects, surveillance, identification of custodial staff, food and medical care, as well as to the specific requirements relating to minors. In coastal maritime areas, custody arrangements may be adapted to the standards for the treatment and handling of detainees set out in Article 36 of the Prison Regulations, whilst respecting their dignity, rights and safety.

In accordance with Instruction 4/2018 of 14 May issued by the Secretary of State for Security, and given that the Logbook of official ships and vessels is a public document, it is reasonable that it should record essential information relating to admission, the period of detention and any incidents occurring during custody, provided that there is no specific register on board.

In the same vein, from the moment of arrest and within the technical capabilities of the naval vessel, it may be appropriate to carry out the procedure for identifying the detainee in parallel. Thus, if the detainee were to be in possession of authentic or verifiable documentation, their identity would be recorded in all proceedings; conversely, if they were unable to provide such documentation, the name by which they claimed to be known would be recorded, subject to verification, where appropriate, through references from third parties, and recorded as their presumed identity pending further verification.

It should also be noted that, from a legal theory perspective, the transfer to port does not, in itself, appear to constitute a criminal investigation or inquiry, but rather a custodial and escort procedure arising from the arrest itself. We find references to this in case law; in particular, Constitutional Court Ruling 21/1997 of 10 February addresses this phase of arrest and custody on the high seas — where the vessel transports the detainees to port — ; consequently, this distinction appears to take on particular relevance in the arrest of vessel skippers for offences against the rights of foreign nationals, as the mere transfer to port would not contribute any element to the police investigation, but would respond exclusively to the logistical need for a ‘ ’ transfer from the maritime area to their physical appearance before the competent authority.

Once the police vessel or boat has arrived in port, and once the immigration services of the National Police Force (CNP) and the medical staff have arrived on the scene, the investigating officer may, as far as possible, obtain the NIE or the assigned health identification number, in order to ensure continuity of identification across administrative, health and criminal proceedings. In accordance with Instruction 20/2005 of 23 September, all occupants must be handed over to the CNP for the initiation of the relevant administrative proceedings relating to immigration, based on Organic Law 4/2000 and Article 12.1.A)(c) of the LOFCS, as well as for possible cross-checking in EURODAC⁸, where applicable.

From a functional perspective, this phase requires enhanced coordination between the agencies and services involved, particularly with regard to the identification of individuals, the separation of potential perpetrators from victims, emergency medical care, the provision of interpreters, and the continuation of police investigations initiated on board. Its importance is not merely logistical, but also relates to the admissibility of evidence and the protection of rights, in that it determines the proper coordination between the criminal investigation and the administrative and medical care of those rescued.

4.9. COMPLETION OF THE NAVAL POLICE REPORT.

The completion of the APN must be understood as the orderly conclusion of a series of procedures carried out in exceptional circumstances, the primary purpose of which is to ensure continuity, clarity and traceability of the actions undertaken at sea. Therefore, the proceedings should expressly state the professional identification of the officer receiving the APN, including their organisational and/or functional unit, in order to ensure traceability and transparency in the handover process, whilst recording the evidence forwarded to other bodies or specialist units for examination — such as the analysis of navigation instruments used — and, in all cases, reflecting this on the corresponding chain of custody form.

Based on the data collected in the marine environment and the technical complexity of the setting, a summary report may be included in the official report, aimed at outlining the facts under investigation and the actions carried out at sea. Its purpose is preparatory and descriptive, enabling the vessel's route to be succinctly reconstructed on the basis of early-warning monitoring positions or other data prior to the interception — including, where necessary, an estimate of the course and speed when electronic navigation equipment has not been seized. This report would summarise the maritime journey described in relation to the alleged offence, including a technical description of the vessel, the number of migrants, accommodation conditions, the identities of the responsible crew members and relevant details up to the point of the police interception.

Separate from the above, a technical report could also be drawn up which would not form part of the Preliminary Investigation Report (APN) or the police report, but could be issued at a later date and upon judicial request, based on and analysing the data incorporated into the police report, thereby potentially acquiring the status of an expert report under the terms of Articles 456 et seq. of the Criminal Procedure Act (LECrím), with the corresponding requirements regarding technical specialisation, formal

⁸ European system for the comparison of fingerprints of asylum seekers (EURODAC).

appointment and confirmation in court. In the same vein, the Supreme Court of Justice of Catalonia Judgment 76/2021 recalls that a police report does not in itself constitute expert evidence unless it has been requested by the court, whilst Supreme Court Judgment 202/2022 specifies that reports issued by public officials do not constitute expert evidence per se, unless they meet the criteria of technical specialisation, formal appointment and the possibility of explanation at trial.

5. TRANSFER OF PROCEEDINGS.

Once the preliminary investigation (APN) has been completed, the continuation of the investigative proceedings raises a question of the coordination of competences between the judicial police function assumed by the Guardia Civil in the maritime sphere and the powers of the National Police Corps (CNP) in matters of immigration. In application of the Organic Law on the Guardia Civil (LOFCS) and the functional criterion arising from the investigation of offences committed at sea, it appears legally justifiable that the transfer of proceedings for criminal prosecution should be directed to the UOPJ units of Guardia Civil at the place of disembarkation, without prejudice to the necessary coordination with the CNP in accordance with Technical Instruction 4/2018 of the Secretary of State for Security (SES), dated 14 May, regarding foreign nationals in an irregular situation.

However, the criterion that has remained in force since SES Instruction 20/2005 of 23 September is the handover to the CNP of all occupants of the intercepted vessel for the purposes of identification and administrative processing relating to immigration matters, meaning that the overlap between these two functional spheres — criminal investigation and administrative management of immigration matters — can lead to practical difficulties when the physical handling of victims, witnesses, detainees and interpreters is fragmented across different police forces.

From this perspective, the problem appears to be not only organisational, but also relates to procedural safeguards and the admissibility of evidence. If migrants are subjected to the administrative immigration process whilst the Guardia Civil continues the criminal investigation without direct and ongoing access to victims and interpreters, both the ability to obtain new sources of evidence and the effective enjoyment of the rights of those involved in the criminal proceedings may be compromised. Hence the need to strengthen inter-agency coordination mechanisms that allow the division of responsibilities to be reconciled with the continuity of the investigation and the effective protection of rights.

6. CONCLUSIONS.

The analysis carried out supports the view that the so-called Naval Police Report could be conceived, in strictly technical and functional terms, as a proposal to systematise the initial investigative procedures carried out at sea in cases of the smuggling of migrants, without this implying the creation of a separate legal category distinct from the police report provided for in the Criminal Procedure Act. Its usefulness would lie in providing a framework for organisation compatible with the constitutional and procedural framework of the Judicial Police, particularly in an environment characterised by operational urgency, the volatility of the situation and the frequent irreproducibility of certain actions.

From a legal and procedural perspective, the main contribution of this framework lies in highlighting that many of the procedures carried out at sea —when documented with precision, objectivity and respect for procedural safeguards— can prove highly effective in criminal proceedings, whether as acts of verification, as supporting evidence for subsequent expert or qualified witness testimony, or as a basis for the inclusion of non-reproducible elements, in line with constitutional case law and the procedural doctrine cited.

At the same time, the study shows that the effectiveness of these procedures depends less on a conceptual expansion of the official report than on better coordination between the functions of rescue, custody, criminal investigation and the administrative handling of rescued persons. Hence, the proposed systematisation should be understood, first and foremost, as an instrument for operational rationalisation and procedural continuity, useful for improving the traceability of proceedings and the quality of their documentation, but always subject to the current regulatory framework and the interpretation thereof by the courts.

Consequently, rather than definitively settling the doctrinal and jurisdictional issues raised by maritime interdiction in this area, the aim is to provide a systematic basis for its handling and for future doctrinal, jurisprudential and operational developments. In this regard, its main contribution lies not in formulating definitive solutions for all scenarios, but in proposing a technically structured and legally defensible framework for police action at sea and its subsequent procedural application against this type of crime, which also paves the way for the development of *ad hoc* procedural models specifically tailored to combating the smuggling of migrants by sea.

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