

The Analysis of the Seafarers' Employment Legislation in the Republic of Slovenia

Analiza legislative o zaposlivanju pomoraca u Republici Sloveniji

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Summary

The paper is analysing national and international legislation regarding the seafarer employment. Particular emphasis shall be placed on the fact, that there is insufficient legislation dealing with seafarer labour law in the Republic of Slovenia. On one hand we have the Employment Relationships Act under which the employment contract is concluded between employee and employer. This act determines additional commitments for the employer, which has to submit the contract with seafarer to the evaluation and to the registration. On the other hand there is a Maritime Code under which the employment contract is concluded between the seafarer and ship owner or other person acting on his behalf. Taking into account the national legislation we have to bear in mind the international legislation and especially consider the requirements arising from rules and standards agreed within the International Labour Organization. A comprehensive analysis of this issue presents solutions that the legislator could take into account when preparing employment of seafarer provisions, which need to be systematically, fairly, socially and legally oriented. There is no shipowner included in the maritime training process and consequently there is no system in place for the systematic employment of seafarers. The main goal of this analysis is to find out where the weaknesses are and what should be done better when implementing the Maritime Labour Convention.

Sažetak

Članak analizira nacionalnu i internacionalnu legislativu koja se tiče zaposlivanja pomoraca. Posebna će se pažnja posvetiti činjenici da ne postoji dostatna legislativa koja se bavi radnim pravom pomoraca u Republici Sloveniji. S jedne strane postoji Zakon o radnopravnim odnosima po kojem se ugovor o radu sklapa između zaposlenika i poslodavca. Ovaj zakon određuje dodatne obveze poslodavcu, koji mora predati ugovor pomorcu zbog procjene i registracije. S druge strane, postoji Pomorski zakonik po kojem se ugovor o zaposlenju sklapa između pomorca i brodoglasnika ili druge osobe koja radi u njegovo ime. Uzimajući u obzir nacionalno zakonodavstvo, moramo imati na umu međunarodno zakonodavstvo i posebno razmotriti zahtjeve koji proizlaze iz pravila i standarda koji su dogovoreni prema Međunarodnoj organizaciji rada. Iscrpna analiza ovoga problema predstavlja rješenja koja zakonodavac može uzeti u obzir kada priprema odredbe o uvjetima zaposlivanja pomoraca, koji trebaju biti sistematični, pošteni, društveno i zakonski usmjereni. Nema poslodavca koji je uključen u proces obrazovanja pomoraca i, posljedično tome, nema postavljenog sustava za zaposlivanje pomoraca. Glavni cilj ove analize je ustanoviti gdje su slabosti i što se treba poboljšati kada se implementira Konvencija o radu pomoraca.

KEY WORDS

employment contract
seafarer
employer
shipowner
international legislation
national legislation

KLJUČNE RIJEČI

ugovor o zaposlivanju
pomorac
zaposlenik
brodoglasnik
međunarodna legislativa
nacionalna legislativa

1. INTRODUCTION / Uvod

The work of seafarers represents one of the dangerous professions. Due to the unpredictability of the weather and mightiness of the sea, through-out the centuries it was considered that little can be done for enhancing safety at the sea.

A large number of marine accidents happened due to human error and for this reason the International Maritime Organization has adopted in 1989 with

the resolution the Management for the Safe Operation of Ships and for Pollution Prevention¹. The adoption of the resolution should help to achieve greater safety, prevention of the injuries and ensure the safety of life at sea and marine pollution prevention. Furthermore the International Management Code for the Safe Operation of Ships and for Pollution

¹ IMO Assembly Resolution A.647, 19. 10. 1989.

Prevent (ISM Code)² was adopted in 1993.

Therefore the argument mentioned indicates, that in comparison with the other employers working ashore, seafarers are working in a special circumstances and under special conditions and within the framework of their work had to be more responsible, not only for the performance of their

² IMO Assembly Resolution A.741, 4. 11. 1993.

work but also for the safety of the vessel and the protection of the marine environment against pollution. For providing safe management of the ship, the ship must have appropriate number of crew members with a requisite level of professional education, who must have a seafarer's book for signing on board vessel and valid employment agreement concluded with a shipowner.

In the Republic of Slovenia the system of the individual employment relationship is regulated in the Employment Relationships Act³, which entirely considers the employment relationship between employee and employer. With joining the European Union, the Slovenian national legislation includes also requirements of the EU *acquis communautaire* concerning labour law, freedom of movement of workers and provisions of safety standards.

Regarding the seafarer 'rights and obligations the Employment Relationships Act reflects conventions and recommendations of the International Labour Organization, ratified by the Republic of Slovenia, as well.

The Directive 1999/95/EC of the European Parliament and of the Council of 13 December 1999 concerning the enforcement of provisions in respect of seafarer 'hours of work on board ships calling at Community ports⁴ was implemented into the Slovenian law with the Rules on inspection of the seafarers 'hour of work⁵ and the Directive 1999/63/EC of the European Council of 21 June 1999 concerning Agreement on the organisation of working time of seafarers concluded by the European Community Shipowners' Association (ECSA) and the Federation of Transport Workers Unions in the European Community⁶ with the Rules on Ranks and Certificates of seafarers⁷. The Employment Relationships Act indicates as a special employment agreement the employment agreement for seafarers. But some of the provisions regarding the seafarers 'labour law can be found also at the Maritime Code of the Republic of Slovenia⁸.

³ Official Gazette RS, No.42/02, 79/06, 103/07.

⁴ Official Journal EU, L 14, 20. 1. 2000 p. 29-35; hereinafter: Directive 1999/95/EC.

⁵ Official Gazette RS, No. 32/07.

⁶ Official Journal EU, L 167, 2. 7. 1999; hereinafter: Directive 1999/63/EC.

⁷ Official Gazette RS, No. 89/05, 95/07.

⁸ Official Gazette RS, No. 120/06 (revised version).

2. SEAFARERS' EMPLOYMENT AGREEMENT / *Ugovor o zapošljavanju pomoraca*

The Employment Relationships Act regulates employment relationships, concluded with an employment agreement between employee and employer. This law determines definitions for employer, employee and employment contract. Employee is every natural person, who is in the employment relationship pursuant to the employment agreement; employer is a legal person or natural person or other subject, as state authority, local community, subsidiary of a foreign company or diplomatic and consular representation, employing the employee pursuant to the employment agreement. The Employment Relationships Act expressly provides that the employment relationship must be concluded with an employment agreement, meaning that the employment relationship is a contractual relationship and the employment agreement is based on a mutual will of both contracting parties.

The employment agreement for seafarers is regulated in the separate part of the Employment Relationships Act and in this part additional commitments for the employer arising from the provisions of the International Labour Organization conventions are considered.

Besides the Employment Relationships Act the seafarers 'employment agreement is mentioned also in the Maritime Code. Maritime Code determines that the employment agreement is concluded by the seafarer, who under the Code fulfils the requirements for the crew member and ship owner or other person acting on his behalf. Seafarers means the person recorded at the crew list for the work on board vessel and is a crew member. As a crew member can be signed on board vessel only with a seafarer's book or embarkations cards and valid written employment agreement.

2.1. Registration of the employment agreement / *Potpisivanje ugovora o radu*

The Employment Relationships Act determines additional commitments for the employer who is concluding the employment agreement with the seafarer:

- commitment for the employer to submit the employment agreement for the evaluation;

- commitment for the employer to submit the employment agreement for the registration;

The employer submits the employment agreement with the seafarer to the evaluation and to the registration in a period of 8 days from the conclusion of the agreement.

This additional commitments arise from the provisions of the ILO convention No. 22 Seamen's Articles of Agreement Convention⁹ in which is clearly designated how the seafarers 'agreement should be concluded, while determines form of the agreement made for an indefinite period, for a definite period or for one or more voyages and specify the cases that may contain, conditions on which the agreement may terminate, special withdrawal or expire of the definite period or voyage. The convention specify also, that the conditions under which the seafarer shall sign the agreement must be lay down by the national law, and the supervising should be regulated by the competent authorities.

In accordance with the Convention the agreement shall in all cases contain the following particulars:

- the surname and other names of the seafarer, the date of his birth or his age, and his birthplace;
- the place at which and date on which the agreement was completed;
- the name of the vessel or vessels on board which the seafarer undertakes to serve;
- the number of the crew of the vessel, if required by national law;
- the voyage or voyages to be undertaken, if this can be determined at the time of making the agreement;
- the capacity in which the seafarer is to be employed;
- if possible, the place and date at which the seaman is required to report on board for service;
- the scale of provisions to be supplied to the seafarer, unless some alternative system is provided for by national law;
- the amount of wages;
- the termination of the agreement and the conditions thereof, that is to say:

- a) if the agreement has been made for a definite period, the date fixed for its expiry;

⁹ Official Gazette of the Kingdom of Yugoslavia, No. 44/1930.

- b) if the agreement has been made for a voyage, the port of destination and the time which has to expire after arrival before the seafarer shall be discharged;
- c) if the agreement has been made for an indefinite period, the conditions which shall entitle either party to rescind it, as well as the required period of notice for rescission; provided that such period shall not be less for the ship owner than for the seafarer;

- the annual leave with pay granted to the seafarer after one year's service with the same shipping company, if such leave is provided for by national law;
- any other particulars which national law may require.

The Convention also determines that the national law shall make adequate provisions to ensure that the seafarer has understood the extent of his rights and duties, the conditions of the employment and similar, and especially determines the principles on which the agreement may terminate and, consequently the employment relationship:

- an agreement for an indefinite period may be terminated by either party, provided that written notice is given and period of notice shall not be less than twenty-four hours;
- termination of the agreement due to the death of the seafarer, loss or total unseaworthiness of the vessel or any other cause provided in national law or by mutual consent of both parties;
- dismissing of the seafarer; in this case the national law must prescribe in which cases the ship owner or master may dismiss the seafarer immediately and,
- the right of the seafarer to immediately sign of the board vessel in cases allowed by the national law;

In view of the above is perfectly reasonable that the legislator requires prior verification of the legality and specially the registration of the seafarers' employment agreement. According to the Employment Relationships Act, the Minister responsible for maritime affairs in accordance with a Minister responsible for labour should have prescribed the contents, principles and procedures for the registration of agreement concluded with a seafarer, but so far this regulation has not been adopted.

2.2. Conditions for the conclusion of the employment agreement / *Uvjeti za sklapanje ugovora o radu*

The employment relationship is concluded with the employment agreement, which is a bilateral continuing agreement, as there are two contracting parties: employee and employer, or in the case of seafarers' employment agreement, seafarer and shipowner or person authorised by him. Seafarer, who wants to conclude the employment relationship for working on board vessel, must additional to the general requirements for the conclusion of the employment relationship, fulfilled also some specific requirements. As a crew member can be signed on board vessel only with a seafarer's book; with this can prove its professional qualification, medical fitness, its position on vessel and period of employment.

The crew member of the Slovenian flagged vessel can be only the one who:

- has been qualified for the appropriate rank and has for the performance of duties in such rank appropriate certificate; the seafarer may perform on board vessel all works necessary for the operation of the vessel, safety of life at sea and for the protection of environment, on the level of responsibility for which has the certificate and all task from its profession that are lower than those achieved on its level of responsibility. In the Republic of Slovenia evidence of ranks and certificates of seafarers are regulated in the Regulations of Ranks and Certificates of Seafarers.
- is physically and mentally capable for working on board vessel; general and specific health conditions for working on board vessel, that must be met by the crew member, procedures and conditions for the preliminary and periodic medical examinations and obligatory immunisation against specific contagious disease are prescribed in the Rules for the assessment and evaluation of the medical capability of the crew members¹⁰. In accordance with this regulation the Minister of health has issued the decision¹¹, which authorised a doctor and an institution for the medical

examinations of the seafarers and for the immunoprophylaxis and chemoprophylaxis.

According to the Employment Relationships Act age of 15 is an absolute condition for the conclusion of the employment agreement. Exemption to the rule shall be applied for the agreement for the work on board vessel, which can be only concluded by the person with the age of 16. Rule is regulated in the Directive 1999/63/EC.

Special features of the seafarers' employment agreement is related also to the admissible longer period of probationary work, exceptions regarding hours of work and night work and also the possibility for transferring the complete annual leave to the next calendar year.

3. MARITIME LABOUR CONVENTION, 2006 / *Konvencija o radu pomoraca 2006*

The Maritime Labour Convention¹² sets out seafarers' rights to decent conditions of work. It has been designed to become a global instrument known as the "fourth pillar" of the international regulatory regime for quality shipping. This Convention complements the three basic maritime conventions: International Convention for the Safety of life at Sea (SOLAS), International Convention on Standards of Training Certification and Watch-Keeping for Seafarers (STCW) and International Convention for the Prevention of Pollution from Ships (MARPOL).¹³

The new convention brings almost all of the existing maritime labour standards and recommendations together with some updating where necessary with the intent to create a general and integral international convention with clear, easily understandable, readily updatable general social working standards.

The Convention is organized into three main parts: the Articles coming first set out the broad principles and obligations. This is followed by more detailed Regulations and Code (Part A and B) provisions. The Regulations and the Standards (Part A-mandatory) and Guidelines (Part B-not-mandatory) in the

¹² Adopted in Geneva on 23 February 2006 at 94th (Maritime) session of the International Labour Conference, Not yet in force, Republic of Slovenia has not yet ratified.

¹³ SOLAS, as amended, Official Gazette SFRY - International agreements, No. 2/81; STCW, as amended, Official Gazette SFRY - International agreements, No. 3/84; MARPOL, as amended, Official Gazette SFRY - International agreements, No.2/85.

¹⁰ Official Gazette RS, No. 82/03.

¹¹ Decision No. 512-3/2004 of 14. 10. 2005; authorised doctor: M.D. Šime Kopilovič; authorised institution: Institute for Public Health Koper.

Code are integrated and organized into general areas of concern under five Titles:

- Title 1: Minimum requirements for seafarers to work on a ship
- Title 2: Conditions of employment
- Title 3: Accommodation, recreational facilities, food and catering
- Title 4: Health protection, medical care, welfare and social security protection
- Title 5: Compliance and enforcement

To ensure that the instrument is fully effective the Convention introduces two key model documents: a maritime labour certificate and a declaration of maritime labour compliance, which attest to conformity with the rules of the Convention, unless there is proof to the contrary. The certificate would be issued by the Flag State to a ship that flies its flag, once the State or a recognized organization that has been authorized to carry out the inspections, has verified that the labour conditions on the ship comply with national law and rules of the Convention. Under these conditions, the system of certifications guaranteeing conformity with the Convention can be checked by the Port State Control, which will be able, in cases of doubt, to inspect vessels not only for safety or environmental shortcomings but also for reason related to the employment conditions.

The European Commission has also underlined the importance of the social standards and their interaction with a maritime safety, stressing that 80% of maritime accidents are linked to human error. Due to this fact they consider that global minimal social standards, which have not been applied yet, are essential, and that this will have a positive effect to the maritime safety. The Convention will come into force after it has been ratified by 30 ILO Member States with a total share of at least 33 per cent of world gross tonnage. The European Commission is of the opinion that the European Union can become a motive power in the process of bringing into force the Convention, and will encourage rapid ratification by the Member States.

4. CONCLUSIONS / *Zaključci*

In respect of the above, we can find out that the legislation regarding the seafarers' employment is not overall and systematically regulated as is regulated in the Employment Relationships Act

and also in the Maritime Code and in some secondary legislation. Neither the specific provisions for the seafarers have been adopted yet; therefore any seafarer is employed according to the provisions of the Employment Relationships Act.

As regards the social standards valid for seafarers, the Republic of Slovenia should ratify the consolidated Maritime Labour Convention, as soon as possible. The European Commission has also underlined, that the ratification will help to develop competitiveness of the maritime sector, increase the attractiveness of the profession and to long-term sustain technical knowledge and experience on this field.

Recently, we can notice that there is a decrease in interest for the profession of the seafarer and also entry to the nautical school is decreasing. We shall give a real concern to this fact as this activity is of a strategic importance to our country. Shipping industry has namely an important role in the international trade as most efficient, safe and environmentally friendly way of carrying goods around the world.

In view of the fact, that we have only one secondary nautical school and only one faculty for maritime studies, the Government should ensure the promotion of the maritime profession with the recognitions of the quality education and with the promotion of the profession as interesting and perspective. Nautical schools can give a quality education to the future seafarers as their program is in compliance with the STCW Convention.

Unfortunately, both nautical institutions produce every year less and less duly qualified seafarers who join the employment market. With their knowledge they can build a future of a maritime economy, but they need a decent working and living conditions.

We often speak of a "Slovenian shipowner", *Splošna plovba*, but its vessels do not fly the Slovenian flag. Can we speak then of *Splošna plovba* as a "Slovenian shipowner"? According to the Maritime Code a shipowner shall be a person who, in a bareboat charter, delivers possession of a ship; until proved otherwise, it shall be considered that a shipowner is a person who is entered in the ships' register as its owner. As the "only Slovenian shipowner" has none of its vessel registered or under

its operation in the Slovenian ship's register, than we could say that is not a Slovenian shipowner. Despite the fact that its registered office is in the Republic of Slovenia, the Government has no control on its vessels, which are flying the flag of convenience. This means that the Republic of Slovenia cannot perform the Flag State Control on its vessels.

The Republic of Slovenia commits itself with the Resolution on the maritime orientation of the Republic of Slovenia¹⁴ to keep also maritime oriented economy and development policy. For this reason, the Government should established such legal arrangements, that will help the Slovenian shipowner to register its vessel into Slovenian ship's register and to employ on its vessel seafarers under conditions that will allow him to be competitive on the world market.

The first step has been taken with the adoption of the Tonnage Tax¹⁵. The European Commission adopted the Community guidelines on State aid to maritime transport¹⁶ advising the Member States to establish for the shipowner among other aids a specific way of fiscal charge - Tonnage tax. In this way shipowners' competitive position can be facilitated. The Tonnage tax is a specific way of fixing the tax base on shipowners' vessels tonnage. The European Commission considers this as a State aid, but nevertheless allowed it under special conditions. With such imposition the European Commission wants to encourage safe, efficient and environmentally friendly maritime transport, registration renewal of the vessels to the ships register of the Member States, contribute to the integration of the maritime economy in the Member States whilst maintaining a general competitiveness of the fleet and to maintain and develop the maritime knowledge and encourage the employment of the European seafarers.

The Tonnage Tax shall be applicable as from the date on which the European Commission will approve the State Aid Scheme pursuant to the Tonnage Tax law. The Minister for Finance shall announce the information on the approval day of the State Aid Scheme in the Official Gazette of the Republic of Slovenia. The approval is still under process.

As we can see, there is still a lot of

¹⁴ Official Gazette RS, No. 10/91.

¹⁵ Official Gazette RS, No. 61/07.

¹⁶ Official Journal EU, C 013, 17. 1. 2004.

work to do in the field of the seafarers' employment and to ensure decent working and living conditions, but undoubtedly it is necessary to combat unfair practices on board vessels. First of all we shall: harmonise the legislation, promote and develop maritime education and training, encourage registration renewal of the vessels into our ships' register.

The promotion of the maritime profession and Slovenian flagged vessels will contribute to the development of the Republic of Slovenia to a modern also maritime oriented country.

REFERENCES / Literatura

1. Management for the Safe Operation of Ships and for Pollution Prevention, IMO Assembly Resolution A.647, London, 1989.
2. International Management Code for the Safe Operation of Ships and for Pollution Prevention (slo. Kodeks varnega upravljanja ladij in preprečevanja onesnaževanj), IMO Assembly Resolution A.741, London, 1993.
3. Zakon o delovnih razmerjih (ZDR), GV Založba, Ljubljana, 2008.
4. Directive 1999/95/EC of the European Parliament and of the Council of 13 December 1999 concerning the enforcement of provisions in respect of seafarers' hours of work on board ships calling at Community ports, Official Journal, L 14, 20. 1. 2000, p. 29-35.
5. Pravilnik o inšpekcijskem nadzoru delovnega časa pomorščakov, Uradni list RS, št. 32/2007.
6. Directive 1999/63/EC of the European Council of 21 June 1999 concerning Agreement on the organisation of working time of seafarers concluded by the European Community Shipowners' Association (ECSA) and the Federation of Transport Workers Unions in the European Community, Official Journal, L 167, 2. 7. 1999.
7. Pravilnik o nazivih in pooblastilih pomorščakov, Uradni list RS, št. 89/05, 95/07.
8. Pomorski zakonik, Uradni list RS, št. 120/06 (uradno prečiščeno besedilo).
9. Konvencija št. 22 o pogodbi o zaposlitvi mornarjev, Službene novine Kraljevine Jugoslavije, št. 44/1930; Mitja Novak (et al.), Konvencije Mednarodne organizacije dela s komentarjem, Inštitut za delo pri Pravni fakulteti Univerze v Ljubljani, GV Založba, Ljubljana, p. 452-459, 2006.
10. Pravilnik o ugotavljanju in oceni zdravstvene zmožnosti članov posadke na ladjah, Uradni list RS, št. 82/03.
11. Odločba Ministrstva za zdravje, št. 512-3/2004-6 z dne 14. 10. 2005.
12. International Labour Office, International Labour Conference, Maritime Labour Convention, Geneva, 2006.
13. Mednarodna konvencija o varstvu človeškega življenja na morju, Uradni list SFRJ-mednarodne pogodbe, št. 2/81; Mednarodna konvencija o standardih za usposabljanje, izdajanja spričeval in ladijsko stražarjenje pomorščakov, Uradni list SFRJ-Mednarodne pogodbe, št. 3/84; Mednarodna konvencija o preprečevanju onesnaženja z ladjami, Uradni list SFRJ-Mednarodne pogodbe, št. 2/85.
14. Resolucija o pomorski usmeritvi Republike Slovenije, Uradni list RS, št. 10/91.
15. Zakon o davku na tonažo, Uradni list RS, št. 61/07.
16. Community guidelines on State aid to maritime transport, Official Journal, C 013, 17. 1. 2004.