REGULATION OF THE EMPLOYMENT STATUS OF SEAFARERS

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This article discusses the specifics of the employment relationship of seafarers who not only perform their obligations on a ship under an employment contract, but also live far away from their permanent residence, with limited contact with their home environment, including their families. In the past, their position was less than envious, since they, as a party in the working relationship, were clearly under the authority of the shipowner and were very poorly informed about their rights. The situation began to improve in recent times, when the legislator and international organisations, such as the International Maritime Organization (ILO), began to adopt legislation to regulate their position. The Maritime Labour Convention, 2006 (MLC, 2006) is of key importance in the legislation that has recently been adopted to improve the position of seafarers. Its greatest value is that it introduces port state control, which means that member states carry out inspections on ships arriving at their ports to ensure that they comply with its provisions. Regardless of the above, the position of seafarers is still far from desirable as shipowners are trying to reduce their operating costs by cutting down on the number of crew members and their benefits. The situation of seafarers should not only be improved with appropriate legislation, but also with its implementation. The main purpose of this article is to point out the specifics of the legal regulation of the position of seafarers, which cannot be regulated by the provisions of general labour law, and to analyse the development of such regulation which began to improve the position of seafarers from the middle of the 19th century. However, it is necessary to highlight that the legal regulation of seafarers is not a new phenomenon, since it is possible to find regulations from as early as the Middle Ages that contained certain provisions that could serve as an example for modern regulations. Another purpose of this article is to point out that different national regulations are based on the same principles of regulating the position of seafarers. With this aim, the

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position of seafarers in Slovenia, Croatia, and Italy is analysed. The legislations of the three countries are more or less in compliance with the MLC, 2006 and other international conventions, but they differ in their scope, which is influenced by the extent and importance of the maritime sector in their national economies.

Keywords: *seafarers; contract of employment; International Labour Organization (ILO); Maritime Labour Convention, 2006; repatriation; port state control.*

1. INTRODUCTION

As in all employment relationships, seafarers are under the authority of an employer (i.e., a shipowner). However, certain characteristics of the relationship between seafarers and shipowners cannot be regulated within general labour legislation. Due to the nature of their work, seafarers face entirely different risks and working conditions than other employees. Seafarers operate in an environment and in conditions of considerable risk summarised in the well-known formula of *"risicum maris et gentis"*, with long periods of absence from their homes and families, with scarce and sporadic opportunities for contact that may cause them social and economic instability; for this reason, the intervention of the legislator is particularly incisive, including the introduction of a contract in a public administrative form still required today to address the risks to which seafarers are exposed.[1]

In the past, the position of seafarers was not envious. In many cases, seafarers were forced to accept jobs far below the standards of legal protection.[2] Their poor working conditions were also caused by the lack of appropriate labour legislation. People from the bottom of society, with a lack of schooling or poor education that would enable them to exercise their rights, often chose to become seafarers. This is much less the case now, which applies especially to Europe, North America, and the rest of the developed world. However, this is still a problem for seafarers who are recruited from underdeveloped parts of the world. With advances in technology and the adoption of seafarers' legislation at

[1] Comenale Pinto, M. M., Il contratto di arruolamento nel diritto della navigazione, *Il diritto marittimo*, vol. 2014, nos. 2-4, pp. 277-278.

[2] Bilić, A.; Smokvina, V., Problemi i perspektive ugovora o radu pomoraca u svijetlu konvencije o radu pomoraca uz poseban osvrt na hrvatsko zakonodavstvo (Problems and Perspectives of Seafarers' Labour Contracts in the Light of Maritime Labour Convention with Special Reference to Croatian Legislation), in: Amižić Jelovčić, P. (ed.), *Zbornik radova 3. međunarodne znanstvene konferencije pomorskog prava "Suvremeni izazovi pomorske plovidbe" (MZKPP Split, 2021.) (The Book of Proceedings of the 3rd International Scientific Conference on Maritime Law "Modern Challenges of Marine Navigation" (ISCML Split 2021))*, Faculty of Law, University of Split, Split, 2021, p. 12.

national and international levels, the living and working conditions of seafarers on ships have improved. Nonetheless, there are new challenges that require the constant improvement of the seafarers' status, especially the reduction of the crew and the increased intensity of loading and unloading of cargo when the ship is in port and when the shipowner uses all crew members to the maximum, not allowing them to leave the vessel.[3]

2. HISTORICAL OVERVIEW

Contrary to the impression that the position of seafarers began to be regulated only after the First World War, with the International Labour Organization (ILO) adopting conventions regulating the position of seafarers, there had already been awareness that seafarers should be entitled to special legal protection.

The development of the modern legal protection of seafarers began in the 19th century through case law and the first legal acts, although the position of seafarers had been quite thoroughly regulated in most medieval sea codes. Promulgated in 1200, the Rolls of Oléron asserted, "I(f) the master () orders and commands any of the ships' company … in the service of the ship, and (they) thereby happen to be wounded or otherwise hurt, … they shall be cured and provided for at the cost and charges of the said ship".[4] As well as other medieval maritime codes, these laws not only provided for medical treatment for crew members, but also broader "social security". Such codes also existed in the area of the Adriatic Sea. In accordance with the Zadar Statute from the 14th century, salaries of sailors employed on a fixed-term basis were established as payments by instalments. They would receive their first payment on the day of signing the contract, the second one upon 2/3 completion, and the third upon 3/3 completion of the voyage.[5] According to the Dubrovnik Statute from 1272, if a sailor got ill in Dubrovnik, before the commencement of the voyage and after receiving the salary, he had to give it back to the shipowner, but if the ship had sailed out of Dubrovnik and the sailor had to be discharged at some place other than Dubrovnik, he was entitled to a salary in proportion to the time he had served on board the ship. Sailors in Dubrovnik were also entitled to participate in the profits of the maritime enterprise. If the ship sailed within the Adriatic Sea, the profit was divided into thirds between the sailors, the merchant, and the shipowner, but if the ship sailed

[3] *Ibidem*, p. 14.

[4] The Laws of Oléron (The Rules of Oléron), Article VI.

[5] Bartulović, Ž.; Aflić, M., Sailor's Service from Medieval Times to Modern Maritime Labour Conventions, *Pomorski zbornik*, vol. 55 (2018), no. 1, p. 169.

outside the Adriatic Sea, the merchant received half of the profit, and the sailors and shipowners a quarter each. Sailors could enter into special agreements to their own benefit, using their right to load certain goods on board, as cabin baggage, which they were allowed to sell on the captain's approval.[6] All of the above shows a fairly advanced regulation of the seafarer's position for that time, in some cases more advanced than at the beginning of the 19th century, when common case law protecting the seafarer's position started to develop.

In England, the Court of Admiralty in the 19th century was concerned about the position of seafarers and tried to strike a balance between shipowners and seafarers.[7] In the *Minerva* case, Lord Stowell emphasised that seafarers were a population that was generally ignorant and illiterate, notoriously and proverbially reckless and improvident, ill provided with the means of obtaining useful information, and almost ready to sign any instrument regarding wages and conditions that may be proposed to them, even against themselves.[8] The aforementioned positions contributed to the fact that the courts in the British Empire began to treat seafarers as persons who, due to their weaker position, must receive special protection. A similar position existed in the United States in the case of *Harden v. Gordon*.[9] In this case, the court decided that the shipowner was responsible for charges related to board and lodging and the nursing of a sick seafarer on shore under maritime law, and that a stipulation tying the seafarer's wages to the successful completion of a long voyage was unfair and illegal.

The legislature followed the courts somewhat later. Although one of the main reasons for regulating the position of seafarers was the improvement of their social situation, this was not the only reason for the adoption of such legislation. Another reason was the awareness that the regulated position of seafarers helps to strengthen the country's merchant marine fleet.[10]

In 1876, after years of campaigning, the British Parliament amended the Merchant Shipping Act to discourage the overloading of cargo ships by means of mandatory "load lines", a symbol displayed on the hull to mark the minimum "freeboard".[11] The aforementioned amendment to the Merchant Shipping Act

6 *Ibidem,* pp. 170-171.

7 Carey, L., The Maritime Labour Convention, 2006: The Seafarer and the Fisher, *Australian and New Zealand Maritime Law Journal*, vol. 31 (2017), no. 1, p. 15.

8 *The Minerva* (1825) 1 Hagg Adm 347.

9 *Harden v. Gordon*, 11 F. Cas. 480 (No. 6047), 2000 AMC 893 (C.C.D. me. 1823), p. 893.

10 Comenale Pinto, M. M., Il contratto di arruolamento…, *op. cit.*, p. 277.

11 Piniella, F.; Silos, J. M.; Bernal, F., Who Will Give Effect to the ILO's Maritime Labour Convention, 2006?, *International Labour Review,* vol. 152 (2013), no. 1, p. 60.

was not intended to systematically improve the position of seafarers, but it contributed significantly to their safety. Before that, seafarers had to board ships even if they were overloaded. The systematic regulation of the position of seafarers can only be discussed with the amendment of the Merchant Shipping Act in 1894. With the amendments to the aforementioned act, a number of preventive measures were introduced, which improved the safety of seafarers. The act regulated the training and qualifications of seafarers, rules of navigation and signalling, ship construction, and maritime safety. It also contained a stipulation that if the ship's crew exceeded a hundred persons, a medical practitioner had to be present on the ship.[12] This act effectively planted the seed of future international maritime conventions.[13]

Before the First World War, Great Britain was a superpower in both merchant and military navies, so it is not surprising that it was the first to begin the process of adopting legislation aimed at improving the safety of seafarers. It was therefore only a matter of time before the process of creating legislation aimed at improving the position of seafarers at the international level began, all the more because the first conventions of maritime law, although not in the field of improving the situation of seafarers, started to be adopted during this period.[14] In this respect, a conference was held in Washington in 1889 aimed at adopting legislation to prevent collisions at sea. The Titanic disaster in 1912 led to the organisation of an international conference in London in 1914. One of its outcomes was the preparation of the text of the Convention on the Safety of Life at Sea. It was due to enter into force in 1915, but did not because of the First World War.[15]

3. DEVELOPMENT OF MODERN SEAFARERS' EMPLOYMENT REGULATIONS

At the international level, seafarers' labour rights were regulated at the end of the First World War with the establishment of the ILO in 1919 as part of the Treaty of Versailles, with the aim of supporting countries in creating labour legislation and other regulations that would ensure humane working conditions

[12] Merchant Shipping Act (UK), Article 209.

[13] Piniella, F. *et al.,* Who Will Give Effect…, *op. cit.*, p. 60.

[14] Thus, in 1910, two international conventions in the field of maritime law were adopted: the Convention for the Unification of Certain Rules of Law respecting Assistance and Salvage at Sea (The Salvage Convention 1910) and the Convention for the Unification of Certain Rules of Law with Respect to Collision Between Vessels (The Collision Convention 1910).

[15] Piniella, F. *et al.*, Who Will Give Effect…, *op. cit.*, p. 61.

for workers and prevent exploitation by employers.[16] The ILO became the first of the United Nations' specialised agencies. Because of the international nature of maritime transport, not significantly affected even at the time of relatively closed national borders, and the rather unenviable position of seafarers as one of the key stakeholders in the implementation of maritime transport, the ILO has adopted many conventions[17] and recommendations[18] regulating the position of

[16] Rozić, I.; Vuković, T.; Božiković, N., Kolektivni ugovori kao izvor prava za reguliranje radnog statusa pomoraca u Republici Hrvatskoj, *Zbornik Pravnog fakulteta Sveučilišta u Rijeci*, vol. 42 (2021), no. 3, p. 697.

[17] Minimum Age (Sea) Convention, 1920 (No. 7); Unemployment Indemnity (Shipwreck) Convention, 1920 (No. 8); Placing of Seamen Convention, 1920 (No. 9); Minimum Age (Trimmers and Stokers) Convention, 1921 (No. 15); Medical Examination of Young Persons (Sea) Convention, 1921 (No. 16); Inspection of Emigrants Convention, 1926 (No. 21); Seamen's Articles of Agreement Convention, 1926 (No. 22); Repatriation of Seamen Convention, 1926 (No. 23); Marking of Weight (Packages Transported by Vessels) Convention, 1929 (No. 27); Protection against Accidents (Dockers) Convention (Revised), 1932 (No. 32); Officers' Competency Certificates Convention, 1936 (No. 53); Holidays with Pay (Sea) Convention, 1936 (No. 54); Shipowners' Liability (Sick and Injured Seamen) Convention, 1936 (No. 55); Hours of Work and Manning (Sea) Convention, 1936 (No. 57); Minimum Age (Sea) Convention (Revised), 1936 (No. 58); Food and Catering (Ships' Crews) Convention, 1946 (No. 68); Certification of Ships' Cooks Convention, 1946 (No. 69); Seafarers' Pensions Convention, 1946 (No. 71); Paid Vacations (Seafarers) Convention, 1946 (No. 72); Medical Examination (Seafarers) Convention, 1946 (No. 73); Accommodation of Crews Convention, 1946 (No. 75); Wages, Hours of Work and Manning (Sea) Convention, 1946 (No. 76); Paid Vacations (Seafarers) Convention (Revised), 1949 (No. 91); Accommodation of Crews Convention (Revised), 1949 (No. 92); Seafarers' Identity Documents Convention, 1958 (No. 108); Minimum Age (Fishermen) Convention, 1959 (No. 112); Medical Examination (Fishermen) Convention, 1959 (No. 113); Fishermen's Articles of Agreement Convention, 1959 (No. 114); Fishermen's Competency Certificates Convention, 1966 (No. 125); Accommodation of Crews (Fishermen) Convention, 1966 (No. 126); Accommodation of Crews (Supplementary Provisions) Convention, 1970 (No. 133); Dock Work Convention, 1973 (No. 137); Continuity of Employment (Seafarers) Convention, 1976 (No. 145); Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147); Occupational Safety and Health (Dock Work) Convention, 1979 (No. 152); Health Protection and Medical Care (Seafarers) Convention, 1987 (No. 164); Repatriation of Seafarers Convention (Revised), 1987 (No. 166); Recruitment and Placement of Seafarers Convention, 1996 (No. 179); Seafarers' Hours of Work and the Manning of Ships Convention, 1996 (No. 180).

[18] Hours of Work (Fishing) Recommendation, 1920 (No. 7); Hours of Work (Inland Navigation) Recommendation, 1920 (No. 8); National Seamen's Codes Recommendation, 1920 (No. 9); Unemployment Insurance (Seamen) Recommendation, 1920 (No. 10); Migration (Protection of Females at Sea) Recommendation, 1926 (No. 26); Repatriation (Ship Masters and Apprentices) Recommendation, 1926 (No. 27); Labour Inspection (Seamen) Recommendation, 1926 (No. 28); Protection against Accidents (Dockers) Reciprocity Recommendation, 1929 (No. 33); Protection against Accidents (Dockers) Consultation of Organisations Recommendation, 1929 (No. 34); Seamen's Welfare in Ports Recommendation, 1936

seafarers. The main difference between conventions and recommendations is that conventions are legally binding on member states that have ratified them, while recommendations have only an advisory function.

With the exception of the MLC, 2006, all conventions and recommendations regarding the seafarers' position adopted since the ILO's foundation regulate only specific relations of seafarers. However, this does not diminish the importance of the ILO and all the conventions and recommendations that have been adopted for the protection of seafarers. Each individual convention or recommendation represents an issue that needed to be solved in relation to seafarers, but some conventions and recommendations are also very technical. With the growing number of conventions and recommendations, the question arises whether they could be ranked by their importance, but, from the seafarers' perspective, it is very difficult to establish which aspects of labour legislation are more important than others.

Rather than the question of the importance of an individual convention or recommendation, the question of the implementation of individual conventions and recommendations arises. The ILO has 187 member states[19] characterised by different economic, cultural, and social conditions. All this affects the very implementation of conventions and recommendations at the national level. For this reason, it is not surprising that the provisions of the conventions are not equally enforced in all ILO member states, and, of course, shipowners are aware of this.

(No. 48); Hours of Work and Manning (Sea) Recommendation, 1936 (No. 49); Seafarers' Social Security (Agreements) Recommendation, 1946 (No. 75); Seafarers (Medical Care for Dependants) Recommendation, 1946 (No. 76); Vocational Training (Seafarers) Recommendation, 1946 (No. 77); Bedding, Mess Utensils and Miscellaneous Provisions (Ships' Crews) Recommendation, 1946 (No. 78); Ships' Medicine Chests Recommendation, 1958 (No. 105); Medical Advice at Sea Recommendation, 1958 (No. 106); Seafarers' Engagement (Foreign Vessels) Recommendation, 1958 (No. 107); Social Conditions and Safety (Seafarers) Recommendation, 1958 (No. 108); Vocational Training (Seafarers) Recommendation, 1970 (No. 137); Seafarers' Welfare Recommendation, 1970 (No. 138); Employment of Seafarers (Technical Developments) Recommendation, 1970 (No. 139); Crew Accommodation (Air Conditioning) Recommendation, 1970 (No. 140); Crew Accommodation (Noise Control) Recommendation, 1970 (No. 141); Dock Work Recommendation, 1973 (No. 145); Protection of Young Seafarers Recommendation, 1976 (No. 153); Continuity of Employment (Seafarers) Recommendation, 1976 (No. 154); Merchant Shipping (Improvement of Standards) Recommendation, 1976 (No. 155); Occupational Safety and Health (Dock Work) Recommendation, 1979 (No. 160); Seafarers' Welfare Recommendation, 1987 (No. 173); Repatriation of Seafarers Recommendation, 1987 (No. 174).

[19] For more on the ILO, see https://www.ilo.org/global/about-the-ilo/lang--en/index.htm (accessed 31 August 2023).

As has been emphasised, one of the characteristics of the ILO conventions and recommendations that have been adopted since the establishment of the organisation is that they dealt with narrower areas of relations that needed to be regulated for seafarers. In this regard, some specific areas were soundly regulated, although a convention that would comprehensively regulate the legal position of seafarers was not adopted until the adoption of the MLC, 2006. Specific regulations of individual areas turned out to be problematic due to the long time span in which individual conventions were adopted, i.e. since the end of the First World War. Above all, the conventions adopted before the Second World War are wholly unsuitable for seafarers' working conditions today.[20]

3.1. Maritime Labour Convention, 2006

The problem of regulating individual aspects of seafarers' employment was solved by the MLC, 2006, which was adopted at the 94th International Labour Conference in Geneva between 7 and 23 February 2006. The decision to draft a new convention was the result of a 2001 resolution that the international seafarers' and ship owners' organisations had jointly adopted and which was later proposed for consideration to the ILO Assembly by a substantial number of member states. On the basis of extensive consultations between 2001 and 2006 by representatives of seafarers and shipowners as well as many international governmental and non-governmental organisations and government representatives, a text was prepared for adoption at the conference.[21] The Convention defines that it enters into force twelve months after the thirtieth country ratifies it, but on condition that these include countries with a share of at least 33% of gross tonnage. In accordance with the above, the Convention entered into force in October 2013.

The MLC, 2006 is labelled the "Fourth Pillar" of the international regulatory regime for safe shipping, complementing three existing conventions of the International Maritime Organization (IMO).[22] The first three pillars represent three IMO conventions: the International Convention for the Safety of Life at Sea – SOLAS,[23] the International Convention for the Prevention of Pollution from

[20] Bilić, A.; Smokvina, V., Problemi i perspektive ugovora o radu pomoraca…, *op. cit.*, p. 18.

[21] Ntovas, A. X. M., Introductory Note to the Maritime Labour Convention, *International Legal Materials*, vol. 53 (2014), no. 5, p. 933.

[22] Carey, L., The Maritime Labour Convention, 2006…, *op. cit.*, p. 19.

[23] The main objective of the SOLAS Convention is to specify minimum standards for the construction, equipment and operation of ships, compatible with their safety. Flag States are responsible for ensuring that ships under their flag comply with its requirements, and

Ships – MARPOL,[24] and the International Convention for Standards of Training, Certification and Watchkeeping for Seafarers – STCW.[25]

Compared to the MLC, 2006, the main purpose of which is to regulate the social status of seafarers, the conventions created within the framework of the IMO, which are part of the "Fourth Pillar" system, are significantly more technical in nature. The violation of a single convention of this Pillar is not necessarily a violation of some important institutes of maritime law such as seaworthiness, as defined in more detail hereinafter. The position of seafarers is affected not only if the MLC, 2006 is violated, but also if they are boarded on a ship that does not meet the minimum construction standards prescribed by the SOLAS Convention or if they have not reached the minimum training standards prescribed by the STCW Convention. On the other hand, it is necessary to consider the MLC, 2006 and the other conventions that form the four-pillar system within the framework of the maritime undertaking as a whole, because their violation has far-reaching consequences; their violation is not only a violation of public law investigated by the competent state inspection authorities, but also extends to the field of private legal relationships of the maritime undertaking. Violation of the provisions of the conventions of the four-pillar system itself can also lead to a situation where the vessel can be declared unseaworthy. However, the term seaworthiness covers more than the technical or physical condition of the ship. Particular standards of the industry governing the seaworthiness of vessels are regulated by IMO conventions, namely SOLAS and STCW.[26] Seaworthiness is defined as the state of a vessel in such a condition, with such equipment, and manned by such a master and crew, that normally the cargo will be loaded, carried, cared for and discharged properly and safely on the contemplated voyage.[27] This means, among other things, that the ship must also be adequately

a number of certificates are prescribed in the Convention as proof that this has been done, available at https://www.imo.org/en/About/Conventions/Pages/International-Convention-for-the-Safety-of-Life-at-Sea-(SOLAS),-1974.aspx (accessed 31 August 2023).

[24] MARPOL is the main international convention covering prevention of pollution of the marine environment by ships from operational or accidental causes, available at https://www.imo.org/en/about/Conventions/Pages/International-Convention-for-the-Prevention-of-Pollution-from-Ships-(MARPOL).aspx (accessed 3 September 2023).

[25] STCW prescribes minimum standards relating to training, certification and watchkeeping for seafarers which countries are obliged to meet or exceed, available at https://www.imo.org/en/ourwork/humanelement/pages/stcw-conv-link.aspx (accessed 3 September 2023).

[26] Aladwani, T., Effect of Shipping Standards on Seaworthiness, *European Journal of Commercial Contract*, vol. 3 (2011), no. 2, p. 34.

[27] Tetley, W., *Marine Cargo Claims*, 3rd Edition, Les Éditions Yvon Blais, Montreal, 1988, p. 370.

equipped for navigation.[28] In this respect, when the seafarers are not provided with adequate food and drinking water, not only is the MLC, 2006 violated,[29] but the ship is also considered unseaworthy,[30] and if damage occurs as a result, the shipowner is responsible. Until now, there has been no case law for ships deemed unseaworthy because of MLC, 2006 violations. However, a breach of SOLAS was established in the case of *The Marine Sulphur Queen*,[31] where the court considered that the vessel violated the building regulations and was therefore considered unseaworthy. The construction regulations of merchant vessels are extracted from the regulations of SOLAS. Nevertheless, it should be noted that not all violations of the MLC, 2006 and of other labour legislation, which may also have an impact on navigation, are considered to make the ship unseaworthy. In the case of *Alfred C. Toepfer v. Schiffahrtsgesellschaft G.m.b.H. v. Tossa Marine Co. Ltd.*,[32] the court stated that seaworthiness covers more than the physical state of the ship. However, it is clear that the term does not impose an obligation on the carrier to ensure that the wages paid to the seafarers on board the vessel have been approved by the International Transport Workers Federation.

The primary aims of the MLC, 2006 are to ensure comprehensive worldwide protection of seafarers' rights and to "level the playing field" for operators by protecting shipowners and countries committed to the protection of seafarers from unfair competition on the part of substandard ships.[33] From this point of view, the MLC, 2006 has three underlying purposes:

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28 *Ibidem*.

29 MLC, 2006 obliges member states to ensure that food and drinking water of appropriate quality are provided on ships flying their flag (Regulation 3.2). The said obligation of member states is specified even more precisely by the provisions relating to the provision of minimum supplies of food and drinking water (Standard A3.2).

30 Law firms and insurance companies often start from the point of view that if the ship is not supplied with adequate supplies of food and drinking water, it is not seaworthy, as for example: "Unsanitary living conditions are another form of unseaworthiness. Spoiled food, lack of safe drinking water, and other basic deficiencies can all lead to serious illnesses and conditions that require immediate medical attention out at sea". Morrow & Sheppard LLP, 10 Things That Can Make a Vessel Unseaworthy, 31 August 2021, available at https://www.morrowsheppard.com/blog/10-things-can-make-vessel-unseaworthy/ (accessed 19 June 2023); Accessible Marine Insurance (AMI) considers the lack of adequate food provisions and other provisions for seafarers as the unseaworthiness of the ship, available at https://ami-ins.com/unseaworthiness/ (accessed 19 June 2023).

31 *The Marine Sulphur Queen* (1973) 1 Lloyd's Rep. 88.

32 *The Derby, Alfred C. Toepfer v. Schiffahrtsgesellschaft G.m.b.H. v. Tossa Marine Co. Ltd*. (1985) 2 Lloyd's Rep. 325.

33 Carey, L., The Maritime Labour Convention, 2006…, *op. cit*., p. 19.

- to lay down (in its Articles and Regulations) a firm set of principles and rights;
- to allow (through the Code) a considerable degree of flexibility in the way members implement these principles and rights; and
- to ensure (through Title 5) that the principles and rights are properly complied with and enforced.[34]

3.1.1. Structure of the Maritime Labour Convention, 2006

The MLC, 2006 contains three interconnected parts, namely Articles, Regulations, and Code. The Convention consists of standards (part A) and guidelines (part B). The Articles and Regulations set out the core rights and principles and the basic obligations of members ratifying the Convention.[35] The Convention details implementation of the Regulations. It comprises Part A (mandatory Standards) and Part B (non-mandatory Guidelines).[36] After ratification of the MLC, the member states are obliged to ensure the application of the provisions contained in the Regulation and Standards from Part A of the Convention. The application of Part B, which refers to the Guidelines, is not mandatory and is left to the discretion of each country.

The Convention consists of 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.

3.1.2. Regulation of Labour Relations According to the MLC, 2006 and the Obligations of Countries that Have Ratified the Convention

The provisions of the MLC, 2006 can be classified according to purely technical criteria or according to the purposes of implementation. The purposes of MLC, 2006 implementation can be further divided into provisions defining seafarers' rights guaranteed by the MLC, 2006 (Titles 1-4) and various enforcement and compliance provisions (Title 5 of the Convention).

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[34] *Ibidem*.

[35] MLC, 2006, Explanatory note to the Regulations and Code of the Maritime Labour Convention, paragraph 3.

[36] MLC, 2006, Explanatory note to the Regulations and Code of the Maritime Labour Convention, paragraph 4.

3.1.2.1. Recruitment

Recruitment provisions in the MLC, 2006 are divided into age, health, and professional requirements for seafarers, specifying who can be recruited in the first place. In connection with the employment of seafarers, age criteria, health criteria, and professional qualification criteria have to be met to prevent child labour and ensure that no underage persons work on a ship, the minimum age of employment is 16 years.[37] Health provisions require that, with exceptions specified by the Code, seafarers shall not work on a ship unless they are certified as medically fit to perform their duties.[38] Professional requirements for seafarers include a recruitment and placement system stipulating that crew members may not work on a ship unless they are trained or certified as competent or otherwise qualified to perform duties.[39] The MLC, 2006 provides all seafarers with free access to an efficient, fair, and transparent shipboard employment system.[40] According to the MLC, 2006, member states can have public seafarer recruitment and placement services or private ones. The latter must be operated only in conformity with the standardised system of licensing or certification, or another form of regulation.[41]

3.1.2.2. Seafarers' Employment Agreements and Their Rights from the Employment Relationship

The regulation of seafarers' employment agreements is one of the central topics of the MLC, 2006. Through this regulation, the Convention tries to prevent situations that in the past have led seafarers to a distinctly subordinate position, either because they were forced into it or were unaware of their rights. In this respect, the seafarer's employment agreement as regulated by the MLC, 2006 intends to prevent such situations by providing clear information both to the seafarers, shipowners, flag state inspectors, and port state inspectors alike in order to readily demonstrate compliance with the MLC, 2006.[42]

All the above is specified in the MLC, 2006 stipulating that an employment contract must be set out in a clearly written, legally enforceable agreement, in

37 MLC, 2006, Regulation 1.1, paragraph 2.

38 MLC, 2006, Regulation 1.2.

39 MLC, 2006, Regulation 1.3, paragraph 1.

40 MLC, 2006, Regulation 1.4, paragraph 1.

41 MLC, 2006, Standard A1.4, paragraph 2.

42 Carey, L., The Maritime Labour Convention, 2006…, *op. cit.*, p. 21.

accordance with the standards set out in the Code.[43] An employment agreement in written form was introduced by the MLC, 2006 to minimise dilemmas as to what the two parties have agreed upon. The position of seafarers was upgraded to allow them to review and seek advice on the terms and conditions in the agreement and accept them freely before signing.[44] Bearing in mind that seafarers are mostly ill-informed or uneducated in law, the MLC, 2006 gives them the opportunity to examine the employment contract before concluding it and, if necessary, seek advice from experts. In this way, the MLC, 2006 creates the conditions for eliminating one of the problems that occurred for seafarers in the past.

In the context of the MLC, 2006 provision stipulating that the terms of employment of seafarers must be defined in a clear and legally enforceable contract, the question arises: What is a legally enforceable contract? The answer is simple: a legally enforceable contract is one with contents directly mandatory for the contracting parties according to the MLC, 2006 (regulations and standards), or according to the MLC, 2006 recommendations (guidelines) that become mandatory if declared as such by a member state. If not stated otherwise, the provisions of the MLC, 2006 or national legislation apply. No contract of employment that breaches the MLC, 2006 and national law can be legally enforceable. An employment contract that is in accordance with national law but does not comply with the provisions of the MLC, 2006 to the extent ratified by the country is also null and void.

Since an employment agreement is a bilaterally binding contract, one of the basic obligations of a shipowner is to pay wages to seafarers. The MLC, 2006 defines that seafarers working on a ship flying the flag of a member state must be paid at intervals not exceeding one month.[45] With this provision, the MLC, 2006 ensures regular payment of incomes to seafarers, which had proven to be a great problem in the past. Regardless of the importance of paying seafarers a regular income, the provision fails to solve the issue of low wages that do not allow seafarers and their families to enjoy at least a minimal standard of living. Although the Convention fails to address the socioeconomic issue of poverty among crew members, it does stipulate that, without prejudice to the principle of free collective bargaining, each member state should, after consulting representative shipowners' and seafarers' organisations, establish procedures for determining the wages of seafarers.[46] However, this provision is only a non-

[43] MLC, 2006, Regulation 2.1, paragraph 1.

[44] MLC, 2006, Regulation 2.1, paragraph 2.

[45] MLC, 2006, Standard A2.2, paragraph 1.

[46] MLC, 2006, Guideline B2.2.3, paragraph 1.

binding guideline. In most countries, the wages of seafarers are either regulated by special rules or governed by collective agreements.

In addition to wages, the MLC, 2006 regulates other rights of seafarers, which must be taken into account when concluding employment contracts with them. The minimum hours of rest are ten hours per day and 77 hours per week.[47] Regulated hours of rest are essential to prevent seafarers from becoming fatigued, which can greatly affect their safety, the safety of the crew, and the safety of the ship. The MLC, 2006 itself does not define the state of fatigue, which is already defined by the IMO in its documents.[48] The MLC, 2006 specifically states that seafarers are entitled to paid leave. Minimum standards for annual leave for seafarers are determined by each member state. The length of paid annual leave is calculated on the basis of a minimum of 2.5 calendar days per month of employment.[49]

One of the main characteristics of seafarers' employment is that they perform it far from their permanent residence. One of the negative consequences of the said circumstance that has been proven in the past is that seafarers were abandoned by the shipowner without means to return home. For this reason, the MLC, 2006 regulates the possibility of repatriation of seafarers: (i) if the seafarers' employment agreement expires while they are abroad; (ii) when the seafarers' employment agreement is terminated by the shipowner or by the seafarer for justified reason; (iii) when the seafarers are no longer able to carry out their duties under their employment agreement or cannot be expected to carry them out in the specific circumstances.[50]

In order to ensure smooth repatriation and to prevent cases where the shipowner does not have the financial means to carry it out, the MLC, 2006 provides that each member state shall require that ships sailing under its flag have financial security to ensure that seafarers are repatriated.[51]

These constitute the basic seafarers' rights from the legal employment relationship, in accordance with the provisions of the MLC, 2006.

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47 MLC, 2006, Standard A2.3, paragraph 5.

48 The Maritime Safety Committee of the IMO approved MSC.1/Circ. 1598 Guidelines on Fatigue, with an annex defining fatigue as a state of physical and/or mental impairment resulting from factors such as inadequate sleep, extended wakefulness, work/rest requirements, out of sync with circadian rhythms, and physical, mental or emotional exertion that can impair alertness and the ability to safely operate a ship or perform safety-related duties.

49 MLC, 2006, Standard A2.4, paragraph 2.

50 MLC, 2006, Standard A2.5.1, paragraph 1.

51 MLC, 2006, Regulation 2.5.

Title 2 with conditions of employment includes provisions concerning the number of crew members, career and skills development, and opportunities for seafarers' employment that are normally not part of seafarers' employment agreements. Nonetheless, the question arises as to whether seafarers in an employment relationship could file a claim against the shipowner if these provisions are violated. Such a claim could not be ignored based on the shipowner's general liability to seafarers. So, for example, if the shipowner has a smaller number of crew members than prescribed and consequently endangers the safe operation of the ship, causing damage to the seafarers (whether due to injuries or something else), the seafarers would succeed in a compensation case against the shipowner.

In addition to Title 2, which defines the direct employment conditions of seafarers, seafarers' rights are also defined in Title 3 and Title 4, establishing some important rights not directly regulated in employment contracts with shipowners. While Title 3 covers the accommodation, recreational facilities, food and catering of crew members, Title 4 regulates health protection, medical care, welfare and social security protection. Social security protection includes medical care, sickness benefit, unemployment benefit, old-age benefit, employment injury benefit, family benefit, maternity benefit, disability benefit, and survivors' benefit.[52]

3.1.2.3. Compliance and Enforcement

No convention, even one that is perfect from a systemic and substantive point of view, can achieve its purpose if it does not include mechanisms for its enforcement. This challenge is thoroughly addressed in Title 5 of the MLC, 2006 with its provisions regulating three areas: flag state responsibilities, port state responsibilities, and labour-supplying state responsibilities.

Member states are responsible for the implementation of the MLC, 2006 obligations regarding ships flying their flag. In this respect, member states are required to establish an effective system for the inspection and certification of maritime labour conditions to ensure that the working and living conditions for seafarers on ships that fly their flag meet, and continue to meet, the standards of the MLC, 2006.[53] One important innovation introduced by the MLC, 2006 in respect of flag states, as reflected in the provision of the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147), and the Labour Inspection

[52] MLC, 2006, Standard A4.5, paragraph 1.

[53] MLC, 2006, Regulation 5.1.1, paragraph 2.

(Seafarers) Convention, 1996 (No. 178), is the requirement for ships to hold a maritime labour certificate and a declaration of maritime labour compliance.[54] A maritime labour certificate, complemented by a declaration of maritime labour compliance, attests, in the absence of any other provisions, that the ship has been duly inspected by the flag state and that the requirements of the MLC, 2006 relating to working and living conditions of the seafarers are met to the extent so certified.[55] All of the above refers to ships with a gross tonnage of 500 or over, involved in international travel, and ships of 500 gross tonnage or over, flying the flag of a member state and operating from a port, or between ports, in another country.[56] In order to ensure compliance with the provisions of the MLC, 2006, inspectors have broad powers and not only check whether an individual ship complies with the provisions of the Convention, but can also request the elimination of deficiencies if they believe that the deficiencies constitute a serious breach of the requirements of the Convention or represent a significant danger to seafarers' safety, health or security. They may also prohibit the ship from leaving port until necessary actions are taken.[57]

Inspections by the flag state are not enough since not all member states follow the same rigorous criteria regarding the exercise of jurisdiction and control of ships. Many of the states that operate open ship registers do not require shipowners to comply with international conventions, even if they have ratified them. The result of such a situation is that seafarers on such ships receive very low wages, live in poor on-board conditions, and work long periods of overtime without proper rest.[58] This situation could be solved by introducing port state control, which means that member states carry out inspections on ships arriving at their ports to ensure that they comply with the provisions of the MLC, 2006. The concept of the inspection of foreign ships was established in 1914 with the drafting of the SOLAS Convention. The Memorandum of Understanding on Port State Control regime emerged in the early 1980s.[59] For this purpose, the MLC, 2006 defines that every foreign ship calling, in the normal course of its business or for operational reasons, in the port of a member state may be the subject of inspection, for the purpose of reviewing compliance with the requirements of

[54] Adăscăliței, O., Compliance and Conformity in Maritime Labour Law. The Maritime Labour Convention, *Perspectives of Law and Public Administration*, vol. 11 (2022), no. 4, p. 492.

[55] MLC, 2006, Regulation 5.1.1, paragraph 4.

[56] MLC, 2006, Regulation 5.1.3, paragraph 1.

[57] MLC, 2006, Standard A5.1.4, paragraph 7.

[58] Carey, L., The Maritime Labour Convention, 2006…, *op. cit*., p. 27.

[59] Adăscăliței, O., Compliance and Conformity in Maritime Labour Law…, *op. cit*., p. 492.

the Convention relating to seafarers' working and living conditions on board ship, including seafarers' rights.[60]

The MLC, 2006 systematically regulates the position of seafarers by enforcing their rights as well as by defining some special measures to protect seafarers in the areas where they are most vulnerable. This is particularly relevant when seafarers are looking for and concluding an employment relationship or when individual stakeholders do not fulfil their obligations towards seafarers. In this regard, member states are obliged to ensure the implementation of the MLC, 2006 regulations regarding the recruitment, placement, and social security protection of seafarers who are nationals, permanent residents, or are domiciled in their territory.[61] In this case, rights from the Standard A5.3 MLC, 2006 can be implemented and enforced. Among other rights, seafarers must be exempted from paying the costs of their employment, informed of their rights before and during employment, and given the opportunity to review the contract of employment before singing it. They also have the right to be protected through insurance or other equivalent measures to compensate for the monetary loss they may incur as a result of the failure of a recruitment and placement service or the relevant shipowner under the seafarers' employment agreement to meet their obligations to them. To ensure the rights of seafarers in these cases, member states must establish an effective system of inspection and supervision to fulfil their responsibility.[62]

3.2. 2022 Amendments to the MLC, 2006

Protecting the position of seafarers requires the constant upgrading of the provisions of the MLC, 2006. At its 110th session on 6 June 2022, the ILO approved amendments to the MLC, 2006, which are expected to come into force from 1 December 2024. The amendments refer to recruitment and placement, repatriation, recreational facilities (including access to the internet on board and at port), food and catering, and the disembarkation of seafarers who require immediate medical attention. Some of the most important amendments are briefly described below. If the recruitment and placement agencies or shipowners fail to fulfil their employment agreement obligations, causing financial loss for the seafarer, they must compensate the seafarer through insurance or a similar method. Seafarers must be informed about such protection measures.[63] The Convention is based

[60] MLC, 2006, Regulation 5.2.1, paragraph 1.

[61] MLC, 2006, Regulation 5.3, paragraph 1.

[62] MLC, 2006, Regulation 5.3, paragraph 3.

[63] Amendment of Standard A1.4.

on the principle that it is necessary to repatriate seafarers, including those who are abandoned. Even replacement seafarers should be given the same rights and entitlements as per the MLC, 2006. The responsibility falls on the port state, the flag state, and the labour-supplying country.[64] Regarding nutrition and drinking water, the Convention enforces the observance of religious requirements, cultural practices, and nutritional value.[65] Each member state must ensure the immediate disembarking of seafarers in need of urgent medical care from ships in its territory.[66] The amendments also impose the obligation of adding the registered owner's name, if different from the shipowner's.[67]

3.3. The Impact of the MLC, 2006 on European Union Legislation

The European Union has recognised the importance of the MLC, 2006, especially its effect on improving seafarers' living and working conditions, as well as its effort to ensure fair and equal competition for operators and shipowners.[68]

This has resulted in the adoption of several legal acts by the European Union in relation to the MLC, 2006. First, on 7 June 2007, a Council Decision authorising the Member States to ratify the Convention was adopted. The MLC, 2006 was incorporated into the EU legislation by Council Directive 2009/13/EC of 16 February 2009.[69] This directive introduces the Agreement concluded by the European Community Shipowner's Association (ECSA) and the European Transport Workers' Federation (ETF) on the MLC, 2006 and amends Council Directive 1999/63/EC.[70] The directive introduces the contents of Titles I, II, III and IV of the MLC, 2006, but not the contents on social security, the flag states' responsibilities, the maritime labour certificate, the declaration of maritime labour compliance, the inspection of enforcement, the labour-supplying state's responsibilities, and

64 Amendment of Standard A2.5.1.

65 Amendment of Standard A3.2.

66 Amendment of Standard A4.1.

67 Amendment of Appendix A2-I and Appendix A4-1.

68 Adăscăliței, O., Compliance and Conformity in Maritime Labour Law…, *op. cit*., p. 500.

69 Council Directive 2009/13/EC of 16 February 2009 implementing the Agreement concluded by the European Community Shipowners' Associations (ECSA) and the European Transport Workers' Federation (ETF) on the Maritime Labour Convention, 2006, and amending Directive 1999/63/EC, Official Journal of the European Union, L 124/30, 20 May 2009.

70 Council Directive 1999/63/EC of 21 June 1999 concerning the 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 Union (FST) – Annex: European Agreement on the organisation of working time of seafarers, Official Journal of the European Communities, L 167, 2 July 1999.

the onshore seafarer complaint-handling procedures[71] regulated mainly in Title V. The directive was amended by Council Directive (EU) 2018/131,[72] with the implementation of the 2014 amendments to the MLC, 2006 referring to financial security for repatriation and contractual compensation for death or long-term disability of seafarers due to an occupational injury, illness, or hazard.[73]

The content of Title V of the MLC, 2006 is included in some other documents of EU legislation. Thus, port state control is regulated in Directive 2009/13/EC as amended by Directive 2013/38/EU of the European Parliament and of the Council.[74] This directive applies both to ships flying the flag of a party to the MLC, 2006 and to ships flying the flag of a state that is not party to the MLC, 2006. In this way, the directive introduces the rule that ships flying the flag of a state which is not a party to the Convention shall not be subject to more favourable treatment during port state control than that applicable to ships flying the flag of a state which is a party to the Convention.[75] Within the framework of measures to comply with the provisions of the MLC, 2006, the competent state authorities have various options, the most extreme of which is the detention of the ship until the requirements of the Convention are met.[76]

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71 Adăscăliţei, O., Compliance and Conformity in Maritime Labour Law…, *op. cit*., p. 500.

72 Council Directive (EU) 2018/131 of 23 January 2018 implementing the Agreement concluded by the European Community Shipowners' Associations (ECSA) and the European Transport Workers' Federation (ETF) to amend Directive 2009/13/EC in accordance with the amendments of 2014 to the Maritime Labour Convention, 2006, as approved by the International Labour Conference on 11 June 2014, Official Journal of the European Union, L 22/28, 26 January 2018.

73 The financial security system set in the MLC, 2006 was prescribed very broadly and insufficiently, opening a number of questions and doubts, especially: what is the legal nature of MLC, 2006 financial security? From the insurance standpoint, is it life, accident or liability insurance? Who has an insurable interest and what is the nature of that interest? Which document proves the fulfilment of the MLC, 2006 requirements? To clarify the financial provisions, amendments to the MLC, 2006 were adopted that came into force in January 2014. Although the MLC, 2006 does not explicitly prescribe a system of compulsory insurance, with the third party right to a direct claim *(actio directa)* against the insurer, marine insurance with its characteristics appeared as a very suitable method of fulfilling the MLC, 2006 requirements – especially P&I insurance. See Petrinović, R.; Lovrić, I.; Perkušić, T., Role of P&I Insurance in Implementing Amendments to Maritime Labour Convention 2014, *Transactions on Maritime Science*, vol. 6 (2017), no. 1, p. 39.

74 Directive 2013/38/EU of the European Parliament and of the Council of 12 August 2013 amending Directive 2009/16/EC on port State control, Official Journal of the European Union, L 218/1, 14 August 2013.

75 Directive 2013/38/EU, Article 1, paragraph 2.

76 Directive 2013/38/EU, Article 1, paragraph 10.

Among the Union law directives relating to the MLC, 2006, it is also worth mentioning Directive 2013/54/EU[77] of the European Parliament and of the Council. The purpose of the directive is to introduce certain compliance and enforcement provisions, envisaged in Title V of the MLC, 2006, which relate to those parts of the MLC, 2006 in respect of which the required compliance and enforcement provisions have not yet been adopted.[78]

4. THE REGULATION OF SEAFARERS' EMPLOYMENT RELATIONSHIP IN SOME COUNTRIES

The development of individual national systems for regulating the seafarers' position depends on several factors, including historical, political, cultural, social and economic ones in every country, as well as the scope and importance of the maritime sector in the national economy. In the following section, systems regulating the position of seafarers in Slovenia, Croatia, and Italy are presented. These are neighbouring countries and very connected to the territory where there have been intensive trade routes in history. However, despite the fact that they are all subject to the legislation of the European Union and have all ratified a number of ILO conventions, including the ILO 2006, they have developed specific regulations governing the legal position of seafarers. In the past, Slovenia and Croatia were part of the same state of Yugoslavia and of the same socio-economic system, different from the Italian one, which is why they have a fairly similar system of regulating the position of seafarers. Regardless of the above, the reasons for the differences are primarily economic. Italy has the most extensive maritime sector, and for this reason it also has the most comprehensive and diversified regulation of the position of seafarers. Unlike Slovenia and Croatia, it has significantly more differentiated categories of seafarers. It also has a very differentiated system of collective agreements for different categories of seafarers compared to Croatia, while Slovenia does not have such a system at all. There are also differences between Slovenia and Croatia, which mainly lie in the fact that Croatia has more regulations governing the position of seafarers, while in Slovenia seafarers have to refer directly to international conventions to a greater extent. Regardless of the above, the same principles of protecting

[77] Directive 2013/54/EU of the European Parliament and of the Council of 20 November 2013 concerning certain flag State responsibilities for compliance with and enforcement of the Maritime Labour Convention, 2006, Official Journal of the European Union, L 329/1, 10 December 2013.

[78] Directive 2013/54/EU, Preamble (8).

the position of seafarers can be found in all three systems, which are, on one hand, historically conditioned by the legal regulation of the position of seafarers, which began to develop in the Mediterranean from as early as the Middle Ages, and, on the other hand, they are determined by international conventions, ratified by all three states.

4.1. Slovenia

Slovenia does not have a special system of regulating seafarers' employment relations. The regulation of seafarers' employment relationships is based on general labour legislation governed by the Employment Relationships Act-1,[79] which states that the act shall also apply to seafarers' employment relationships, except for issues that are otherwise specified in a special law.[80] The same act also prescribes that until the adoption of a special law regulating seafarers' employment relationships, the provisions of the Employment Relationships Act[81] in force before the Employment Relationships Act-1, regulating the registration of employment contracts, the minimum age of seafarers, working hours, night shifts and annual leave of seafarers, will be in force.[82]

The only special law that to some extent regulates the employment relationships of seafarers in the Republic of Slovenia is the Maritime Code.[83] In the Maritime Code, the chapter on crew members regulates some aspects of seafarers' employment relationships and introduces certain content regulated by the MLC, 2006 in its own provisions, such as a the national seafarer's book, the minimum employment age for seafarers, seafarers' right to information regarding the content of the employment contract before its conclusion, documents related to the employment contract that a shipowner must have on board, placement services, working hours, leave of seafarers, and the content of the contract on

[79] Employment Relationships Act-1, *Official Gazette of the Republic of Slovenia*, nos. 21/2013, 78/2013.

[80] Employment Relationships Act-1, Article 2, paragraph 3.

[81] Employment Relationships Act, *Official Gazette of the Republic of Slovenia*, nos. 42/2002, 103/2007.

[82] Employment Relationships Act-1, Article 229, paragraph 2, defines that until the adoption of a special law that will regulate seafarers' employment relationships, the provisions of Articles 218 to 223 of the Act, which regulate registration of employment contracts, the minimum age of seafarers, working hours, night shifts and annual leave of seafarers, shall apply.

[83] Maritime Code, *Official Gazette of the Republic of Slovenia*, no. 62/2016.

employment and repatriation.[84] While the Maritime Code covers some important aspects of seafarers' employment relationships, it fails partially or fully to regulate the registration of employment contracts and the annual leave of seafarers.

Regardless of the fact that Slovenian legislation regulates certain areas of seafarers' employment relationships, it should be pointed out that the Republic of Slovenia ratified the MLC, 2006 on 27 February 2016. In accordance with the Constitution of the Republic of Slovenia,[85] ratified and published international treaties are directly applicable.[86]

Adopted national legislation and international conventions provide a considerable legal basis for regulating the legal position of seafarers in Slovenia, although certain legislation is still missing. This includes tax legislation, especially rules regulating the payment of personal income tax for seafarers, which is not as favourable in Slovenian legislation as in some other countries where seafarers are not subject to income tax if they are on board ship for more than half a year. In accordance with Slovenian legislation, up to 50% of the income for the highest income class from employment on a long-sea merchant ship sailing on the open sea is taxable if the employment contract defines that the seafarer shall work on the ship for a period of at least six months or shall be absent from Slovenia for at least six months in the tax year due to such employment.[87]

Another problem is that the competent authorities of the Republic of Slovenia have not adopted sufficient legislation to regulate the situation of seafarers. Besides the Maritime Code, certain other rules and decrees have been adopted to additionally support the legal and social position of seafarers,[88] but some issues still remain unsolved, such as seafarers' placement service, retirement and health insurance, registration of seafarers' employment contracts, implementation of the MLC, 2006, etc.

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84 See the provisions of Articles 153, 154, 154a, 154b, 154c, 154č, 154d and 155.

85 Constitution of the Republic of Slovenia, *Official Gazette of the Republic of Slovenia*, no. 33/1991.

86 Constitution of the Republic of Slovenia, Article 8.

87 Personal Income Tax Act – 2, *Official Gazette of the Republic of Slovenia*, no. 13/2011, Article 42, paragraph 2.

88 Decree on Seafarer Certification, *Official Gazette of the Republic of Slovenia*, nos. 85/2014, 131/2021; Rules on Medical Examinations of Seafarers, *Official Gazette of the Republic of Slovenia*, nos. 72/2017, 4/2020; Rules on Minimum Safe Manning of Seagoing Ships Flying the Flag of the Republic of Slovenia, *Official Gazette of the Republic of Slovenia*, no. 69/2009; Rules on Inspection of Seafarers' Hours of Work, *Official Gazette of the Republic of Slovenia*, no. 32/2007; Rules on the Seaman's Book, *Official Gazette of the Republic of Slovenia*, nos. 5/2002, 96/2003, 80/2007, 76/2023.

In Slovenia, there are no collective agreements governing the position of seafarers, which is understandable since the maritime sector in Slovenia, with the exception of the port sector, is very small. However, insufficient labour regulation is not encouraging in general.

4.2. Croatia

Croatia has no special legislation to regulate the legal status of seafarers. The Labour Act that governs all labour relations in the Republic of Croatia regulates only some aspects of seafarers' employment relationships, including the most significant provision on the form of employment contract. In this respect, the employment contract of a seafarer and a worker on maritime fishing vessels must be registered with the administrative body of the local community or the City of Zagreb that is competent for performing the entrusted tasks of state administration related to employment tasks.[89] The most important legal act regulating some aspects of seafarers' work in Croatia is the Maritime Code,[90] with its chapter on the crew that contains provisions governing the recruitment and placement service, employment contracts in international shipping for a certain period of time, personal income taxation, retirement insurance, the insurance period with bonuses, personal requirements and professional qualifications for crew members, working conditions, complaint processing, and repatriation.[91] In Croatia, a number of other rules and decrees have been adopted to regulate some important areas of seafarers' labour relations.[92]

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[89] Labour Act, *Official Gazette of the Republic of Croatia*, nos. 93/2014, 127/2017, 98/2019, 151/2022, 64/2023, Article 14, paragraph 7.

[90] Maritime Code, *Official Gazette of the Republic of Croatia*, nos. 181/2004, 76/2007, 146/2008, 61/2011, 56/2013, 26/2015, 17/2019.

[91] See Articles 125a, 127, 128, 129, 129a, 131, 131a, 133a, 138, 139 in 140.

[92] Decree on the Monthly Basis for the Calculation of Contributions for the Member's Compulsory Insurance Ship Crews in International Navigation for the Year 2023, *Official Gazette of the Republic of Croatia*, no. 8/2023; Rules on the Application of the Seafarers' Labour Convention from 2006, *Official Gazette of the Republic of Croatia*, nos. 122/2016, 42/2019; Rules on Placement in the Employment of Seafarers, *Official Gazette of the Republic of Croatia*, no. 55/2018; Rules on Titles and Certificates of Seafarers' Qualifications, *Official Gazette of the Republic of Croatia*, nos. 125/2005, 126/2008, 34/2011, 155/2013, 29/2016, 85/2021; Rules on the Minimum Number of Crew Members for Safe Navigation that Maritime Goods, Floating Objects and Stationary Coastal Objects Must Have, *Official Gazette of the Republic of Croatia*, nos. 63/2007, 76/2011, 46/2013, 104/2015, 31/2016, 83/2016; Rules on Determining the Medical Fitness of the Crew of Seagoing Ships, Boats and Yachts, *Official Gazette of the Republic of Croatia*, nos. 93/2007, 107/2014; Rules on the Conditions for Keeping Watch and Performing other Tasks that Ensure Safe Navigation and Protection of the Sea from

According to the Constitution of the Republic of Croatia, international treaties that have been concluded and confirmed in accordance with the Constitution, that have been published, and that have entered into force form part of the internal order of the Republic of Croatia and have primacy over domestic law.[93] Thus, the MLC, 2006 is above national legislation and is automatically applied if domestic law is in contradiction with any provision of the Convention. In regulating a wide area of seafarers' rights, the MLC, 2006 supported by the national legislation in the Republic of Croatia provides broader social, health, and work protection than in Slovenia.

The development and functioning of the labour market in Croatia is determined by negotiations between employers and unions concluded with a collective agreement. The aim of collective agreements is, on one hand, to strengthen the bargaining position of employees, and, on the other hand, to ensure social peace for the employer for an agreed period of time.[94]

Collective agreements on the part of seafarers in Croatia are concluded by the Seafarers' Union of Croatia, which is a member of the International Transport Workers Federation. Employers are represented by the Mare Nostrum Shipowners' Association in the form of a cooperative.

In collective negotiations, the Croatian Seafarer's Union and the Mare Nostrum Shipowners' Cooperative concluded two collective agreements that are currently in force.

Significant success in the field of collective bargaining led to the conclusion of a new collective agreement for seafarers sailing on ferries and passenger ships on 29 June 2023, namely the Collective Agreement for Seafarers on Ships Carrying Out Transport in Liner Coastal Maritime Transport,[95] replacing the Collective

Pollution from Ships, *Official Gazette of the Republic of Croatia*, nos. 125/2005, 126/2008, 34/2011, 155/2013, 29/2016; Rules on Seafarers' Passbooks and Embarkation Permits, as well as Procedures and Methods of Seafarers' Deregistration for Compulsory Pension and Compulsory Health Insurance, *Official Gazette of the Republic of Croatia*, nos. 112/2016, 17/2019; Rules on Covering the Costs of Salaries and Contributions of Interns, *Official Gazette of the Republic of Croatia*, no. 97/2019; Rules on the Registration Procedure and Content of the Register of Employment Contracts for Seamen and Workers on Maritime Fishing Vessels, *Official Gazette of the Republic of Croatia*, nos. 32/2015, 109/2019, 13/2020.

93 Constitution of the Republic of Croatia, *Official Gazette of the Republic of Croatia*, nos. 56/1990, 135/1997, 8/1998, 113/2000, 124/2000, 28/2001, 41/2001, 55/2001, 76/2010, 85/2010, 5/2014, Article 134.

94 Rozić, I. *et al*., Kolektivni ugovori kao izvor prava…, *op. cit.*, p. 701.

95 Collective Agreement for Seafarers on Ships Carrying Out Transport in Liner Coastal Maritime Transport, *Official Gazette of the Republic of Croatia*, no. 93/2023, available at https://narodne-novine.nn.hr/clanci/sluzbeni/2023_08_93_1417.html (accessed 11 August 2023).

Agreement for Croatian Seafarers on Passenger Ships and Ferries of 28 July 1998.[96] The latter collective agreement had been concluded for a period of two years, except for the part governing salaries, which was to be determined annually.[97] After a period of two years, no new collective agreement had been concluded; however, the parties still complied with the provisions of this collective agreement.

The new collective agreement applies to Croatian seafarers and seafarers from other member states of the European Economic Area (EEA) who sail on ships that carry out transportation in coastal shipping in the Republic of Croatia, with the aim of ensuring the same starting points and the same level of labour and social rights for all seafarers on ships that carry out transportation in liner coastal shipping, and for the purpose of ensuring equal market competition.[98] The collective agreement regulates the conclusion of an employment contract for seafarers, where it follows that the employment contract is generally concluded for an indefinite period, although it can also be concluded for a fixed period based on general labour legislation, i.e. the Labour Act and other special regulations.[99] This shows that collective agreements for seafarers sailing on ships carrying out transport and liner coastal maritime transport derive from the general principles of labour law, that contracts with employees are generally concluded for an indefinite period, and that employment contracts for a definite period are exceptions rather than the rule. All the above is based on general labour legislation regulating labour relations in the Republic of Croatia.[100] Otherwise, the collective agreement contains provisions that can also be found in other

[96] National Collective Agreement for Croatian Seafarers on Passenger Ships and Ferries of 28 July 1998, available at https://www.nsppbh.hr/nacionalni-kolektivni-ugovor/ (accessed 20 September 2023).

[97] National Collective Agreement for Croatian Seafarers on Passenger Ships and Ferries of 28 July 1998, Article 115, paragraph 1.

[98] Collective Agreement for Seafarers on Ships Carrying Out Transport in Liner Coastal Maritime Transport, Article 2, paragraph 2.

[99] Collective Agreement for Seafarers on Ships Carrying Out Transport in Liner Coastal Maritime Transport, Article 3, paragraph 4.

[100] The provision of Article 11 of the Labour Act defines that the employment relationship is concluded for an indefinite period of time, unless the same act provides otherwise. Exceptions when the employment relationship can be concluded for a certain period of time are listed in Article 12 of the same act. It is a characteristic of Croatian legislation that it contains only very general provisions governing employment contracts for seafarers, and it is mainly as a result of this that it lists the types of employment contracts. However, it does not regulate the determination of the assumptions when the employment relationship that a seafarer has with an employer on the basis of several consecutive employment contracts for a fixed period of time is transformed into an employment relationship for an indefinite period, as regulated by Italian legislation, where case law in this regard also exists (see point 4.2 of the Article).

collective agreements aimed at regulating the situation of seafarers, such as working hours, food and accommodation, embarkation and repatriation, wages, and termination of the employment contract.

The second collective agreement, namely the Collective Agreement for Croatian Seafarers on Ships in International Navigation (2023-2024),[101] between the Seafarer's Union of Croatia and the Mare Nostrum cooperative, was concluded on 29 December 2022. The Collective Agreement applies to seafarers who are citizens of the Republic of Croatia and other Member States of the European Union who sail on ships in international navigation registered in the Croatian or some other register of ships, but listed in the list of ships of the special addendum to the Collective Agreement.[102] Unlike the Collective Agreement for Seafarers on Ships Carrying Out Transport and Liner Coastal Maritime Transport, the new agreement also enables seafarers to enter into a contract for an indefinite period, for a definite period of time that cannot be longer than six months, but can be shortened to five months or extended to seven months depending on the needs of the voyage, or for one or more voyages that cannot last more than seven months, except for apprentices whose employment cannot last more than twelve months.[103] Such a provision is typical of employment contracts in the merchant navy, with seafarers sailing on long-sea ships, where it is not possible to regulate employment relations in accordance with the general rules of labour law. In these cases, it is necessary to ensure flexibility, which is not possible given that the employment relationship is concluded for an indefinite period.

In accordance with the Collective Agreement, an employment contract includes the seafarer's rights and obligations regulated by the MLC, 2006. A seafarer is employed after signing an employment contract, which must be in writing and which must set out the requirements in accordance with Rule 2.1 of the MLC, 2006.[104] The Collective Agreement regulates trial work, working hours, work beyond regular working hours, salary, composition and number of crew, compensation for work on Saturdays and Sundays, rest, vacations, keeping watch, navigation in war and high-risk areas, and termination of employment.

[101] National Collective Agreement for Croatian Seafarers on Ships in International Navigation (2023-2024), *Official Gazette of the Republic of Croatia*, no. 21/2023, available at https://narodne-novine.nn.hr/clanci/sluzbeni/2023_02_21_369.html (accessed 22 February 2023).

[102] National Collective Agreement for Croatian Seafarers on Ships in International Navigation (2023-2024), Article 2, paragraph 1.

[103] National Collective Agreement for Croatian Seafarers on Ships in International Navigation (2023-2024), Article 3, paragraph 4.

[104] National Collective Agreement for Croatian Seafarers on Ships in International Navigation (2023-2024), Article 3, paragraph 1.

Repatriation is specifically regulated in the Collective Agreement, which requires that all reasonable steps shall be taken to provide benefits in accordance with Regulation 2.5 of the MLC, 2006.[105] In this regard, the question arises as to what constitutes reasonable requirements. In this case, it is necessary to proceed primarily from the MLC, 2006, but in no case should the concept of reasonable requirements be interpreted in such a way as to avoid the implementation of the Convention. Repatriation must not be carried out at the expense of the seafarer, except when the seafarer has committed a serious breach of his obligations or several successive minor breaches, and when the seafarer requests disembarkation before the employment contract expires. Then the operator who concluded the employment contract with the seafarer carries out the repatriation of the seafarer at his own expense, but has the right to offset these costs from any amount due to the seafarer.[106]

Other important provisions of the collective agreement regulate medical assistance to seafarers, sick leave, maternity and disability. The operator is obliged to take out standard club insurance cover for payments of compensation arising from the provisions of the collective agreement.[107]

The purpose of a collective agreement is to protect the weaker party to the employment contract. This process requires constant monitoring of the implementation of the provisions of the collective agreement. For this reason, the collective agreement has a provision allowing authorised representatives of the trade union to visit and inspect the ship on which the members of the trade union are employed, and request documentation that demonstrates the implementation of the collective agreement, including payslips.[108]

4.3. Italy

In Italy, the legal status of seafarers is regulated by several laws, including the Navigation Code[109] that protects not only workers in maritime transport,

[105] National Collective Agreement for Croatian Seafarers on Ships in International Navigation (2023-2024), Article 20, paragraph 1.

[106] National Collective Agreement for Croatian Seafarers on Ships in International Navigation (2023-2024), Article 20, paragraph 3.

[107] National Collective Agreement for Croatian Seafarers on Ships in International Navigation (2023-2024), Article 27, paragraph 1.

[108] National Collective Agreement for Croatian Seafarers on Ships in International Navigation (2023-2024), Article 40.

[109] Code of Navigation, approved by Royal Decree of 30 March 1942, no. 327, La Tribuna, Piacenza, 2021.

but also personnel employed in aviation. This legislation allows for the special regulation of seafarers' employment relationships.

In Italy, there are three categories of seafarers: (i) navigation staff of high and low rank in service on deck, in the engine room, and in charge of technical services on board; (ii) on-board support staff; (iii) staff for local navigation and coastal fishing.[110] Special technical qualifications are required for navigation personnel, especially in relation to the on-board tasks. On-board support staff provide occasional services on a ship that are not essentially nautical and such staff may include doctors, nurses, cooks, waiters, musicians, etc. Workers employed as seafarers are registered in a special register, called "matriculation".[111] Registration is possible only for Italian citizens or citizens of one of the Member States of the European Union that are at least sixteen years old.[112]

In Italy, seafarers can conclude three types of contract: (i) for one or more voyages; (ii) for a definite period of time; (iii) for an indefinite period of time.[113] A seafarer's employment agreement for one or more voyages or for a definite period of time can only be concluded for up to one year, otherwise it is automatically converted into a contract for an indefinite period of time.[114] In order to prevent the abuse of the institution of continuous work by very short interruptions of one fixed-term contract and the start of another fixed-term contract, it is considered that there is an interruption of work only if more than sixty days elapse between two mentioned fixed-term contracts.[115] These provisions prevent any abuse of several successive employment contracts for a definite period that are longer than one year.[116]

[110] Code of Navigation, Article 115.

[111] Code of Navigation, Article 118, paragraph 1.

[112] Code of Navigation, Article 119, paragraph 1.

[113] Code of Navigation, Article 325, paragraph 1.

[114] Code of Navigation, Article 326, paragraph 1.

[115] Code of Navigation, Article 326, paragraph 3.

[116] Judgment of the Court of Cassation of Italy, no. 62/2015 (08/01/2015). In this case, the court took the standpoint that the framework agreement on fixed-term employment, concluded on 18 March 1999, which is as an attachment to Council Directive 1999/70/EC of 28 June 1999 on the ETUC, UNICE and CEEP (trade unions) framework agreement on fixed-term employment, shall be interpreted as applying to workers employed as seafarers with fixed-term employment contracts on ferries, making a maritime journey between two ports located in the same Member State. In this regard, the Court observes that the provision of Article 326 of the Navigation Code, which defines the service as uninterrupted when a period not exceeding sixty days has elapsed between the termination of a contract and the conclusion of a subsequent contract, constitutes in general an abstract, adequate, and suitable measure to prevent abuses in the succession of fixed-term contracts and

Navigation Code is not the only act that governs seafarers' employment relationships in Italy. Health and safety at work, hours of work, as well as the training and employment of seafarers are regulated by many other decrees and regulations.[117]

In Italy, the employment of seafarers is not only governed by EU and national legislation, but is also subject to collective agreements as sources of autonomous

employment relationships, given the need for a time interval of more than sixty days between one fixed-term employment and the next one, for the purpose of preventing the intentional circumvention of what is prescribed in the aforementioned Community source, which does not allow the employer to validly plan the activity and discourages the fragmentation of a single real permanent employment relationship into multiple fixed-term relationships.

[117] Important national regulations governing seafarers employment relationships in Italy:

- Legislative Decree No. 271 of 27 July 1999 (*Official Gazette of the Republic of Italy*, no. 185, 9.8.1999), on adapting the current legislation on the safety and health of workers in the workplace to the particular needs of the services performed at the ships defined by decree;

- Legislative Decree No. 108 of 10 May 2005 (*Official Gazette of the Republic of Italy*, no. 145, 24.6.2005), implementing the directive 1999/63/EC and regulate some profiles of the discipline of the employment relationship of related seafarers the organization of working hours. The decree applies to seafarers serving on board of all merchant ships flying the Italian flag and used for maritime navigation;

- Regulation No. 231 of 18 April 2006 (*Official Gazette of the Republic of Italy*, no. 161, 13.7.2006), specifying professional qualifications of maritime personnel and minimum requirements for access to the profession;

- Legislative Decree No. 136 of 7 July 2011 (*Official Gazette of the Republic of Italy*, no. 185, 10.8.2011), implementing Directive 2008/106/CE concerning the minimum training requirements for seafarers;

- Law No. 97 of 6 August 2013 (*Official Gazette of the Republic of Italy*, no. 194, 20.8.2013), concerning the provisions for the fulfilment of the obligations deriving from Italy's membership of the European Union, which regulates the working hours for seafarers;

- Legislative Decree No. 71 of 12 May 2015 (*Official Gazette of the Republic of Italy*, no. 133, 11.6.2015), implementing Directive 2012/35/EU, which modifies Directive 2008/106/EC, concerning the minimum training requirements for seafarers, applicable to Italian seafarers, to seafarers from EU Member States and to those from third countries holding a certificate issued by a EU Member State, who work on board ships flying the Italian flag;

- Legislative Decree No. 151 of 14 September 2015 (*Official Gazette of the Republic of Italy*, no. 221, 23.9.2015),with Provisions for the rationalization and simplification of procedures and obligations for citizens and businesses and other provisions on the subject of equal opportunities employment relationships, in implementation of the Law No. 183 of 10 December 2014 (*Official Gazette of the Republic of Italy*, no. 296, 15.12.2014), abolishing the special placement for seafarers, i.e. seafarers' employment offices, introducing the competence of ordinary placement and simplifying the ways in which job supply and demand meet in this sector.

law. Considering the size of the Italian maritime sector, it is not surprising that the system of collective bargaining agreements at the national level is extensive. A National Collective Agreement of Work for the Private Sector of the Shipping Industry from 16 December 2020 (hereinafter: Collective Agreement) is currently in force in Italy, valid from 1 January 2021 to 31 December 2023. The collective agreement has as many as fifteen sections and includes not only typical maritime professions,[118] but also doctors who board the ship where their presence is mandatory according to the applicable regulations.[119] The collective agreement also regulates certain onshore occupations related to maritime transport, such as a manager of charter parties, a bunkering manager, a chief forwarder or a head of the freight forwarding office, port captain, etc.[120]

Despite a large number of sections in the collective agreement, most of the sections have certain constants: (i) types of employment contracts for seafarers arising from Article 325 of the Navigation Code; (ii) work schedules derived from the provisions of the MLC, 2006; (iii) rest; (iv) definition of work that is not part of the seafarer's ordinary duties; (v) definition of work for the safety of navigation and work for maintenance; (vi) wages, salaries and allowances; (vii) repatriation;

[118] First section: Section for embarkation of community seafarers on cargo ships and passenger/goods ferry ships over 151 G.R.T. and for captains and engineering managers embarked on ships over 151 G.R.T and less than 3,000 G.R.T or 4,000 T.S.C.; Second section: Section for the embarkation of community seafarers on board cargo ships enrolled in the Italian international register armed by companies operating internationally; Third section: Section for the embarkation of captains and engineering directors of cruise ships, cargo ships and passenger/food ferry ships over 3,000 G.R.T of national shipping; Fourth section: Section for crew embarkation on high-speed HSC, DSC type vessels and hydrofoils for passenger transport; Fifth section: Section for community seafarers on cruise ships; Sixth section: Section for seafarers on ships up to 151 G.R.T.; Seventh section: Section for the embarkation of seafarers of Italian nationality on cargo and passenger ships leased bare hull to foreign owner pursuant to Articles 28 and 29 of Law 234/89; Eighth section: Section for the embarkation of seafarers on special vessels with an Italian owner; Ninth section: Section for the embarkation of Italian seafarers on special vessels with a foreign owner and foreign flag; Tenth section: Section for captains and engineering directors embarked on special vessels; Eleventh section: Section for personnel embarked on the units used for the towing service of the ships and the rescue of the ships; Twelfth section: Section for seafarers embarked on recreational craft intended for commercial purposes, even not exclusively; Thirteenth section: Collective bargaining agreement for non-domiciled seafarers embarked on Italian international register vessels or vessels under or vessels under the bare-boat system; Fourteenth section: Section for doctors on board ships whose obligation to embark is provided by law; Fifteenth section: Section for shore personnel – offices and terminals of shipping companies.

[119] Collective Agreement, Section 14.

[120] Collective Agreement, Section 15.

(viii) termination of the employment agreement. All of this is already regulated by national legislation, the legislation of the European Union and international conventions, but specified in detail in the Collective Agreement.

Due to the introduction of flags of convenience that above all enable shipowners to carry out a navigational undertaking with lower costs, which is also reflected in seafarers' employment relationships, many countries, including Italy, have introduced parallel registration of international seafarers. The international register in Italy was established by Decree Law No. 457 of 30 December 1997, converted into Law No. 30 of 27 February 1998, allowing the employment of crew members from third states.[121] The law governing the contract of employment for non-European seafarers can be chosen by the parties.[122]

5. CONCLUSION

Due to their work conditions, seafarers' employment relationships are very specific and cannot be regulated by general labour legislation. Seafarers perform their duties and live on a ship that represents an isolated community with very defined rules and obligations that have been formed since the very beginnings of organised merchant shipping. Because of the characteristics of work on ships, it is not surprising that the position of seafarers was regulated very early in history. Some medieval codes regulated employment relationships very precisely and contained many provisions that could still be applied now. The seafarers' position was first addressed by case law at the beginning of the 19th century and later further regulated by labour legislation. One of the reasons maritime countries began regulating the legal position of seafarers was not only to improve their living and working conditions, but also to build a powerful merchant fleet. Because ships needed trained and able-bodied crews, seafarers became more protected nationally and internationally. National legislations provide more or less protection to seafarers, depending on the country. Internationally, seafarers are to a certain degree protected by the MLC, 2006 and its standards, which are mandatory, unlike its guidelines which are left to the discretion of each member state. Ratification of the MLC, 2006 in many countries is an important step in protecting the position of seafarers, but we must not stop there. Currently, there is no great need for any new major regulation regarding seafarers' employment relationships at the international level. The

[121] Decree Law No. 457 of 30 December 1997 (*Official Gazette of the Republic of Italy*, no. 303, 31.12.1997), Article 2.

[122] Decree Law No. 457 of 30 December 1997, Article 3, paragraph 2.

enforcement of the existing international regulations is more important. In this regard, the MLC, 2006 was right to introduce port state control that bans "flags of convenience" in the maritime labour sector.

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Sažetak:

REGULACIJA RADNOG STATUSA POMORACA

U članku se razmatraju posebnosti radnog odnosa pomoraca koji na brodu obavljaju svoje obveze iz ugovora o radu i žive daleko od svog stalnog prebivališta te su u ograničenom kontaktu s okolinom i svojim obiteljima. Njihov položaj u prošlosti bio je vrlo nepovoljan jer su kao strana u radnom odnosu bili izrazito podređeni brodovlasniku te slabo informirani o svojim pravima. Situacija se počela poboljšavati u novije vrijeme kada su zakonodavac i međunarodne organizacije, poput ILO-a, počele donositi pravila kojima reguliraju njihov položaj. Konvencija o radu pomoraca iz 2006. godine (MLC, 2006) ima ključnu ulogu među zakonodavstvom koje je usmjereno na poboljšanje položaja pomoraca. Najveća je vrijednost MLC-a, 2006, uvođenje nadzora države luke, odnosno države članice provode inspekciju nad brodovima koji dolaze u njihove luke kako bi osigurale usklađenost s konvencijskim odredbama. Unatoč tomu, položaj pomoraca još uvijek nije zadovoljavajući jer brodari, smanjenjem broja članova posade i njihovih beneficija, nastoje smanjiti troškove poslovanja. Položaj pomoraca treba poboljšati odgovarajućom zakonskom regulativom i njezinom provedbom. Glavna je svrha članka ukazati na posebnosti pravnog uređenja položaja pomoraca koje se ne mogu regulirati odredbama općeg radnog prava te analizirati razvoj propisa koji uređuju položaj pomoraca. Njegovo uređivanje započelo je sredinom devetnaestog stoljeća, iako je potrebno istaknuti kako zakonska regulativa pomoraca ne predstavlja posve novu pojavu. Propisi su bili prisutni već u srednjem vijeku i sadržavali su određene odredbe koje bi i danas mogle poslužiti kao primjer. Također, svrha je članka ukazati i na različitosti nacionalnih propisa na temelju načela o reguliranju položaja pomoraca. Radi toga se analizira položaj pomoraca u Sloveniji, Hrvatskoj i Italiji. Zakonodavstva tih triju zemalja uglavnom su usklađena s MLC-om, 2006, i drugim međunarodnim konvencijama, ali se razlikuju u opsegu regulacije, na što utječe opseg i značaj pomorskog sektora za njihovo nacionalno gospodarstvo.

Ključne riječi: *pomorci; ugovor o radu; Međunarodna organizacija rada (ILO); Konvencija o radu pomoraca iz 2006. godine; repatrijacija; nadzor države luke.*