THEORETICAL AND PRACTICAL ASPECTS RELATING TO OCCUPATIONAL ACCIDENTS ABOARD SHIPS

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ABSTRACT
This study analyses the theoretical and practical aspects relating to a special category of occupational accidents, more precisely the occupational accidents aboard ships. The International Labour Organization (I.L.O.), while aware of the importance of this topic, has issued the Maritime Labour Convection (MLC 2006) – ratified by Romania through the Law no. 214/2015 - ensuring the legal framework for maritime personnel by taking into account the special labour conditions thereof. On the internal level, a series of regulations in the Romanian law provide a legal framework in this matter. Among these, we may mention the Guide of March 19, 2018 for the safe management and health protection of seafarers aboard the ships flying the Romanian flag, a document bringing important regulations in this field. In this study we will also present the jurisprudential issues regarding the occupational accidents aboard ships which, together with the theoretical approach, will lead conclusions relating to the relevant regulations in the internal law.

Keywords: Labour accidents, ship, I.L.O. Convention, internal regulations.

The labour issues in the field of maritime industry has required that the International labour Organization pay more attention to maritime personnel in terms of the work conditions, the social issues and those referring to health protection and occupational safety as well as for the prevention of occupational accidents aboard ships.

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Knowing the global nature of the maritime industry and of the insecure circumstances in which it carries out its activity, the maritime field is a relatively dangerous one in terms of occupational accidents. Thus, the Maritime Labour Convention (MLC 2006) of the International Labour Organization establishes a minimum set of principles and basic rules applicable to the maritime personnel for each member state ratifying this convention in order to reinforce the level of protection and safety for this special category of personnel.

From the express consecration of some fundamental principles such as the freedom of association and the recognition of the right to collective bargaining, the elimination of all forms of forced or compulsory labour, the real abolition of children’s work and the elimination of discrimination in terms of employment and profession to the provision of social rights for this special category of personnel (the right to a safe workplace according to safety standards, to decent conditions of work and life aboard ships, the right to health protection and medical care, welfare measures and other forms of social protection), as is stated in the article 3 and 4 of the Convention, are important aspects that complete the package of the minimum conditions necessary for the work of seafarers aboard ships, in accordance with the convention content. The field of occupational health and safety and of occupational accident prevention must not be neglected in the light of the convention.

To make sure that the work environment of seafarers aboard ships contributes to their occupational health and safety, the Convention stipulates that “each Member shall develop and promulgate national guidelines for the management of occupational safety and health onboard ships that fly its flag, after consultation with representative ship owners’ and seafarers’ organizations and taking into account applicable codes, guidelines and standards recommended by international organizations, national administrations and maritime industry organizations”. Therefore, the legislation of each ILO member state relating to health and safety protection and accident prevention aboard the ships flying its flag shall be adapted in relation to the international fundamental standards established for this field of work while equally taking into account the minimum conditions imposed by this convention.

In this context, we may affirm that Romania, while trying to develop its internal legislation existing in the maritime sector, has approved via the Ministry of Transport the elaboration of a GUIDE of March 19, 2018 for the safe management of seafarers’ health and safety aboard the ships flying the Romanian flag, in the sense of the conditions and terms imposed by 2006 ILO Convention.

The guidelines given by ILO in terms of occupational health and safety aboard ships have been transposed at national level so that the maritime personnel, ship owners and the persons in charge with tasks in this field might take into consideration the Convention provisions.

If we refer to the most important aspects regulated by the Convention, the establishment of policies in terms of occupational health and safety by ship owners is made after consultation of seafarers' representatives or their Trade unions, as the case may be.

To monitor and prevent accidents aboard ships, the internal provisions in the Guide
on the safety and health protection of seafarers aboard ships flying the Romanian flag also stipulate ship owners’ obligation to set up Occupational health and safety committees aboard the ships they manage, and to develop a management system in terms of occupational health and safety that may allow the detailed investigation of work accidents and the clear representation thereof.

Consequently, the provision of a healthy work environment for the maritime personnel represents a legal priority imposed to the ship owner in the sense of this legislative act.

Moreover, in relation to the minimum conditions imposed by the 2006 MLC Convention in the maritime sector, the structure of work places aboard ships should take into account the prevention standards, the technological progress and the national and international legislation applicable in this domain.

While clearly taking over the provisions of the convention, the internal legislative context currently imposes the provision of certain accommodation, recreational facilities, food and catering, as provided by Title 3 of the Maritime Labour Convention (MLC 2006), aspects which are also compatible to the promotion of occupational health and safety in terms of this special category of personnel (as for occupational health and safety, see Al. Țiclea, 2016 [1]).

Another important element for maritime personnel’s safety aboard ships established by the convention in its content refers to ship owners’ obligation “to provide seafarers with information, training and preparation in terms of hazards, occupational health and safety measure aboard ship, and bear the expenses related to them”. In the same vein, the provisions of the Maritime Labour Convention (MLC 2006) stipulates that, as far as jobs are set up aboard ships, the principles of prevention, technological progress and the observance of national and international laws and of the relevant standards and codes of good practice shall be taken into consideration.

REGULATION OF OCCUPATIONAL ACCIDENTS ABOARD SHIPS ON THE INTERVAL LEVEL

In the internal level, the most important aspects are regulated by the Government Decision no. 83/2003 on the authorization of companies providing selection and placement services for the Romanian maritime or river personnel aboard ships flying a Romanian or a foreign flag as well as on the elaboration of some financial security measures in case of abandonment thereof outside Romania, which contains a series of rules that may become important in terms of the matter we are interested in, namely maritime personnel’s occupational health and safety. Thus, pursuant to article 3 of the Government Decision 83/2003 “maritime personnel agencies may hire the maritime personnel for a defined period of time via an employment contract concluded on the basis of a collective labour contract negotiated with the representative trade union under legal conditions”.

There is equally a special provision stipulating a derogating rule from the Labour code in terms of the cases that legitimately require the conclusion of fixed-term employment contracts (for fixed-term employment contracts see I. T. Ștefănescu, 2017 [2]).

More precisely, in this last case there is no longer any requirement for any objective reason or any maximum duration of such a contract.
Moreover, the very case law of the Court of Justice of the European Union established during the judgment of some cases that the provisions of the Directive 1999/70/CE on the Framework agreement on fixed-term work shall also apply to employees having the quality of seafarers within some fixed-term employment contracts on ferryboats who get a sea leg between 2 ports situated in the same member state (in this respect, see also R. Dimitriu, 2016 [3]). Furthermore, from the interpretation of these provisions, it results that the maritime personnel, though seen as a special category of personnel, have the quality of an employee by virtue of entering into employment contracts in the sense provided by the labour code.

Consequently, the legal protection regime provided by the labour legislation for the quality of employee becomes applicable to them, too. Or, in the current legislative conditions, the provisions of the Law 319/2006 on occupational health and safety become incident for the maritime personnel as a framework law supplementing the special law, namely the Guide elaborated by the Ministry of Transport for the implementation of MLC Convention provisions as adopted in the maritime sector, unless the provisions of the special legal provide otherwise.

**Regarding the Government Decision no. 83/2003, the above-mentioned legislative act also includes other important aspects regarding the seafarers, among which are the following:**

The seafarers’ contract of embarkation includes, according to art. 4 par. (2) of the legislative act, the duration and nature of boarding, compensation, compensation in respect of accidents at work and occupational diseases, transport to and from the ship, specific conditions of work and life on board, and duties of the seafarers, based on the collective labor contract, but not below the standards accepted by the International Labor Organization.

As a special measure for the protection of seafarers, the legislator in art. 7 par. (1) of the aforementioned Government Decision, stipulated that, in order to obtain the operating authorization, the Agency for the Navigation of Personnel shall have to prove the establishment of a financial security measure for the abandonment of the seagoing personnel placed outside Romania by the provision of a guarantee, financial security, worth at least $100,000. In par. (2) of the same Article provides that the financial security deposit must cover the cost of repatriation of the seafarers’ staff placed by the shipping agency and two months of non-payment of its due financial entitlements established by the individual embarkation contract or by the mediation contract, in the event of failure by the shipowner to pay them. The guarantee provided in art. 7 may be constituted either by depositing that amount in a deposit account opened with a bank in Romania, authorized in accordance with the legal provisions in force, or in the form of an insurance policy, concluded for this purpose, issued by a Romanian company insurance, subject to legal regulations, provided that the necessary sums can be made available at the request of the Romanian Navy.

**The Government’s Decision also regulates certain contraventions, thus penalizing with the fine the following facts:** a) performing mediation activities of the seagoing personnel without obtaining the operating authorization issued by the Romanian Naval Authority according to...
the present decision; b) non-compliance with the obligations stipulated in art. 1 par. (1) and art. 9 par. (1) in the aforementioned Government Decision. Art. 1 par. (1) of the Decision establishes that companies which carry out activities for the selection and placement of Romanian maritime and river personnel on vessels flying the Romanian or foreign flag will be able to carry out this activity only on the basis of the operating authorization issued by the Romanian Naval Authority and in compliance with the provisions regarding the specific technical conditions of operation, included in the tender documents drawn up by the Romanian Naval Authority as an annex to the authorization, and art. 9 par. (1) of the Decision establishes that air navigation agencies are required to extend the financial security system for cases of abandonment of seafarers outside Romania, so that the seafarers selected and placed after authorization are effectively and legally covered for such risks.

According to art. 18 of the Decision, the Ministry of Foreign Affairs, through the diplomatic missions and consular offices, shall take the necessary measures to ensure, through the competent public authorities or foreign bodies, to Romanian seafarers placed on ships flying the Romanian or foreign flag the protective measures provided for the law of that State and the settlement, in accordance with the law applicable to that State, of any disputes relating to the grant of the rights provided for in the mentioned Decision.

JURISPRUDENTIAL DEVELOPMENTS OF THE ASPECTS RELATING TO OCCUPATIONAL ACCIDENTS ABOARD SHIPS

Mister G.G. aged 50 was hired in show business by an American tourism company specialized in cruises. His life insurance was concluded by the employer with a Swiss company.

During the first cruise, the ship captain acted abusively (by virtue of the “total” rights a captain has at sea) and asked Mr. G.G. to repeatedly lift very heavy objects (foods, drinks) – practically to take part in the ship supply.

Two months after the cruise, Mr. G.G. suddenly started to complain about terrible pains in the lumbar region. He informed the nurse and then the captain who ordered Mr. G.’s disembarking. Both the nurse and the captain must write down such incidents in the medical register and in the logbook.

His pains became worse when doing rotation movements, while getting dressed, and walking and they finally led to his hospitalization in Romania. Pains exuded to the right lower limb. The patient had never had any problems with his spine up to that point, a fact which is sustained by the copy of his family physician record.

He was subject to a Nuclear Magnetic Resonance (NMR) exam which identified two disc hernias in the lumbar region at L4-L5 and L5-S1 level.

During the neurological exam the neurologist identified right paravertebral muscular contracture, compensatory scoliosis, right hyperalgesic lumbosciatic, a positive Lasegue sign and gave him the diagnostic of spondylo-discarthrosis, L4-L5 and L5-S1 disc hernias with right secondary L5-S1 sensitive radiculopathy. The patient had 3 physiotherapy and kinesiotherapy sessions with the slight improvement of symptoms. He has been having intense lumbar pains if he...
lifts weights heavier than 5 kg or when standing up for more than an hour.

Mr. G.G. claimed for damages from the insurance company based on the policy concluded before employment.

He has been subject to numerous exams carried out by the physician accepted by the insurance company and requested by the insurer in order to establish his financial entitlements.

On the basis of the neurological, orthopedic exams and NMR, the medical expert established:

1. the reduction of work capacity by 65%;
2. that the vertebral lesions are permanent;
3. since it is a chronic disease, it will get worse, therefore prevention measures are required – physiotherapy sessions twice a year.
4. the patient can work part-time (4 hours) in sitting position while avoiding to lift weights, cold, vibrations and prolonged orthostatic position.

The insurer did not pay anything in the first year after the accident and asked for a new expert report after 12 months from the accident to establish the definitive functional deficiency.

The patient has repeatedly protested by expressing his discontent relating to insurance company’s unjustified delay to give an answer.

The expert physician has maintained the conclusions of the medical expertise report from the first exam while mentioning that the lesions are permanent.

The insurance company answered 6 months later by approving Mr. G.G.'s request and decided to pay him a monthly allowance for his entire life, with the observation that the money will be paid for his health insurance until he turns the legal retirement age, and only afterwards he will receive to his account each month a sum representing his invalidity pension. This case is taken from Irina Soare Private Doctor’s Office archive 2015 - 2017.

**CONCLUSIONS**

Occupational accidents aboard ships represent a special category of work accidents knowing the specificity of the work carried out by the maritime personnel.

Maritime Labour Convention (MLC 2006) of the International Labour Organization (ratified by Romania) ensures the legal framework in this field by establishing the basic rules relating to the work in the maritime sector.

Besides the law ratifying the abovementioned convention, Government Decision no. 83/2003 on the authorization of the companies providing recruiting and placement services of the Romanian maritime or river personnel aboard ships flying a Romanian or foreign flag, and for the establishment of financial security measures in case of abandonment thereof outside Romania contains important regulations regarding occupational accidents.

Other relevant provisions in this domain are also contained in the Guide elaborated by the Ministry of Transport for the implementation of the provisions of the I.L.O. Convention mentioned above.

The provisions of the Law 319/2006 on occupational health and safety shall also remain valid in terms of occupational accidents aboard ships as this law...
represents the common law in the field of labour accidents for all categories of personnel.

The ratification of the Convention on the labour in the maritime sector by the Romanian state is judicious since on one hand the importance of this Convention is undisputable, and on the other hand very many Romanian citizens choose to work aboard ships, a fact that justifies the utility of transposing this international document into the domestic law.

Once the transposition into the domestic law has been done, the provisions of the law for the transposition of the Convention shall also apply aboard the ships navigating under the Romanian flag, according to the principle of territoriality.

REFERENCES

