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Abstract

The Medieval statutory regulations at the east coast of the Adriatic Sea, especially in Dubrovnik, that are analysed in this article are related to sailor's service, agreement of service, types of contracts, single voyage contracts, time contracts and profit share, sailors' working responsibilities, breach of contractual obligations etc., all of which enable an interesting insight and open the question of possible parallels with contemporary seafarers' labour relations. In 2006, the International Labour Organisation adopted the Maritime Labour Convention (MLC) which sets out terms and conditions for employment of seafarers, regarding the minimum age for employment, medical conditions to be met by seafarers, employment of seafarers through an appropriate system with no charge to the seafarers, entitlement to wages in accordance with employment agreements, etc. Special focus is dedicated to their hours of work and rest in order to ensure safety of navigation. MLC entitles seafarers to adequate compensation in cases of injury, loss or unemployment arising from ship's loss or foundering, in addition to the right to free repatriation of seafarers, except in cases of serious breach of seafarer's contractual obligations.

Key words: medieval statutes, maritime law, International Maritime Labour Convention, seafarer service

1. Introduction

The sea is the way opened to all nations and states to the mutual benefit and as a source of wealth to the whole humankind. Social relations connected with the sea and sailing have been the object of legal norms since ancient times. Sailors and their service have been also regulated in legal sources since antiquity, such as the 17th century BC Code of Hammurabi, the 5th century BC Greek *Lex Rhodia de iactu*, the Roman and Byzantine law (i.e. the 8th or 9th century *Nomos rodion nauticos*, the 9th century *Bazilikas*

of Emperor Leo IX), Venetian regulations in force since 12th century on, etc. [12, 5] Kostrenčić has divided statutes at the east side of the Adriatic Sea into two divisions, the “northern” one inspired by Venetian *Statuta navium* or *Capitulare natuticum* since 1255 (the 14th century statutes of Zadar, the ones of Split dated 1312, the 14th century statute of Skradin, written in Latin, the 14th century ones of Krk and Rab, partly of Pag dated 1433 and of Šibenik dating from 15th century) and the “southern” division that was inspired by the Statute of Dubrovnik from 1272 (statutes of Hvar from 1331 and Kotor from the beginning of 14th century). The Statute of Trogir dating from 1322 and of Korčula from 1264 cannot be listed into any of these groups [2, 12]. In this article, the dominant analysis concerns the Statute of Dubrovnik which makes up a whole “book” (*liber*), the 7th chapter consisting of 67 paragraphs (*capitul*) committed to maritime law [14, 17]. All maritime disputes in Dubrovnik used to be solved by regular judges, but nevertheless a special maritime court was operating between 1535-1540 and nautical accidents were solved by the Maritime Consulate (*Consulatus maris*) since 1629 [12]. Maritime disputes were solved in summary, accelerated procedures held on any day. Where a dispute had been solved in a community which was not the port of ship's registry, the party in dispute could demand retrial before the court of the ship's port of registry (book VI, chapter 72) [15]. The quarantine (*lazaret*) was founded in Dubrovnik in 1377. Sailors and other persons had to be examined by the communal doctor before boarding a ship and expenses were paid by the treasury of the Republic of Dubrovnik out of the money collected from custom duties [12].

2. Sailors' services

In the statutes, sailors' service is often called *officium marinariae*, while there are also different terms for special services, such as *officium temonariae* for helmsman. According to the Statute of Pula dating from 15th century, sailors' services were arranged by symbolic down payments. In the Middle Ages, down payments did not necessarily have any larger value. It might have been a small coin symbolically representing the acceptance of contractual obligations that would subsequently become valid and enforceable. Another mode was by extending good faith (*fides*), which included hand shaking or fist bumping (IV, 34) [13]. The same regulations regarding down payments (*per arras*) can be found in the 14th century Statute of Rab (III, 24) and regulations regarding good faith (*per fidantiam*) in the 14th century Statute of Zadar (IV, 65) [9, 24].

Sailors can be divided into three main categories, depending on the way of their salary was earned.

2.1. *Marinarii ad marinariciam*

Marinarii ad marinariciam represent a category of sailors who work for fixed salaries. Further on, this category can be divided into two groups: a) the ones who work on a fix-term basis, for example 6 months, or in accordance with what was ordinarily arranged in Zadar, until Saint Andrew's Day, and b) the ones who work on a fix-voyage (*viaggio*) basis, who were called, according to the Statute of Dubrovnik, *marinarii ad viagum* (VII, 43) [14, 17], and according to the Statute of Zadar, *ad viaticum* [24]. They were sailing for a fixed salary, called *mercedem*.

They were obliged to complete the initiated voyage and were not allowed to leave the ship without good reason, even where the service time of fix-term sailors had expired. A sailor who would have acted to the contrary and would have left the ship was obliged to pay back to the shipowner, the *dominus navis* (*parun*, *patronus*), or to his deputy double the amount he had got or was entitled to get for his salary (Earlier, *parun* was the term denoting shipowner and later it could denote a bareboat charterer.) [7, 2], but only to the amount that was calculated for extra days they had to stay on board the ship, and proportionally to the salary (VII, 12, 22) [14, 17]. According to the Statute of Zadar, salaries of sailors who worked on a fix-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 completed 2/3 and the third one upon completed 3/3 of the voyage (IV, 44) [24, 1]. Where the shipowner would hire sailors for voyages outside the Adriatic Sea (*ultra Gulfum*) and then would change the route, they were obliged to stay on board. But, the ship was not allowed to sail into a prohibited, i.e. hostile port (Krk III, 64, 71; Rab III, 22-23, Zadar IV, 32) [8, 9, 24, 1].

Of course, sailors were contractually obliged to obey their part of the contract as well. The Statute of Krk and the Statute of Rab were prohibiting sailors from leaving the ship. *Parun* was entitled to keep the sailor when he wanted to leave the ship, thereby breaking his contract. The Statute of Zadar regulated this situation by giving *parun* the right to keep sailor's salary until the completion of his responsibilities. In the case of leaving the ship secretly or by force, the sailor was obliged to pay double the amount in respect of damages according to the Statute of Krk. On the other hand, the Statute of Rab prescribed a punishment in judicial discretion. The most severe punishment was provided for by the Statute of Zadar, whereby the sailor was obliged to pay double the amount for damages, but he could also be cumulatively punished in judicial discretion (Zadar IV, 32) [24, 1].

Sailors in Dubrovnik used to enjoy a certain protection; in cases where the *parun* or his deputy had not paid sailor's salary within the agreed time, they were obliged to pay the salary doubled (VII, 12) [14, 17]. The Statute of Krk also recognised the obligation of payment within a determined deadline (III, 65) [8]. The Statute of Zadar regulated this issue by allowing the shipowner an extended period of 8 days to pay the salary after the agreed time, or otherwise he was bound to pay double the amount of salary if they were staying in a port (IV, 33) [24].

Sailors who got ill were in a less beneficial position. There were two possible situations: if the sailor had got ill in Dubrovnik before the commencement of the voyage and had already received his salary, he had to give it back to *parun* or his deputy; 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 with the time he had served on board the ship. In the case of sailor's death, his heirs were entitled to a payment proportional to the late sailor's service on board the ship (VII, 24-25) [14, 17]. According to the Statute of Zadar, if the deceased sailor had not completed even one third of the voyage, his heirs were entitled to one third of his salary as the minimum (IV, 63) [1, 24]. By both the Statute of Krk (III, 69) [8] and the Statute of Split (VI, 59) [15] the *parun* was obliged to pay the salary for the entire voyage to sailor's heirs if the sailor had passed away during a voyage in the Adriatic Sea [3].

2.2. *Marinarii ad partem*

Marinarii ad partem present a special category of sailors who don't work for salaries, but for a share in profit. The *parun* would sign contracts with *navklir* (*Nauclerius*, *nokjer* is captain or commander of a vessel [7], but according to statutes of Hvar and Dubrovnik *nokjer* can also mean boatswain [2].) and sailors and would give them a certain share in the profit which was to be gained from the carriage of goods and passengers. However, they were not only entitled to profit rights, but were also obliged to cover expenses of maintenance and repairs, in proportion with their shares (Dubrovnik, VII, 1), in addition to damages caused by water leaking due to ship's poor insulation, which would result in damaging the goods carried on board (VII, 6). Of course, *marinarii ad partem* also handled the business risk. Their shares in the profit were a part of the contract and in the case of a dispute, with no witnesses present, it was the word of the *patrun* that was held relevant (VII, 30) [14, 17].

Apart from the Statute of Dubrovnik, this category of sailors is also mentioned respectively in the Statutes of Zadar, Ancona and Trania, while the Statutes of Venice do not mention them [7]. In 16th and 17th century, sailing regulated in this way was a characteristic of Dubrovnik, which is the reason why on the Apennine Peninsula it used to be called *sailing in the Ragusian way* [12]. This category was actually established because of voyage risks, to be later replaced with voyages with fixed salaries.

In the case of illness, *marinarii ad partem* were in a better position than *marinarii ad marinariam*. In cases they had got ill before the ship sailed out of Dubrovnik, the contract between the *parun* and the sailor *ad partem* was terminated. On the other hand, where the ship had already sailed out of Dubrovnik, the sailor *ad partem* was entitled to his share even if discharged elsewhere than Dubrovnik. He was also entitled to a certain subsistence allowance. A sailor was entitled to a share in profit only for the first and not for any subsequent voyages. If the ship would sail back to the port where the sailor had been previously discharged, he was allowed to come back on board if he

was healthy, unless the ship had already replaced him (VII, 23). In the case of sailor's death, his heirs were entitled to a share in that voyage only (VII, 25) [14, 17].

Once having sailed out of Dubrovnik, the *navklir* and sailors *ad partem* were not allowed to leave the ship without the approval of the *parun* or his deputy. The fine for violation amounted to 25 perpers. One half of the fine went to the municipality, and the other to the ship with *navklir* and sailors *ad partem*. Anyone who would leave the ship in Dubrovnik was charged a fine of 10 perpers. Sailors would be exempted from the fine on reasonable grounds which were ruled by the Duke and his court (VII, 11) [14, 17].

2.3. *Marinarii in entega*

Entega is a special sort of merchant and maritime merging. The name has derived from the Greek word *entithemi*. It is constituted from three parties: the *parun* gives the ship, sailors invest their work and the merchant invests money, or exceptionally, goods [7, 17, 2]. The profit is shared in three portions. If the ship sails within the Adriatic, the three parties share the profit equally (1/3 for each party), but if the ship sails outside the Adriatic, the merchant gets 1/2 and the *parun* and the sailors get 1/4 each (Dubrovnik VII, 42-43) [14, 17]. The money carried on board the ship is used for trading and the merchant bears the risk of its destruction in the case of storm or pirate attacks (VII, 42). Yet, in the event of a shipwreck, damages will be compensated out of the profit, while the *entega* remains intact (VII, 47). Where the *navklir* and the sailors accept the *entega* under a condition binding them to sail within the borders of the Adriatic Sea, they are not allowed to break the given condition without the approval of the majority of *entega* owners. If they sail out of the Adriatic without such approval, and *entega* or a part of it becomes destructed, the complete damages have to be covered by *navklir* and the sailors (VII, 48). In the case of damages caused by storm or pirate attacks, the principle of general average applies between *entegas* (VII, 44).

Entegas are usually constituted from money, but it is also possible for an individual to give goods for sale, in which case he bears the risk. Once the goods are sold, the money received from the sale goes to the *entega* (VII, 44). Sailors can enter special agreements to their own benefit, using their right (*pakotilja*) to load certain goods on board, as cabin baggage, which they are allowed to sell upon *navklir*'s approval. To insure that there is no neglecting of interests of *entega*, *parun* who was not on board the ship is allowed to take those goods from the sailor, giving him a fee in return, but only to the limit of uninvested *entegas* (VII, 53). The Statute of Dubrovnik dated 1272 holds ten regulations regarding the *entega*, but after 16th century this institute has disappeared [7].

There are pros and cons for each category of sailors. *Marinarii ad marinariciam* were generally in a poorer position in comparison with the other two categories. Although those other two categories included certain burden like risk bearing, they also included the possibility of more profit gains.

3. Generally about sailors

Sailors for salaries in Dubrovnik are obliged to load and unload cargoes (VII, 12). Cvitanić explains that sailors were only required to unload goods that belonged to the *parun* [2]. The same was in Zadar, where they were also required to load the ship with the ballast, to accept, stow, and unload cargoes, except in Venice, and to load timber cargo for the shipowner (*parun*) (IV, 68-69) [24, 1]. According to the Statute of Trogir, sailors were to take care of cargo handling only where the *parun* could not find any porters (II, 106) [16].

If a sailor from Ragusa, or another embarked person, had been captured in any port because of some debt collection (the so-called *repressalia*) and suffered damage, he had to be refunded by every boarded person, the so-called ship community (*comunitas navis*) (Dubrovnik VII, 32). Where the vessel called at a port or some anchorage post and a sailor went ashore, other than for ship service, and was taken captive, he had to cover his own damage by himself. If the sailor had gone to the shore by will of the shipowner or boatswain (*nokjer*), the damage would have been covered by the ship community (VII, 31) [14, 17]. The Statute of Zadar quite similarly forbids disembarking at port except with shipowner's permission, or otherwise a penalty of 20 *solds* had to be paid for each day. Disembarking is generally prohibited from vessels anchored outside the port (IV, 46) [24].

Sailors from Dubrovnik were not allowed to embark any smuggled or forbidden goods, or otherwise they had to pay the whole damage resulting therefrom (VII, 36). Special sanctions were provided for in respect of sailors who would intentionally damage the ship or perform a theft aboard. The sanction was double the amount of the damage caused and in case of theft fourfold the value of the object concerned. Criminal liability did exist there, as well as in Krk, III, 66, 68) [8].

The number of sailors (crew) is prescribed by the ordinance of Dubrovnik of 27th October 1341 and depends on vessel's bearing capacity. Any ship bearing 20-30 *miliars* ought to have 8 sailors and a cabin boy, ships from 30-50 *miliars* 10 sailors and a cabin boy, ships from 80-100 *miliars* 14 sailors and a cabin boy, and larger ships are to be regulated by the Duke of Dubrovnik and the Council. Another rule also prescribes the number of sailors for boats on the Drim river (Dubrovnik, Liber omnium reformationum X, 12 and XI, 2). A *miliar* is about 420 kilos of weight [17]. The Statute of Split regulates the number of sailors in proportion with the size of the ship and distance of the voyage (VI, 14) [15, 3]. Sailors have to be armed by shield, sword and helmet according to the rule of 16th January 1336, and are banned by fine of 6 *grossi* for each missing part of the equipment (Dubrovnik VII, 78) [14, 17]. The obligation of armament is also prescribed by the Statute of Rab (281) [9] and the Statute of Split (III, 25 and IV, 61) [15].

Since 1358, shipowners were allowed to embark only Ragusians as sailors [17]. The Statute of Venice contains more limitations concerning persons permitted to be boarded as sailors. Chapter 32 includes embargo on boarding persons under the age of

18, foreigners and servants (*miles, peregrinus et serviens*) [7]. The Statute of Dubrovnik approves even subordinate persons (*servi*) to sail as sailors certifying them as frank persons. Everything they earned belonged to their masters. If such a person escaped outside Dubrovnik, his portion/salary belonged to his master. Boatswain (*nokjer*) was authorised to punish such persons and if they escaped because of that, the boatswain and sailors were not obliged to pay any compensation, but such person's portion belonged to his master. Shipowner (*parun*) could board his servants, but they would retain a subordinate position and would not be considered to be frank, they were named *conducti* (Dubrovnik VII, 20) [14, 17]. Sailors in Zadar could be persons under the authority of father, i.e. younger than 20 years, and servants of the master. Where embarked without father's or master's permission, they had to pay a fine out of their income (IV, 47) [24].

4. The International Labour Organisation (ILO) and the Republic of Croatia

The International Labour Organisation (ILO) as a United Nation agency has a significant role in the international unification of labour legislation. ILO Conventions regulate a variety of situations in the context of labour, such as employment, safety at workplace, minimum age for certain jobs, hours of work, hours of rest, vacations, medical examination attesting working capacity, the right to workers' compensation, protection of women and children, requirements for seafarers and employment conditions (that will be mostly focused on in this article), etc. Member States ratifying conventions shall harmonize their domestic laws [4].

The Republic of Croatia became a member of ILO on 30th June 1992. The Croatian Parliament adopted the Constitutional Decision on the Sovereignty and Independence of the Republic of Croatia on 25th June 1991, whereby it is stipulated in Article 3 that treaties concluded and acceded to by SFRY (the Socialist Federative Republic of Yugoslavia) shall apply in the Republic of Croatia provided they are not in conflict with the Constitution and the legal system of the Republic of Croatia, on the basis of the provisions of international law on state succession relating to treaties. On the following day, Article 3 of the Constitutional Decision became a part of Croatian legislation. Thereby, the Republic of Croatia accepted international treaties from SFRY, which included ILO Conventions as well [19].

Likewise, Article 141 of the Constitution of the Republic of Croatia stipulates that „*international treaties which have been concluded and ratified in accordance with the Constitution, published and which have entered into force shall be a component of the domestic legal order of the Republic of Croatia and shall have primacy over domestic law. Their provisions may be altered or repealed only under the conditions and in the manner specified therein or in accordance with the general rules of international law.*“ [23].

5. Historical overview of seafarers' working conditions through ILO

Maritime affairs are characterized by a series of specific features, which, *inter alia*, include a matter of special nature concerning living and working conditions for maritime workers, that cannot be framed into a „*classic employment relationships*“, because of their dynamics and complexity. Therefore, they require a special *sui generis* status [22]. Because of the particular features regulating voyages, especially when it comes to labour and social status of seafarers, these situations are regulated by ILO Conventions and Recommendations, but also by domestic law of the Member State whose flag the ship flies [20]. It is worth mentioning that the term „seamen“ had been used until 1926 and 1936 respectively, in ILO Conventions and Recommendations instead of the term „seafarer“ that has become a part of today's terminology. The term „seafarer“ was used for the first time in Labour Inspection (Seamen) Recommendation, 1926, and later in ILO Convention in 1936 [18].

One of the specificities concerning the regulation of maritime affairs is connected with the matter of ratification of ILO Conventions. According to the established practise, ILO Conventions shall come into force after the minimum of two ratifications from Member States (except for one case, where the Unemployment Convention, 1919 required ratification by 3 Member States). However, when the *Maritime Labour Convention, number 186, was involved, 30 ratifications were required, which speaks a lot about the complexity of this field and its special regime* [21]. Hence, the *Maritime Labour Convention (MLC), number 186, will be the subject of the upcoming chapters.*

MLC was adopted by ILO on 23rd February 2006 in Geneva, Switzerland. There were 314 votes for, none against and 4 abstentions (Lebanon and Venezuela). They abstained for reasons that were unrelated to the substance of the Convention. Lebanon abstained because of the financial situation in its country, while Venezuela because of its views on the reference in the Preamble of the MLC to the United Nations Convention on the Law of the Sea (UNCLOS), to which Venezuela was opposed [11].

The new MLC provides improvement of rights and protection at work for more than 1.5 million seafarers of the world, out of which there are around 27 thousand seafarers in Croatia. It is often referred to as a „Seafarers' Bill of Rights“. It has been designed to become a global instrument known as the “fourth pillar” of the international regulatory body charged with governing quality shipping and complementing the key SOLAS, MARPOL and STCW conventions of the International Maritime Organisation (IMO). MLC came into force in August 2013, after ratification by 30 countries that in total represent the minimum of 33 % of the world fleet [10].

As a result, MLC represents consolidation and modernisation of the existing 68 maritime labour instruments (37 Conventions and 31 Recommendations) adopted by the ILO since 1920 which were later outdated. The aim of MLC was to accomplish more efficient usage of regulations, while maintaining the prevailing standards of the current maritime labour conventions [10].

6. The form and the content of MLC

MLC consists of the Preamble, Articles, Regulations and a Code. The Regulations and the Code are divided into five titles and contain Standards and Guidelines. The Standards are referred to as Part A and are mandatory. On the other hand, the Guidelines, referred to as Part B, are not mandatory and are leaving each country greater freedom in formulating their domestic laws in accordance with MLC provisions [10].

The first title „*Minimum requirements for seafarers to work on a ship*“ regulates the minimum age, medical certificate, training and qualifications, and recruitment and placement. The second title „*Conditions of employment*“ regulates seafarers' employment agreements, wages, hours of work and hours of rest, entitlement to leave, repatriation, seafarer compensation for the ship's loss or foundering, manning levels, career and skill development and opportunities for seafarers' employment. The third title refers to „*Accommodation, recreational facilities, food and catering*“. The fourth title „*Health protection, medical care, welfare and social security protection*“ regulates medical care on board ship and ashore, shipowners' liability, health and safety protection and accident prevention, access to shore-based welfare facilities and social security. Lastly, the fifth title „*Compliance and enforcement*“ regulates Flag States responsibilities, Port State responsibilities and labour-supplying responsibilities [6].

7. Conditions of employment, rights and obligations and *sui generis* status of seafarers under MLC

MLC defines a seafarer as „*any person who is employed or engaged or works in any capacity on board a ship to which this Convention applies*“ (Article 2, 1 (f)) [6]. Every seafarer is entitled to a safe and secure workplace that complies with safety standards, a right to fair terms of employment, decent working and living conditions on board ship, right to health protection, medical care, welfare measures and other forms of social protection. Each Member shall ensure, within the limits of its jurisdiction, that the seafarers' employment and social rights are fully implemented through national laws or regulations, applicable collective bargaining agreements, other measures or in practice, in accordance with the MLC requirements (Article 4) [6].

7.1. Minimum requirements for seafarers to work on a ship under MLC

MLC prohibits the employment, engagement or work on board a ship of any person under the age of 16. More stringent provisions are regulating night work, where MLC raised the age limit and prohibited night work for seafarers of less than 18 years of age. However, the Convention leaves it upon Members to define „night“ in accordance with their national laws and practice, while it shall „*cover a period of at least nine hours starting no later than midnight and ending no earlier than 5 a. m.*“. The competent

authority can make two exceptions from the night work restrictions; when „*the effective training of the seafarers concerned, in accordance with established programmes and schedules, would be impaired, or if the specific nature of the duty or a recognized training programme requires that the seafarers covered by the exception perform duties at night and the authority determines, after consultation with the shipowners' and seafarers' organizations concerned, that the work will not be detrimental to their health or well-being*“ (Regulation 1.1, Standard A1.1., 1 – 3) [6].

In principle, seafarers shall not work on a ship unless they are certified as medically fit to perform their duties. Therefore, the competent authority shall require that, prior to beginning work on a ship, seafarers hold a valid medical certificate, which shall be issued by a duly qualified medical practitioner or, in the case of a certificate solely concerning eyesight, by a person recognized by the competent authority as qualified to issue such a certificate. Each medical certificate shall state that the hearing and sight of the seafarer concerned, and the colour vision in the case of a seafarer to be employed in capacities where fitness for the work to be performed is liable to be affected by defective colour vision, are all satisfied. It shall also state that the seafarer concerned is not suffering from any medical condition likely to be aggravated by service at sea, or to render the seafarer unfit for such service or to endanger the health of other persons on board. A medical certificate shall be valid for a maximum period of two years unless the seafarer is under the age of 18, in which case it shall be valid for one year. A certification of colour vision shall be valid for a maximum period of six years. In urgent cases the competent authority may permit a seafarer to work without a valid medical certificate until the next port of call where the seafarer can obtain a medical certificate from a qualified medical practitioner, under two conditions: the period of such permission shall not exceed three months and the seafarer concerned shall be in possession of an expired medical certificate of recent date. „*If the period of validity of a certificate expires in the course of a voyage, the certificate shall continue in force until the next port of call where the seafarer can obtain a medical certificate from a qualified medical practitioner, provided that the period shall not exceed three months*“ (Regulation 1.2, Standard A1.2., 1, 4, 6 – 8) [6].

Other than medical capacity, seafarers are required to be trained or certified as competent or otherwise qualified to perform their duties. Those who haven't successfully completed training for personal safety on board ship, shall not be permitted to work (Regulation 1.3, 1 – 2) [6].

All seafarers shall have access to an efficient, adequate and accountable system for finding employment on board ship without charge to themselves, which shall be accomplished by seafarer recruitment and placement services (Regulation 1.4) [6]. MLC defines seafarer recruitment and placement services as „*any person, company, institution, agency or other organization, in the public or the private sector, which is engaged in recruiting seafarers on behalf of shipowners or placing seafarers with shipowners*“ (Article 4, 1 (g)) [6].

7.2. Conditions of employment under MLC

The terms and conditions for employment of a seafarer shall be set out or referred to in a written legally enforceable agreement, signed by both the seafarer and the shipowner or a representative of the shipowner (or, where they are not employees, evidence of contractual or similar arrangements) (Regulation 2.1, Standard A2.1., 1 (a)) [6]. Shipowner is the „owner of the ship or another organization or person, such as the manager, agent or bareboat charterer, who has assumed the responsibility for the operation of the ship from the owner and who, on assuming such responsibility, has agreed to take over the duties and responsibilities imposed on shipowners in accordance with this Convention, regardless of whether any other organization or persons fulfil certain duties or responsibilities on behalf of the shipowner“ (Article 4, 1 (j)) [6].

Seafarers' employment agreements shall contain: the seafarer's full name, date of birth or age, and birthplace; the shipowner's name and address; the place where and date when the seafarers' employment agreement is entered into; the capacity in which the seafarer is to be employed; the amount of the seafarer's wages or, the formula used for calculating them; the amount of paid annual leave or, the formula used for calculating it; the termination of the agreement and the conditions thereof, including: if the agreement has been made for an indefinite period, the conditions entitling either party to terminate it, as well as the required notice period, which shall be equal for the shipowner and the seafarer, if the agreement has been made for a definite period, the date fixed for its expiry and if the agreement has been made for a voyage, the port of destination and the time which has to expire after arrival before the seafarer should be discharged. Furthermore, agreements in matter shall contain the health and social security protection benefits to be provided to the seafarer by the shipowner; the seafarer's entitlement to repatriation; reference to the collective bargaining agreement, if applicable; and any other particulars which national law may require (Regulation 2.1, Standard A2.1., 4.) [6].

Each Member shall require that payments due to seafarers working on ships that fly its flag are made at no greater than monthly intervals and in accordance with any applicable collective agreement. Seafarers shall be given a monthly account of the payments due and the amounts paid, including wages, additional payments and the rate of exchange used where payment has been made in a currency or at a rate different from the one agreed to. Beside that, each Member shall require that shipowners provide seafarers with a means to transmit all or part of their earnings to their families or dependents or legal beneficiaries (Standard A 2.2., 1 – 3) [6]. It is also important to point out payroll accounting for seafarers with consolidated wages and for seafarers who work overtime.

Consolidated wage means „a wage or salary which includes the basic pay and other pay-related benefits; a consolidated wage may include compensation for all overtime hours which are worked and all other pay-related benefits, or it may include

only certain benefits in a partial consolidation“. For seafarers whose wages are fully or partially consolidated the seafarers' employment agreement should specify the number of hours of work expected of the seafarer in return for this remuneration, and any additional allowances which might be due in addition to the consolidated wage, and in which circumstances (Guideline B2.2.2, 1 (a), (b) and Guideline B2.2.1, 1 (c)) [6].

For seafarers whose remuneration includes separate compensation for overtime work, for the purpose of calculating wages, the normal hours of work at sea and in port, should not exceed eight hours per day, while for the purpose of calculating overtime, the number of normal hours per week covered by the basic pay or wages should be prescribed by national laws or regulations, if not determined by collective agreements, but should not exceed 48 hours per week. Collective agreements may provide a different but not less favourable treatment (Guideline B2.2.2, 1 (a), (b)) [6].

National laws, regulations or collective agreements may provide for compensation for overtime or for work performed on the weekly day of rest and on public holidays, at least equivalent time off duty and off the ship or additional leave instead of remuneration or any other kind of compensation (Guideline B2.2.2, 3.) [6].

Further provisions of MLC are focused on hours of work and hours of rest. Each Member shall establish maximum hours of work or minimum hours of rest over given periods that are consistent with MLC. Also, while determining the national standards, each Member shall take account of the danger posed by the fatigue of seafarers, especially those whose duties involve navigational safety and the safe and secure operation of the ship. In accordance with that, MLC sets out a framework, where the maximum hours of work shall not exceed 14 hours in any 24-hour period and 72 hours in any seven-day period, or where minimum hours of rest shall not be less than ten hours in any 24-hour period and 77 hours in any seven-day period (Standard A 2.3., 2, 4 – 5) [6]. On the other hand, MLC specifically regulates hours of work and hours of rest for seafarers under the age of 18, where working hours should not exceed eight hours per day and 40 hours per week. They need to be entitled to a 15-minute rest period as soon as possible after each two hours of continuous work. Also, overtime work should be an option only if it's unavoidable for safety reasons (Guideline B2.3.1, 1.) [6].

Provisions that follow regulate seafarers' entitlement to leave. Each Member shall adopt laws and regulations determining the minimum standards for annual leave for seafarers serving on ships that fly its flag, taking proper account of the special needs of seafarers with respect to such leave. In accordance with collective agreements, laws or regulations providing for an appropriate method of calculation that takes account of the special needs of seafarers in this respect, the annual leave with pay entitlement shall be calculated on the basis of a minimum of 2.5 calendar days per month of employment. But, public and customary holidays recognized as such in the flag State (whether or not they fall during the annual leave with pay), periods of incapacity for work resulting from illness or injury or from maternity, temporary shore leave granted to a seafarer while under an employment agreement and compensatory leave of any kind, under conditions as determined by the competent authority or through the appropriate machinery in each

country, should not be counted as part of annual leave with pay (Standard A 2.4.1, 2. with Guideline B2.4.1, 4.) [6].

Also, MLC regulates one highly important question, regarding repatriation of seafarers. Each Member shall require ships that fly its flag to provide financial security to ensure that seafarers are duly repatriated at no cost to themselves. Repatriation shall be ensured if the seafarers' employment agreement expires while they are abroad, when the seafarers' employment agreement is terminated (by the shipowner or by the seafarer for justified reasons) and 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, which will be in the event of illness, injury or other medical condition, in the event of shipwreck, if the shipowner becomes unable to continue fulfilling his legal or contractual obligations as an employer of the seafarers by reason of insolvency, sale of ship, change of ship's registration or any other similar reason, in the event of a ship being bound for a war zone to which the seafarer does not consent to go and in the case of termination or interruption of employment in accordance with an industrial award or collective agreement, or termination of employment for any other similar reason (Regulation 2.5., 2; Standard A 2.5.1, 1., 3., 8.; Guideline B2.5.1., 1 (b)) [6]. The standard mode of transport should be by air. Each Member should prescribe destinations to which seafarers may be repatriated, which includes the place at which the seafarer agreed to enter into the engagement, the place stipulated by collective agreement, the seafarer's country of residence, or other mutually agreed place at the time of the engagement. A Member shall not refuse the right of repatriation to any seafarer because of the financial circumstances of a shipowner or because of the shipowner's inability or unwillingness to replace a seafarer in matter. Also, each Member shall prohibit shipowners from requiring seafarers to make an advance payment towards the cost of repatriation at the beginning of their employment, or from recovering the cost of repatriation from the seafarers' wages or other entitlements, except where the seafarer has been found to be in serious default of the seafarer's employment obligations (Guideline B2.5.1., 6.; Standard A 2.5.1, 3, 8.) [6].

Following, MLC entitles seafarers to adequate compensation in the case of injury, loss or unemployment arising from the ship's loss or foundering. The indemnity against unemployment resulting from a ship's foundering or loss should be paid for the days during which the seafarer remains in fact unemployed at the same rate as the wages payable under the employment agreement, but the total indemnity may be limited to two months' wages (Regulation 2.6., 1. with Guideline B2.6.1., 1.) [6].

Provisions regarding manning levels are binding each Member to require that all ships that fly its flag have a sufficient number of seafarers employed on board to ensure that ships are operated safely, efficiently and with due regard to security under all conditions, taking into account concerns about seafarer fatigue and the particular nature and conditions of the voyage (Regulation 2.7., 1.) [6].

Finally, provisions regarding career and skill development and employment opportunities for seafarers have a purpose to organize national policies into promoting

employment in the maritime sector and encouraging development and greater opportunities for seafarers domiciled in its territory. If there's an established system of registers or lists that govern the employment of seafarers, these registers or lists should include all occupational categories of seafarers in a manner, who should consequently have priority in seafaring engagement (Regulation 2.8., 1. with Guideline B2.8.2., 1. – 2.) [6].

8. Conclusion

Frequent, but one-sided attitude could be found in positive legal sciences declaring that many legal institutions in different branches of law, including maritime and labour law, have only arisen since 19th century. The so called “dark” Middle Ages needed to solve many legal problems similar to the ones of today. In medieval statutes of the east coast of the Adriatic Sea, notwithstanding their specificities, we can recognise some characteristics of labour relations, even if they are not based on modern legal standards. We can raise questions or even make statements that some medieval statute solutions have a “grain” of wisdom we should recognise and respect in our modern times. Some of analysed regulations are exotic, some of them partly similar to modern ones or may be even an example of *de lege ferenda*. However, legal tradition of the east coast of the Adriatic Sea as a part of the European legal history should be recognised and respected.

MLC was adopted by ILO on 23rd February 2006 in Geneva, Switzerland, as an instrument representing consolidation and modernisation of the existing 68 maritime labour instruments (37 Conventions and 31 Recommendations) adopted by the ILO since 1920, which were later outdated. The new MLC provides improvement of rights and protection at work for the world's more than 1.5 million seafarers, of which around 27 thousand seafarers take a place in Croatia. The aim was to accomplish more efficient usage of regulations, while maintaining the prevailing standards of the current maritime labour conventions.

The terms and conditions for employment of seafarers shall be set out or referred to in a written legally enforceable agreement, signed by both the seafarer and the shipowner or a representative of the shipowner. Each Member shall require that all ships that fly its flag have a sufficient number of seafarers employed on board to ensure that ships are operated safely, efficiently and with due regard to security under all conditions. MLC sets out age limitations, where its provisions prohibit the employment, engagement or work on board a ship of any person under the age of 16, respectively 18. Also, seafarers are required to be certified as medically fit to perform their duties, which they attest by holding a medical certificate.

On the other hand, provisions which are mainly referring to seafarers' entitlements ensure that all seafarers have access to a system for finding employment on board ship without charge to the seafarer, through seafarer recruitment and placement services. Provisions regulating career and skill development and employment opportunities for

seafarers have a purpose to organize national policies into promoting employment in the maritime sector and encouraging development and greater opportunities for seafarers domiciled in its territory.

After the employment, MLC is imposing shipowners to pay seafarer's wages in accordance with seafarers' employment agreements, while specially regulating overtime. Special focus is dedicated to hours of work and hours of rest, because maritime affairs are characterized by a lot of specificities, dynamics and complexity, which include a different nature of living and working conditions when it comes to maritime workers. That is why they cannot be framed into a „classic employment relationships“. In that regard, it mainly refers to seafarer's requirements and needs where they can fulfil intended standards for work, namely, for rest, and in the way to maintain navigational safety and the safe and secure operation of the ship, considering it is a job ranked as highly responsible, demanding and challenging. Moreover, MLC entitles seafarers to adequate compensation in the case of injury, loss or unemployment arising from the ship's loss or foundering.

Finally, very important question is regarding the right of repatriation, providing financial security ensuring that seafarers are duly repatriated back to their homes at no cost to themselves, but to the cost of Member whose ships fly its flag. Member shall not refuse the right of repatriation and shall prohibit shipowners from requiring that seafarers make an advance payment towards the cost of repatriation at the beginning of their employment, or from recovering the cost of repatriation from the seafarers' wages or other entitlements, except where the seafarer has been found to be in serious default of the seafarer's employment obligations.

References

1. Beuc, I. (1954) Statut zadarske komune iz 1305. godine. *Vjesnik Državnog arhiva u Rijeci*. 2, pp. 491-781.
2. Cvitanić, A. (1979) Naše srednjovjekovno pomorsko pravo. *Zbornik radova Pravnog fakulteta u Splitu*. 16, pp. 207-229.
3. Cvitanić, A. (1964) *Pravno uređenje splitske komune po Statutu iz 1312. godine*. Split, Muzej grada Splita.
4. Grabovac, I. & Petrinović, R. (2006) *Pomorsko pravo, Pomorsko javno, upravno i radno pravo*. Split, Pomorski fakultet Split.
5. Jakaša, B. (1983) *Udžbenik plovidbenog prava*. Zagreb, Narodne novine.
6. International Labour Organization (2006) *Maritime Labour Convention no. 186* [Online]. Available from: http://www.ilo.org/wcmsp5/groups/public/ed_norm/normes/documents/normativeinstrument/wcms_554767.pdf [Accessed 20th April 2018].
7. Kostrenčić, M. (1914) Pomorsko pravo u statutima primorskih naših gradova i otoka. *Mjesečnik pravničkog društva u Zagrebu*. 1 (9), pp. 960-964.
8. Lusardo, A. & Besta, E. (1954) *Statuta Veglae*. Milano, Dott. A. Giuffrè – editore.
9. Margetić, L. & Strčić, P. (2004) *Statut rapske komune iz 14. stoljeća*. Rab – Rijeka, Grad Rab, Adamić.
10. Petrinović, R. & Lovrić, I. (2015) Osiguranje pomoraca prema novoj Konvenciji o radu pomoraca 2006. *Poredbeno pomorsko pravo*. 59 (169), pp. 145-170.
11. Petrović, D. (2006) Globalna prava za pomorce: Nova konvencija o radu u oblasti pomorstva. *Naše more – znanstveni časopis za more i pomorstvo*. 53 (1-2), pp. 29-33.

12. *Pomorska enciklopedija* (1983). Zagreb, Jugoslavenski leksikografski zavod.
13. *Pulski statut* (2000). Pula, Povijesni muzej Istre.
14. *Statut grada Dubrovnika 1272.* (1990). Dubrovnik, Historijski arhiv Dubrovnik.
15. *Statut grada Splita* (1998). Split, Književni krug.
16. *Statut grada Trogira* (1988). Split, Književni krug.
17. Šundrica, Z. (1972) *Prijevod sedme knjige Dubrovačkog statuta*, Dubrovnik, Historijski arhiv.
18. Učur, M. Đ. (2014) Nacionalni kolektivni ugovor za hrvatske pomorce na brodovima u međunarodnoj plovidbi (2013.-2015.). *Naše more – znanstveni časopis za more i pomorstvo.* 61 (5-6), pp. 118-125.
19. Učur, M. Đ. (2003) Radnopravni status pomoraca. Rijeka, Pravni fakultet Sveučilišta u Rijeci.
20. Učur, M. Đ. & Bartulović, Ž. (2004) Mornarska služba u srednjovjekovnim statutima i Nacionalni kolektivni ugovor za hrvatske pomorce na brodovima u međunarodnoj plovidbi (2013-2015), In: Mićović M. (ed.) *Zbornik Uslužni poslovi*, May 2004, Kragujevac, Pravni fakultet Univerziteta u Kragujevcu. pp. 895-921.
21. Učur, M. Đ. & Smokvina, V. (2016) Posebnosti radnopravnog statusa radnika u pomorskom ribarstvu s posebnim osvrtom na radno vrijeme i odmore. *Naše more – znanstveni časopis za more i pomorstvo.* 63 (4 Suppl.), pp. 98-106.
22. Učur, M. Đ. & Smokvina, V. (2015) Problematika radnopravnog statusa pomoraca i ribara u pomorskoj plovidbi u Republici Hrvatskoj s posebnim osvrtom na registraciju ugovora o radu. *Naše more – znanstveni časopis za more i pomorstvo.* 62 (4 Suppl.), pp. 104-112.
23. Ustav Republike Hrvatske (consolidated text) (2010). Narodne novine. 85/2010.
24. *Zadarski statut* (1997). Zadar, Ogranak Matice hrvatske u Zadru & Hrvatski državni arhiv u Zagrebu.