

The Legal Nature of the Romanian Seafarer's Employment Contract

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Abstract

Objectives of the study - Every Romanian seafarer has the right to a safe and hazard-free job that respects the right to fair employment conditions, decent life on board ships, medical care and other forms of social protection, as provided for in the Maritime Labour Convention (MLC 2006) and its 2014 amendments, as well as in the Agreement concluded between the European Community Shipowners' Association (ECSA) and the European Transport Workers' Federation (ETF). According to the Government Emergency Ordinance (GEO) no. 50/2022, seafarers of Romanian nationality who work on board ships flying the Romanian or foreign flag must have a seafarers' employment contract signed by both the seafarer and the shipowner or a representative of the shipowner. Research methods used - in this paper we have used the analytical method and the synthesis method. Results and implications of the study - if the length of service, as regulated by the Labor Code, can now also be proven by Romanian seafarers through this regulation introduced by GEO no. 50/2022, the seniority in the specialty for seafarers is not regulated in our country. This escape of the legislator has a negative impact for this category of employees because they cannot hire, on land, in a suitable position when this condition of seniority in the specialty is imposed.

Keywords: maritime work, seniority, seniority in specialty, navigator, ship.

JEL Classification: K31, K39

1. Introduction

By Law no. 214/2015 for the ratification of the Maritime Labour Convention (MLC 2006),² adopted on 23 February 2006 in Geneva, at the 94th session of the International Labour Organisation, as well as the 2014 Amendments to the Maritime Labour Convention (MLC 2006), approved at the 103rd session of the International Labour Organisation in Geneva on 11 June 2014, with subsequent additions, an effective system of financial security has been put in place to protect seafarers' rights in the event of their abandonment and to provide compensation for contractual claims in the event of the death or long-term incapacity of seafarers as a result of an accident at work, an occupational disease or an occupational risk.

Council Directive (EU) 2018/131 of 23 January 2018³ also implements the Agreement between the European Community Shipowners' Association (ECSA) and the European Transport Workers' Federation (ETF) amending Directive 2009/13/EC⁴ in accordance with the 2014 amendments to the Maritime Labour Convention 2006, as approved by the International Labour Conference on 11 March 2018.

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² Published in the Official Gazette of Romania no. 636 of 21 August 2015

³ Published in the Official Journal no. L 22 of 26 January 2018, p. 28 - 33

⁴ Published in the Official Journal no. L 124 of 20 May 2009, p. 30 - 50

Seafarers of Romanian nationality who carry out their activity on board ships under the Romanian or foreign flag are obliged to have an employment contract signed by both parties – the navigator and the shipowner or his representative. This contract must ensure decent working and living conditions on board the ship.

Seafarers who are to sign an employment contract must have the opportunity to examine the contract beforehand and seek advice on its content. They must also benefit from other facilities necessary to ensure that the conclusion of the contract was done freely, with a clear understanding of the rights and responsibilities they assume.

The period of employment of the navigator on a ship under the Romanian flag is recorded in the seaman's logbook, specifying the position held by him on board. At the end of this period, the navigator will be issued a certificate attesting to the boarding period.

The owners of ships flying the Romanian flag have the obligation to ensure that a copy of the collective bargaining agreement is available on board. Therefore, for the first time since 1990, the employment contracts of seafarers are regulated by a special normative act. However, if for seafarers sailing on ships under the Romanian flag the period of employment is recorded in the seaman's book and can be proven as such, for seafarers sailing on ships under a foreign flag things are not regulated.

The novelty of this scientific approach lies in the fact that it analyzes the regulation of the employment contract of the Romanian seafarer also from the perspective of proving the seniority of the categories of seafarers and puts forward an objective proposal through which the Emergency Ordinance of the Government (G.E.O. no. 50/2022) can be supplemented⁵ with a provision so that the seniority in the specialty of the seafarers can also be recognized.

The article is structured on 4 sections and in order to describe the operation of interpreting the legal norms in its realization we used the analytical method and the synthesis method.

The conclusions had materialized by advancing proposals to complete the analyzed normative act.

2. National and European regulations on labour relations

In Romania, the regulatory framework applicable to labor relations, regardless of the field in which one or more employees work, is mainly regulated by the Labor Code.

At European level there are several regulations on this segment, the most eloquent normative act being EU Regulation no. 492/2011⁶ on the free movement of workers in the European Union, a regulation that aims to guarantee compliance in practice with the provisions of Article 45 of the Treaty on the Functioning of the European Union (TFEU).

According to European regulations, the member states of the European Union have the necessary mechanisms for the recognition of the professional experience of the member citizens.

⁵ Published in the Official Gazette of Romania no. 382 of 19 April 2022

⁶ Available at <https://eur-lex.europa.eu/legal-content/RO/TXT/PDF/?uri=CELEX:32011R0492>, accessed on 01.11.2024.

Article 45 TFEU clearly states that the free movement of workers is guaranteed within the Union and that this entails the elimination of any discrimination on grounds of nationality between workers of the Member States as regards employment, remuneration and other working conditions.

At the same time, Regulation 1612/68⁷ and, subsequently, Regulation (EU) no. 492/2011, regulations with special relevance for the European Economic Area (EEA), states that the member states of the European Union have the necessary mechanisms for the recognition of the professional experience of the citizens of these states⁸. Thus, Article 1 of Regulation 492/2011 specifies that any national of a Member State, regardless of his residence, has the right to take up an activity as an employed person and to pursue that activity in the territory of another Member State, in accordance with the laws, regulations and administrative provisions governing the employment of nationals of that State⁹. Nationals of a Member State shall, in particular, in the territory of another Member State, enjoy the same priority as nationals of that State in terms of access to available employment.

At the same time, according to the provisions of Article 7 of the same Regulation, a worker who is a national of a Member State may not be treated differently from national workers in the territory of the other Member States on grounds of nationality as regards employment and working conditions, in particular as regards remuneration and, if he becomes unemployed, dismissal and reinstatement or re-employment. Taking into account the above, from the analysis of the European regulatory framework, it is found that, in order for this period to be taken into account as seniority, the person concerned must submit the documents showing the period in which he or she worked on the basis of an individual employment contract, validly concluded according to the legal provisions applicable in the state where the employment relations were carried out, the position and the main attributions. Thus, regardless of whether the person in question has had employment relationships, for a certain period, in another EU member state, he is entitled to the appropriate capitalization of the previously accumulated length of service, based on an individual employment contract concluded valid on the territory of another EU member state. Obviously, the condition is that he submits all the documents that confirm this state of affairs, especially the individual employment contract duly translated, as well as any other documents issued by the employer in the EU member state, from which the activity carried out results, translated into Romanian.

⁷ Available at <https://eur-lex.europa.eu/legal-content/RO/TXT/?uri=celex%3A31968R1612>, accessed on 01.11.2024.

⁸ For a start link between international regulations and corporate employers under current conditions, see Cristina Elena Popa Tache, Cătălin-Silviu Săraru, „Evaluating Today’s Multi-Dependencies in Digital Transformation, Corporate Governance and Public International Law Triad”, in *Cogent Social Sciences* 10 (1) by Taylor & Francis. DOI:10.1080/23311886.2024.2370945.

⁹ For a comparative analyse see Mantoju, Capt. Deepak. 2021. “Analysis of Impact of the Maritime Labour Convention, 2006: A Seafarer’s Perspective.” *Journal of International Maritime Safety, Environmental Affairs, and Shipping* 5 (3): 107–19. doi:10.1080/25725084.2021.1955475. Also see Săraru, Cătălin Silviu, & Cristina Elena Popa-Tache (2024). „An Overview of Certain Tendencies in Extending the Concept of Administrative Litigation in the European Union and International Law”. *Journal of Knowledge Dynamics*, 1(1), p. 61-74. <https://doi.org/10.56082/jkd.2024.1.61>.

3. The particular situation of the Romanian seafarer's employment contract

The employment contract of the seafarer of Romanian citizenship, regardless of the flag of the ship, must contain at least the following elements¹⁰:

- a) the full name of the seafarer, date of birth or age, as well as the place of birth;
- b) the name and address of the shipowner;
- c) the place and date when the employment contract enters into force;
- d) the function/position on which the navigator is employed;
- e) the seafarer's salary or, as the case may be, the formula used to calculate it;
- f) the amount of paid annual leave or, as the case may be, the formula used to calculate it;
- g) the term of the contract and the conditions of its termination, in particular when:
 - h) the contract has been concluded for an indefinite period and its provisions entitle both parties to terminate the contract, and the notice period requested is not shorter for the shipowner than for the seafarer;
 - i) the health and social protection benefits to be provided to the seafarer by the shipowner;
 - j) the seafarer's right to be repatriated;
 - k) reference to the collective labor agreement, as the case may be;
 - l) any other details that may be required by national legislation.

Therefore, for the Romanian seafarer who sails both on ships flying the Romanian flag and on ships flying a foreign flag, there must be an employment contract that must include at least the elements mentioned above. According to the provisions of Article 16 of the Labor Code¹¹, republished, the work performed under an individual employment contract constitutes seniority. Since the text of the law does not distinguish according to whether the work is performed on the territory of Romania or outside it, it follows that the work performed abroad, under an individual employment contract, concluded according to the legal provisions applicable in the Member State, gives the employee seniority. The situation also applies to employment contracts for seafarers, which give them seniority.

However, if the length of service of the navigator can be proven with this contract, which must contain the elements required by GEO no. 50/2022, the seniority in the specialty cannot be proven by a navigator who wants to access a job on land and for whom this condition of seniority in the specialty is required. Specifically, the Government Decision (G.D.) no. 1336/2022¹² for the approval of the Framework Regulation on the organization and career development of contractual staff in the budgetary sector paid from public funds, provides in Article 35 that a candidate who wishes to participate in a competition for filling a vacant position must submit a copy of the work book, the certificate issued by the employer for the period worked, certifying the seniority in work and in the specialty of the studies¹³ required for the position. In practice, this requirement is imposed on all specialized positions provided for in the

¹⁰ Article 21 of GEO no. 50/2022.

¹¹ Published in the Official Gazette no. 72 of February 5, 2003.

¹² Published in the Official Gazette under the number 1078 of November 8, 2022.

¹³ Annex 3 of the decision.

organizational chart of some institutions and authorities¹⁴ in the field of navigation safety. Only people with expertise in the specialty of their completed studies (navigators with practical experience) can be attracted to these positions, and this cannot be proven with an unanimously recognized document in this regard. This is because, on the one hand, the crew of a ship can also include auxiliary personnel¹⁵ who perform work under that employment contract of the seafarer (those positions do not fall into the category of seafarers) and on the other hand there is the practical situation in which a seafarer has concluded an employment contract with an employer in the maritime field but during the period of that contract alternates the periods in which he is embarked on board the ship and performs effectively a trip and the periods when they are at home, so not on board the ship.

However, when accessing a position in which the condition of seniority in the specialty of studies is required, only the actual period worked in that position (on board the ship) which requires certain specialized knowledge is taken into account.

Not all professional experience qualifies as seniority in the specialty. The activities must be closely related to the field of study and correspond to the specific requirements of the position for which the recognition of seniority is requested.

Seniority in work and seniority in the specialty are two distinctly regulated notions to which specific rules apply.

In the labor relations in our country, as far as seniority is concerned, the legal framework is represented by the Labor Code and the specialized seniority is regulated in the Administrative Code. In the specialized literature¹⁶, seniority in the specialty was outlined as "the period of time in which a person worked in activities corresponding to the position (profession) in which he is to be employed or promoted, in fact it is seniority in the profession (for workers) and seniority in office (for other categories of personnel). It constitutes a species of seniority in work. Indeed, for a period of time to be considered seniority in the specialty, it must be, first of all, recognized as seniority in work".

According to the Administrative Code¹⁷ (art. 424 para. 2) seniority in work is the seniority acquired under the conditions regulated by the labor legislation, as well as the seniority acquired in the exercise of a service relationship.

Under these conditions, the length of service is the period in which the employee has performed work under an individual employment contract. In this regard, art. 16 para. (4) of the Labor Code establishes that the work performed under an individual employment contract constitutes seniority. Work performed under an individual employment contract constitutes seniority in employment and unjustified absences and unpaid leaves are deducted from seniority¹⁸.

As for the seniority in the specialty, I mention that it is calculated in relation to the fraction of the time worked. In this regard, the provisions of art. 424 para. (3) and (4)

¹⁴ For example, the Romanian Naval Authority; specialized positions within the Naval Transport Directorate of the Ministry of Transport and Infrastructure, etc.

¹⁵ Medical and health personnel; sanitary-veterinary staff; fishing and fish processing personnel; technological personnel; administrative staff; personnel for other activities on board the ship.

¹⁶ Alexandru Ticlea, *Labor Law Treaty- Legislation. Doctrine. Jurisprudence*. Universul Juridic Publishing House, 9th edition, updated, 2015, p. 432.

¹⁷ Published in the Official Gazette no. 555 of July 5, 2019.

¹⁸ Vlad Barbu, Gheorghe Lucian, *Labor Law, University Course*. Sitech Publishing House, Craiova, 2019, p. 108.

of the Administrative Code, according to which seniority in the specialty is the seniority acquired under an individual employment contract, a service relationship or as a liberal profession, demonstrated with appropriate documents by the person who has carried out an activity in a specialized position corresponding to his profession or specialization. Seniority in the specialty is also the seniority acquired under an individual employment contract, service relationship or as a liberal profession in the member states of the European Union, as well as in other states with which Romania has concluded agreements for the mutual recognition of these rights, demonstrated with appropriate documents by the person who has carried out an activity in a specialized position corresponding to his profession or specialization.

In all cases, the seniority in the specialty is related to the normal duration of the working time, being calculated by reference to the part-time worked and is demonstrated with appropriate documents.

4. Conclusions

Following the above, it follows the idea that a person can demonstrate the seniority in the specialty with the certificate issued by the employer showing the activities carried out in a certain field, in a certain period, or with copies of the individual employment contracts/work orders and the related job descriptions from which the main attributions in the field concerned result, so that it can be capitalized as seniority in the specialty, provided that it does not refer to seniority in the specialty of the graduated studies (which could be capitalized only if the position put out for competition was a position for which a higher level of education was required).

In perfect symmetry, and in the case of seafarers who are part of the category of seafarers, if from the job description or any other documents, they can prove that they have carried out activities related to their specialization in the naval field, this period can also be considered as seniority in the specialty of studies. However, in most cases, given the diversity and specificity of the internal regulations of shipowners/employers in the maritime field that do not require the preparation of such documents, these documents attesting to the seniority in the specialty (job description, etc.) cannot be obtained. A solution to solve this issue may come from the fact that the period of employment of the seafarer on board a ship¹⁹ is certified by the issuance of a boarding stage certificate. Based on the respective certificate and at the request of the navigator, the embarkation period is entered in the registration sheet by the Romanian Naval Authority.

Considering the specificity of the work carried out by the cabin crew, which involves alternating the periods of embarkation with those after disembarkation, I consider that the only possibility for this category of employees to be able to demonstrate seniority in the specialty is the transcript, which is why I propose to supplement GEO no. 50/2022 by inserting in Article 20, after paragraph (10), of a new paragraph, respectively (11) with the following content: "*11) For seafarers of Romanian citizenship who work on board ships flying the Romanian or foreign flag, seniority in the specialty*

¹⁹ On ships flying the Romanian flag, the following shall be distinguished by the entry in the seaman's logbook. See some international stands in Fotteler, M.L., Andrioti Bygvraa, D. & Jensen, O.C. „The impact of the Maritime Labor Convention on seafarers' working and living conditions: an analysis of port state control statistics”. *BMC Public Health* 20, 1586 (2020). <https://doi.org/10.1186/s12889-020-09682-6>.

can also be proven with a copy of the transcript issued by the Romanian Naval Authority."

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