

FROM THE BARGAIN/BARGAINING “AGREEMENT” TO THE SHIPPING AGREEMENT (II)

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ABSTRACT

The analysis of the legal components of the boarding agreement shows that this contract, in fact, is an individual employment contract concluded for a fixed period, with a particular suite of elements determined by very specific of the sailor profession.

The individual boarding agreement is an undefined legal concept, which incidentally regulates the meaning of "individual employment contract concluded for a fixed period" by employees who are part of the crew

Keywords: *Embarking, embarking, Collective Work, boarding personnel*

6. THE INDIVIDUAL BOARDING AGREEMENT

6.1. The definition of terms: “ambarcare” – “imbarcare” (embarking)

The conventions of maritime law use the term “ambarcare” when speaking of goods and the term “imbarcare” when speaking about persons. However, other conventions from the same field use these two terms the other way around (i.e. “ambarcare” when speaking about persons and the term “imbarcare when speaking of goods”). The International Maritime Organization did not interfere in order to clarify these two terms.

6.1.1. “Imbarcare” (Embarking)

The Regulation of 2007 regarding minimum training criteria and certification of maritime pilots, other than deep-sea pilots, requires a license and a "minimum embarking period"[1].

In a 1997 methodology [2] issued by the Romanian Government, there is provided that "the crew will present to the port captain an embarking certificate" (art. 12). In another methodology issued in 2003 by the Romanian Naval Authority [3], it is stated that the agency of the crew may place the crew only on the basis of firm job offers made by the ship owners or by their alternates. The firm offer of employment on board made by ship owners or by their alternates means specifying certain minimum data, including "the embarking duration and nature", "the duration of the embarking contract" [4]. Furthermore, crew agencies are required to submit assurances that "embarking contracts" are consistent with the applicable law and collective agreements. The sailing staff must be informed of their rights and obligations conferred by legislation and by the "embarking contract", and after signing it by the parties, the sailing staff receives copies of the individual employment agreement and of the "embarking contract" [5].

The Law no. 17 / 1990 (r) [6] provides for: "boarding on ships of any kind of aircraft," "boarding of military equipment", "embarking or disembarking of

goods, narcotics and psychotropic substances, cash or people, "embarking or disembarking passengers or cargo"

The G.D. no. 83/2003 stipulates that, on board, the sailing staff must conclude with the ship owner or with his representative an “embarking contract”, which sets out specific working and living conditions on board [art. 3. (3)]. It also reminds of "the individual embarking contract" [art. 7 para. (2)] "for two months of embarking contract " (art. 10) and the " embarking contract periods of the staff" [art. 13 para. (2)].

In 1993, an agreement [7] mentioned the term of "the quay for the embarkation/disembarkation of passengers" [art. 1 letter. g, j) - l)]. Another Agreement of 2000 [8] speak about "the embarkation and disembarkation for passengers transportation" [art. 2 letters. a). 5], "passengers boarding" (Article 4 Section 3).

The 2003 instructions of the Minister of Public Works, Transportation and Housing [9] speak about "the Romanian sailing staff on board of Romanian or foreign-flagged vessels" [art. 9 para. (5)].

6.1.2. “Ambarcare” (Embarking)

The Romanian Government Agreement of 1976 [10] speaks about: "embarking and disembarking passengers" (art. IV).

The Romanian Government Protocol of 1991 [11] defines the term "transit transport": the transport of passengers and/ or goods by a ship of a party on inland waterways in the territory of the other contracting party without "ambarcare"- embarking or disembarking passengers, i.e. without loading or unloading the goods during the transition (section 1 par. (2)).

The Law no. 138/1999 [12] reminded of the Navy crew from the ship and submarines units and subunits, which is "embarked" (art. 22), and the right to "an embarking allowance" paid to the military and civilian personnel from the units and subunits of “embarked” ships (Annex IV, section 1).

In G.D. no. 245/2003 [13] both terms are used. Although in Chapter III, Section 1 is entitled " 'Imbarcare'-Embarking and disembarking of crew",

subsequently there is used the term of "ambarcat"-embarked: "the embarked time of the crew" [art. 46 para. (3)], "data on 'ambarcare'- embarking" [art. 49 para. (A)], "'ambarcare'- embarking periods" [art. 50 para. (A)], "'ambarcare'- embarking operations" mentioned within the seaman's book, "'ambarcare'- embarking certificate" [art. 50 para. (2). a and b], "the 'ambarcat'-embarked crew" (art. 51), "the individual 'ambarcare'-boarding agreement [art. 51 points. b)]

Section 2, of G.D no. 245/2003 mentions: "If the loading, unloading, transshipment of goods or "imbarcare"- embarking or disembarking of passengers" [art. 74 para. (A)], for passenger ships, the "imbarcare"- embarking / disembarking of passengers (art. 86).

This deed uses the term "imbarcare" or "ambarcare" in order to define only the crew and for the cargo operations the terms "loading" ("incarcare") and "unloading" ("descarcare") are used.

The G.O. no. 42/1997(r) [14], also uses both terms: "In addition to the crew, other persons can be "imbarcate" ... with the approval of "imbarcare" port captain" (art. 57), "the chief engineer "imbarcat" on board a vessel" [art. 73 para. (A)], "the number of the passengers "imbarcati" " [art. 131 points. i)]; "the minimum safety crew which must be "ambarcat" on ships" [art. 56 (2)], "all those persons "ambarcate" on the ship" [art. 72 para. (A)].

We can say that, according to the Romanian legislation in force, there are not given definitions of the terms "ambarcare" and "imbarcare", and the legislator often uses both terms as synonymous.

6.2. Defining the individual boarding agreement

6.2.1. International sources

The boarding agreement is governed within the international law, by international conventions of the International Labor Organization, ratified in successive stages by the States concerned. The sailing river and maritime personnel is characterized as a professional group with certain particularities, which operates under contracts manifestly containing international norms. Thus, it was natural that their rights and obligations be regulated in a uniform manner throughout the world.

The large number of conventions that contain legal rules applicable in what concerns the contractual terms of boarding, which we list below, justify the particular nature of this category of staff.

1. The Convention no. 7/1920 concerning the minimum age of employment at sea.
2. The Convention no. 8/1920 relative to the allowance for lack of work in the case of loss by shipwreck [15];
3. The Convention no. 9 / 1921 regarding the placement of sailors [16];
4. The Convention no. 16/1921 on compulsory medical examination of children employed on board ships [17];
5. The Convention no. 7 / 1922. The draft

Convention adopted by the International Labor Conference in the second annual session (15 June - 10 July 1922), which sets the minimum age for admission of children in maritime labor [18];

6. ILO Convention no. 22 of 24.06.1926 on the employment agreement of sailors from 24.06.1926 [19];

7. The Convention no. 27/1929 relative to the indication of the weight on large parcels carried by ships [19];

8. The Convention no. 29/1930, on forced or compulsory labor [20];

9. The Convention no. 53/1936 on capability certificates of officers.

10. The Convention no. 55/1936 on the obligations of ship owners in case of the illness or injury of seamen.

11. The Convention relative to sickness, adopted at the International Labor Conference in Geneva (May 25-June 16, 1927) [21];

12. The Convention no. 56/1936 on the insurance in case of the disease of seafarers;

13. The Convention no. 58/1936 concerning the Minimum Age for the Admission to maritime labor;

14. ILO Convention no. 68 of 1946 on food and dining on board [22];

15. ILO Convention no. 92 of 1949 on the Accommodation of Crews (Revised) [23];

16. ILO Convention no. 105 of 25 June 1957 on the abolition of forced labor [24];

17. ILO Convention no. 108 of 13.05.1958 on national identity documents for seafarers [25];

18. ILO Convention no. 127/1967 on the maximum weight of the cargo that can be carried by one worker [26], at Geneva on 28 iunie 1967 (It will be called the "Convention on the maximum weight, 1967);

19. ILO Convention no. 133 of 1970 on crew accommodation [27];

20. ILO Convention no. 134/1970 on preventing the labor accidents of seafarers [28];

21. ILO Convention no. 137 of 25 June 1973 on the social repercussions of the new working methods in ports [29];

22. ILO Convention no. 138 of 26 June 1973 on the minimum age of employment [30];

23. The Convention no. 145/1976 on employment continuity (of the sailors);

24. The Convention no. 147/1976 on the minimum standards on board of merchant ships, adopted by the General Conference of the International Labor Organization in Geneva, on October 29, 1976, and the Protocol to this Convention, adopted by the General Conference of the International Labor Organization in Geneva on October 22, 1996 [31];

25. ILO Convention no. 163 of 1987 on the welfare of seafarers at sea and in port;

26. The detailed rules for implementing the ILO Convention no. 163/1987 regarding the welfare of seafarers at sea and in port [32];

27. ILO Convention no. 166/1987 on the repatriation of seafarers (revised) [33];

28. ILO Convention no. 180 of 1996 on the working time of seafarers and ships crew [34].

29. The Convention no. 186/2006 on maritime labor.

In international law the employment relationships of seafarers are expressly provided for in the Convention no. 22 of 24 June 1926 concerning the employment contracts of seafarers [35] and they apply to all ships registered in the Member State which has ratified this Convention and to the ship owners, commanders [36] and seafarers [37] of these vessels.

The Convention does not apply to:

- a) warships;
- b) government vessels not engaged in commercial purposes;
- c) vessels engaged in the coastal trade;
- d) pleasure yachts;
- e) Indian craft;
- f) fishing vessels;
- g) ships below 100 gross registered tons or 300 square meters or vessels engaged in the national transportation, with the tonnage under the tonnage limit prescribed by the national legislation for the special regime of these vessels, in force upon the adoption of this Convention.

According to art. 3 of the Convention, the names and conditions of the employment contract must be provided for in domestic law, so as to ensure the control of the competent public authority.

Andrei Popescu believes that the International Labor Organization rules on sailors, presents a certain originality in comparison with those relating to workers, generally being adopted in special session - called maritime and coming into force in specific circumstances [38].

The International Labor Organization's interest is to develop a new instrument bringing together all maritime conventions; it has been concretized by the adoption of Convention No. 186/2006 on maritime labor. The Convention, described by some analysts as a charter of the fundamental rights of seafarers, provides for clear rules, but also flexible enough for Member States to establish the rights and obligations of the seafarers in a unitary uniform.

The new Convention consolidates and updates the 68 maritime conventions and recommendations adopted by the International Labor Organization in 1920. The Convention will enter into force after the ratification by 30 member states of the International Maritime Organization representing at least 33% of world gross tonnage.

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[35] Published in the Of. G al Romania nr. 34 of 28 January 2000.

[36] The term commander includes any person who has the command and the responsibility of a ship, except the pilots.

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