

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

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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

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8. THE INDIVIDUAL BOARDING AGREEMENT

8.1. National sources

The work done by natural persons on a maritime or river vessel was regulated by the following acts:

1. Labor Code [1]
2. Art. 531-556 (contained in Book III, "On maritime trade and navigation", Title III - "On crew recruitment and salaries) of the Commercial Code (published in Booklet no. 0 of 6/27/1997) ;
3. Decree no. 40 of the Merchant Marine 02/14/1950 (Published in Official Gazette no. 11 of 14 February 1950);
4. Decree no. 41 of 14.02.1950 on the supervision, control and order of maritime and river navigation (Published in Official Gazette no. 11 of February 14, 1950). Decree no. 40/1950 and Decree No. 40/1950. 41/1950 were repealed by Decree no. 443/1972;
5. Decision of the Council of Ministers no. 40 of 01/18/1973 approving the Regulation containing rules regarding civil navigation (Published in Official Gazette no. 7 of 25 January 1973).
6. Decree no. 443/1972 regarding civil navigation (published in the Official Gazette, Part I, no. 132 of 23 November 1972). This document provides that the legal rules of labor law are governed by labor law rules. In turn, Decree no. 443/1972 was expressly repealed, except Chapter VI - "Crimes" - and replaced by GO 142/1972;
7. Government Ordinance no. 142/1997 on naval transportation (published in the Official Gazette of Romania, Part I no. 221 of July 21, 1997), approved with amendments and repeals by Act No. 412/2002. The part regarding criminality contained in Decree no. 443/1972 and non-repealed by the Government Ordinance no. 142/1997, was expressly repealed by Law no. 191 / 2003 on the offenses regarding the regime of naval transportation (published in the Official Gazette of Romania, Part I, no. 332 of 16 May 2003);
8. Government Ordinance no. 42 of 28.08.1997 on civil navigation is approved by Law no. 412 of 2002; HCM no. 40/1973 and Decree No. 443/1972 are

repealed, except Chapter IV - "Crimes" and, at the same time, the definition of the rules of navigation is updated;

9. Government Ordinance no. 42 of 28.08.1997 on naval transportation. GO no. 42/1997, after the publication in the Law. 412/2002, has been named by the Order on naval transportation, while changing the law in general. The implementing rules are governed by GD. 245/2003¹ for approving the methodological norms on naval transportation. The legal rules of Law no. 412/2002 refer to the institutional system of naval transport, shipping activities, marine transport means, the crew and vessel crew, activities carried out by means of water transport, navigation surveillance and control in ports and inland waterways. There are not, however, specific rules for the Port of Constanta. Government Ordinance no. 42/1997 was amended and supplemented by Government Ordinance no. 48 of 07.29.2003 and the Government Emergency Ordinance no. 74 of 20.09.2006 amending and completing Government Ordinance no. 42/1997 renamed under art. I point 1, as follows: "Ordinance on maritime and inland waterways transport;

10. Government Decision no. 83 of 23/01/2003 regarding the authorization of trade companies providing services of selection and placement of the maritime and river sailing staff on ships flying a Romanian or foreign flag, and establishing several financial security measures in case of their abandonment outside Romania [2];

11. Law no. 130 of 10.16.1996 on the collective employment agreement [3];

12. Law no. 132 of 12.11.1999 on the settlement of labor disputes [4];

13. Law no. 346 of 05.06.2002 on the insurance for work accidents and professional diseases [5];

14. Emergency Ordinance no. 129 of 31.08.2000 on the vocational training of adults [6];

15. Order of the Minister of Public Works, Transportation and Housing no. 1908 of 28.11.2002 on the Methodology for issuing labor cards in ports and the registration of port workers [7];

16. Order of the Minister of Transport, Constructions and Tourism no. 318 of 03/03/2006 regarding the approval of the training standards, competence confirmation and issue of competence

certificates to the sailing staff for inland waterways ships flying the Romanian flag [8];

17. Order of the Minister of Transport no. 509 of 06/20/2007 amending the Order of the Minister of Transport, Constructions and Tourism no. 318 of 03/03/2006 regarding the approval of the training standards, competence confirmation and issue of competence certificates to the sailing staff for inland waterways ships flying the Romanian flag [9]

18. Order of the Minister of Transport, Constructions and Tourism no. 214 of 07/02/2007 approving the minimum criteria for the training of the Romanian maritime and harbor sailing staff who does not fall under the STCW Convention [10];

19. Order of the Minister of Transport, Constructions and Tourism no. 1627 of 07/09/2006 approving the minimum criteria for training the maritime sailing staff and the system of recognition of certificates of competence [11];

20. Order of the Minister of Transport no. 512 of 21/06/2007 amending and supplementing the Order of the Minister of Transport, Constructions and Tourism no. 1627 of 07/09/2006 approving the minimum criteria for training the maritime sailing staff and the system of recognition of certificates of competence [12];

21. Order of the Minister of Public Works, Transportation and Housing no. 1908 of 28/11/2002 approving the Methodology for the issue of labor cards in ports and the registration of port workers [13].

22. Order of the Minister of Economy and Finance no. 822 of 25/07/2007 on the organization of working time for the staff working off-shore [14].

The employment relationships of crew members [15] of ships flying the Romanian flag in relation to their employers are determined by the provisions of the national legislation, international agreements and conventions to which Romania is party, and based on collective employment agreements and on individual boarding agreements.

The Labor Code defines the individual employment agreement as a "the contract under which a natural person, named employee, undertakes to perform work for and under the authority of an employer, natural or legal person, in exchange for remuneration, called salary" (art. 10). Nicolae Voiculescu, claims that the term traditionally used in the literature is that of "subordination", which better reflects the fundamental characteristics of an employment contract which gives employers the opportunity to have three major powers: legislative, organizational and disciplinary [16].

8.2. The legal status of the boarding agreement

In order to establish specific rights and obligations of employees, employment is done upon the individual boarding contract, subject to the provisions of the Collective Work Agreement.

The term "employees" or "boarding personnel" defines all the persons employed under the individual employment contract or the individual boarding contract, no matter the term of employment.

For the boarding personnel on ships that sail beyond national waters, the individual boarding agreement will be concluded as an appendix to the individual employment contract.

According to art. 1 of Government Decision no. 83/2003 on the authorization of the companies providing the selection and placement of crewing personnel for maritime or inland navigation under Romanian or foreign flag , and also referring to the establishment of financial security measures in case of abandonment of the personnel outside the Romanian borders, the companies established under Law no. 31/1990 and the branches of foreign companies established in Romania that are dealing with crewing operations (maritime or inland) that implies Romanian personnel on ships sailing under the Romanian or foreign flag, have the status of *crewing agencies* only upon the operating permit issued by The Romanian Naval Authority. The Law does not require a unique activity object, but requires that crewing agencies have expressly provided in the articles of association, the object of activity - "the selection and placement of labor force".

Ion Traina Stefanescu states that *crewing agencies are similar to temporary work agencies* as it concerns the terms of selection and the placement of the working personnel [17].

The crewing agencies provide services of selection and placement of such personnel on board ships sailing under the Romanian or foreign flag, if one has the minimum age of 16 years and the Romanian citizenship.

The necessary level of education is determined by Order no. 1627/2006 of the Ministry of Transport, Constructions and Tourism approving the minimum criteria for education and training of Romanian seafarers and the system of the recognition of certificates of competence.

Gheorghe Piperea [18] says that an individual boarding contract is, in fact, an individual contract concluded for a fixed term of employment between an employer and an employee who is part of the crew.

The individual boarding contract will be completed in two copies: one for employer and the other one for the employee.

The employee must always have with him the individual boarding contract and he must provide it to those dealing with labor inspection in the country and abroad, when checking is carried out on board.

In order to have their apprenticeship periods and their embarking (on ships flying a Romanian or foreign flag) taken into account, upon their arrive from voyages, the seafarers must submit to the Romanian Naval Authority a certificate issued by the crewing agency that has selected and placed them, showing the name of ship owner of the, the name of vessel, the registration number of the ship at the International Maritime Organization (IMO number), the gross tonnage of the vessel, the vessel's propulsion engine power, his/her position and the embarking period and the characterization issued by the commander / chief engineer of the ship or by the ship owner.

8.3. *Complying with the individual boarding agreement in foreign countries*

Determining the law applicable to labor migration is not an easy task. In the case of labor migration of seamen, occasioned by the conduct of business in several states, or navigating in the territorial waters of several countries, this problem is usually solved by applying the principle of the law enforcement of the country under whose flag they navigate flies.

This rule is in line with the new EU coordination regulation no. 883/2004 which introduced a new principle: the mutual recognition and assimilation of facts.

The fact that substantial differences still remain between countries demonstrates the complexity of coordination issues regarding security and labor systems.

Current EU coordination rules require member states, in the national social security systems, not to treat the citizens of other Member States differently from their own citizens when they perform activities within a Member State.

The general ship roll is an internal organizational document, including the nominal allocation of crew members to the intervention position in cases of fire, damage, ship abandonment, which requires urgent action for the safety of the ship or for saving people. The general ship roll must be made at the ship's entry into service and it is kept up to date, operating whenever changes occur in personnel cases. For each post there are fixed the duties and the procedure regarding: the closing of watertight doors and bottom valves, pipes leak checking axle damper and fire protection installation, putting down fires, preparing the boats and the other life saving equipment on board in order to abandon the ship, announcing the passengers in case of evacuation of the ship, driving them to boarding stations, boarding supervision etc. The general ship roll nominally allocated the entire crew in rescue craft, in accordance with the "International Convention for the Safety of Human Life at Sea" relating to: the maximum capacity, the appointment of a boat chief, assuring a sufficient number of certificated sailors etc. For the cases of fire and ship abandonment, the general roll provides for the special signals that are transmitted on the ship by means of whistle, buzzer or ringtones.

The partial rolls derive from the general roll: of fire, damage, boats, abandonment etc. on which there are conducted training exercises with the crew.

9. CONCLUSIONS

The sailors having Romanian citizenship can be employed on foreign-flagged vessels only by means of crewing agencies known as agencies (companies) of crewing [19] (which is the guarantee of financial security).

If the Romanian crews are employed, on their own, on ships flying a foreign flag – which is a possible option, according to art. 14 of Government Decree no. 83/2003 – they can not get financial security measures in cases of their abandonment outside Romania.

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.

Obviously, the boarding contract (of employment) of seafarers is applied common law rules of the Labor Code, if they are not contrary to the specific rules listed above [20].

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 [21].

10. REFERENCES

- [1] Labor Code - *Law nr. 53/2003*, published in the Of. G, Part I nr. 72/5.02.2003, modified and completed by *Law nr. 480/2003* (Of. G, nr. 814/18.11.2003), *Law nr. 541/2003* (Of. G, nr. 913/19.12.2003), *Government Emergency Ordinance nr. 65/2005* (M. Of. nr. 576/5.07.2005), approved with modifications, by *Law nr. 371/2005* (Of. G, nr. 1147/19.12.005) and Government Emergency Ordinance nr. 55/2006 (Of. G, nr. 788/18.09.2006).
- [2] published in the Of. G, Part I nr. 84 of 11/02/2003, when it entered in force. Modified by G.D. nr. 2173/2004.
- [3] Republished in the Of. G, Part I nr. 184 of 19/05/1998, when it entered in force. Modified by the Labor Code of 2003 and the Emergency Ordinance nr. 9/2004.
- [4] Published in the Of. G, Part I nr. 582 of 29/11/1999, the Act entered in force on 01.01.2000. Modified by Emergency Ordinance nr. 138/2000.
- [5] Published in the Of. G, Part I nr. 454 of 27/06/2002, the Act entered in force on 01.01.2003. Modified and completed by the Ordinance by: Emergency nr. 107/2003; Emergency Ordinance nr. 129/2004; Emergency Ordinance nr. 171/2005 and by Law nr. 186/2006.
- [6] Republished in the Of. G, Part I nr. 711 of 30/09/2002, when it entered in force. Modified by G.O. nr. 76/2004.
- [7] Published in the Of. G, Part I nr. 888 of 09/12/2002, when it entered in force.
- [8] Published in the Of. G, Part I nr. 315 of 07/04/2006, when it entered in force.
- [9] Published in the Of. G, Part I nr. 470 of 12/07/2007, when it entered in force.
- [10] Published in the Of. G, Part I nr. 123 of 20/02/2007, when it entered in force.
- [11] Published in the Of. G, Part I nr. 917 of 07/09/2006, when it entered in force.
- [12] Published in the Of. G, Part I nr. 471 of 12/07/2007, when it entered in force.
- [13] published in the Of. G, Part I nr. 888 of 09/12/2002, when it entered in force.
- [14] Published in the Of. G, Part I nr. 537 of 08/08/2007, when it entered in force.
- [15] The crew is formed by the crew and by the auxiliary personnel and its organization is made according to the type and the destination of the vessel.
- [16] VOICULESCU, N. *Dreptul muncii. Reglementări interne și comunitare*, Ediția a 2-a, Editura Woters Kkuwer, București, 2007, p. 9. See also: R. Gidro, *Opinii asupra unor dispoziții din proiectul Codului Muncii cu privire la încheierea și conținutul contractului individual de muncă*, în Revista Română de Dreptul muncii nr. 1/2002, p. 22.

[17] ȘTEFĂNESCU, I. T. *Tratat de dreptul muncii*, Editura Wolters Kluwer, București, 2007, pp. 442-443.

[18] Apud. PIPEREA, G. *Dreptul transporturilor. Ediția 2*, op. cit. p. 153. See also: Octavian Căpățînă, Gh. Stanca, op. cit., vol. II, p. 322, and Șerban Beligrădeanu, Contractul individual de ambarcare, in: Șerban Beligrădeanu, Ion Traian Ștefănescu, Dicționar de drept al muncii de Ed. Lumina Lex, București, 1997, p. 42-43. Dicționarul de drept al muncii - art. 39 - 40 of G.D. 42/97 (r) which was cancelled by art. I pct. 31 of O.U.G. nr. 74/2006. See also: Șerban Beligrădeanu - "Natura juridică a contractului individual de ambarcare (îmbarcare)", in *Revista Dreptul* nr. 5/2003, p. 29.

[19] Crewing companies are agencies of labor force placement abroad.

[20] See POPOACA, M. *Natura juridică a contractului de ambarcare al marinarilor. Drepturile și obligațiile personalului navigant de pe navele comerciale sub pavilion român*, În: Revista Română de drept maritim, anul II, nr. 4/2000, pp. 27-35 și Revista de Drept Comercial nr. 7-8/2001, p. 149 -158.

[21] Șerban Beligrădeanu - "Natura juridică a contractului individual de ambarcare (îmbarcare)", in *Revista Dreptul* nr. 5/2003, p. 29.