

# MARITIME LABOUR CONVENTION 2006: COMPLIANCE AND IMPLEMENTATION

PhD candidate **Oana Adăscăliței**

University of Bucharest

Faculty of Law

PhD scientific advisor: professor **Claudia Ana Moarcăș**

## Abstract

*The International Labour Organisation (ILO) has drawn up a significant number of conventions in the field of maritime labour. The most important of these, the Maritime Labour Convention 2006 (MLC 2006), revises and strengthens pre-existing standards by ensuring that seafarers' working and living conditions on board ships are respected. The compliance between the provisions of the MLC 2006 and the ILO conventions is complete: the MLC 2006 includes the fundamental principles of the most important conventions in international labour law. Cooperation between the ILO and the International Maritime Organisation ensures that the provisions of maritime labour conventions and international maritime conventions comply. Internally, compliance is ensured by the adoption of the Emergency Ordinance No. 50/2022, which takes over the provisions of the MLC 2006 adapted to the national requirements. The peculiarities of maritime work impose differences from the provisions of the Labour Code.*

**Keywords:** *compliance, Maritime Labour Convention (MLC 2006); International Labour Organization (ILO); ILO, IMO conventions, labour.*

## 1. Compliance with International Labour Organisation regulations

The main institutional sources of maritime labour have been developed by the International Labour Organisation (ILO). Between 1922 and 1996, the ILO elaborated over 66 instruments on maritime labour<sup>1</sup>. The MLC 2006 contains - in particular - the fundamental principles set out in other international labour Conventions, as follows: the Forced Labour Convention, 1930 (No. 29); the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87); the Right to Organise and Collective Bargaining Convention, 1949 (No. 98); the Equal Remuneration Convention, 1951 (No. 100); the Abolition of Forced Labour Convention, 1957 (No. 105); the Discrimination (Employment and Occupation) Convention, 1958 (No. 111); the Minimum Age Convention, 1973 (No. 138); the Worst Forms of Child Labour Convention, 1999 (No. 182). The MLC 2006 includes all the updated provisions of the current international conventions and recommendations on work in the maritime sector.

### 1.1. Forced Labour

The Forced Labour Convention, 1930 (No. 29), defines forced labour as „all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily”<sup>2</sup>. The Abolition of Forced Labour Convention, 1957 (No. 105) requires states not to use labour as a means of coercion, punishment, labour discipline, or racial, social, national, or religious discrimination<sup>3</sup>. In the case of work at sea, the extension of labour contracts beyond 11 months without seafarers' consent, due to Sars cov 2, has been described as tantamount to forced labour<sup>4</sup>.

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<sup>1</sup> Christodoulou-Varotsi, Iliana, & Pentsov, Dmitry A., *Maritime Work Law Fundamentals: Responsible Shipowners, Reliable Seafarers*, Springer-Verlag, Berlin Heidelberg, 2008,

<sup>2</sup> Article 2 Forced Labour Convention, 1930 (No. 29), published in the Official Bulletin No. 4 of January 18, 1958.

<sup>3</sup> Article 1 Abolition of Forced Labour Convention, 1957 (No. 105), published in the Official Journal No. 249 of July 6, 1998.

<sup>4</sup> ITF Beyond the limit of safe shipping - ITF General Secretary's UN address, available at <https://www.itfglobal.org/en/news/beyond-limit-safe-shipping-itf-general-secretarys-un-address>.

### 1.2. Freedom of association

The Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), recognises the right of workers to form and join organisations of their own choosing without prior authorisation<sup>5</sup>. The Right to Organise and Collective Bargaining Convention, 1949 (No. 98) encourages the adoption of measures appropriate to national conditions to promote the development and widest possible use of procedures for voluntary negotiation of collective agreements between employers and employers' organisations on the one hand and workers' organisations on the other, with a view to regulating conditions of employment by this means<sup>6</sup>. The MLC 2006 requires States to adopt laws and regulations safeguarding seafarers' right to freedom of association and the right to collective bargaining<sup>7</sup>.

### 1.3. Discrimination

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) defines discrimination as „any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation”<sup>8</sup>. According to the Maritime Labour Convention (MLC 2006), Member States must adopt legislation providing for the elimination of discrimination in respect of employment and occupation<sup>9</sup>.

### 1.4. Child Labour

The Worst Forms of Child Labour Convention, 1999 (No. 182) includes all forms of slavery or practises similar to slavery, the use, procuring or offering of a child for prostitution, for the production of pornography or for illicit activities, in particular for the production and trafficking of narcotic drugs; or work which, by its nature or the conditions in which it is carried out, is likely to harm the health, safety or morals of the child, in the worst forms of child labour<sup>10</sup>. Under the MLC 2006, Member States are obliged to ensure that the provisions of their legislation respect the effective abolition of child labour<sup>11</sup>.

### 1.5. Minimum Age

The Minimum Age (Sea) Convention, 1920 (No. 7) provides for a minimum age of 14 years, except where members of the same family are employed on ships<sup>12</sup>. The Minimum Age (Sea) Convention (Revised), 1936 (No. 58), sets the minimum age at 15 years<sup>13</sup>. In accordance with the provisions of the Convention, national authorities may grant certificates permitting the employment of children over 14 years of age, provided that the child's health and physical condition are not impaired and that the employment is beneficial in the immediate

<sup>5</sup> Article 2 Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), published in the Official Bulletin No. 4 of January 18, 1958.

<sup>6</sup> Article 4 Right to Organise and Collective Bargaining Convention, 1949 (No. 98) published in Official Gazette No. 34 of August 29, 1958.

<sup>7</sup> Basic rights under ILO | ITF Seafarers <https://www.itfseafarers.org/en/your-rights/basic-rights-under-ilo>

<sup>8</sup> Article 3 Discrimination (Employment and Occupation) Convention, 1958 (No. 111), Geneva, June 25, 1958, ratified by Law No. 593-XIII, September 26, 1995

<sup>9</sup> Article III Maritime Labour Convention (MLC 2006), adopted on February 23, 2006 in Geneva at the 94th Session of the International Labour Organization, and the 2014 amendments to the Maritime Labour Convention (MLC 2006), adopted at the 103rd Session of the International Labour Organization in Geneva on June 11, 2014, ratified by Law no. 214 of July 21, 2015, published in the Official Gazette of Romania, Part I, No. 636 of July 21, 2015.

<sup>10</sup> Article 3 Worst Forms of Child Labour Convention, 1999 (No. 182), published in Official Gazette Part I, No. 577 of November 17, 2000.

<sup>11</sup> Article III MLC 2006.

<sup>12</sup> Article 2 The Minimum Age (Sea) Convention, 1920 (No. 7) ratified by Decree No.1902/13.04.1922, published in the Official Bulletin of Romania No.11, of April 14, 1922.

<sup>13</sup> Article 2 para 1 Minimum Age (Sea) Convention (Revised), 1936 (No. 58) not ratified by Romania available at [https://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300\\_INSTRUMENT\\_ID:312203](https://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312203)

and future perspective<sup>14</sup>. According to the Minimum Age Convention, 1973 (No. 138), the minimum age fixed shall not be less than the age at which compulsory schooling ceases and under no circumstances be less than 15 years<sup>15</sup>. Member States are free to set a minimum age of 14 as a first step, in consultation with employers' and workers' organisations, where their economies or educational institutions are not sufficiently developed<sup>16</sup>. Where work, by its nature or the conditions under which it is performed, is likely to harm the health, safety or morals of young people, the minimum age for employment in any capacity or for use in any work shall not be less than 18 years<sup>17</sup>.

### 1.6. Wages

The ILO has adopted several international conventions on seafarers' wages. Wages, Hours of Work and Manning (Sea) Convention (Revised), 1949 (No. 93)<sup>18</sup>, Wages, Hours of Work and Manning (Sea) Convention (Revised), 1958 (No. 109)<sup>19</sup> set the minimum basic salary per calendar month for the able seaman. Wages, Hours of Work and Manning (Sea) Recommendation, 1958 (No. 109) also sets the minimum wage for a calendar month's service for an able seaman<sup>20</sup>. It was replaced by Seafarers' Wages, Hours of Work and the Manning of Ships Recommendation, 1996 (No. 187)<sup>21</sup>. Recommendation, 1996 (No. 187) includes separate provisions for the payment of overtime depending on the method of payment chosen, i.e. full or partial consolidated wages and the situation where remuneration providing for separate payment of overtime worked<sup>22</sup>. The MLC 2006 reproduces the content of Recommendation No. 187/1996 as regards the principle of paying salaries at intervals not exceeding one month<sup>23</sup>. Another rule that was taken over was that a able seaman's basic wage for a calendar month of work cannot be less than the amount set by the Joint Maritime Commission or another body authorised by the International Labour Office's Governing Body<sup>24</sup>.

### 1.7. Working time and rest periods

Forty-Hour Week Convention, 1935 (No. 47) provided for the first time the principle of establishing a 40-day working week so that standards of living would not be affected<sup>25</sup>. The ILO has developed specific conventions for seafarers' working and resting time. The Seafarers' Hours of Work and the Manning of Ships Convention, 1996 (No. 180) provides that States may establish either a maximum number of hours of work, which shall not be exceeded within a given period of time, or a minimum number of hours of rest, which shall be provided for within a given period of time<sup>26</sup>. The maximum number of working hours shall not exceed 14

<sup>14</sup> Idem Article 2 paragraph 2.

<sup>15</sup> Article 2 paragraph 3 Minimum Age Convention, 1973 (No. 138), Romania ratified the Convention by Decree No. 83/1975, which was published in the "Official Gazette of Romania," Part I, No. 86 of August 2, 1975.

<sup>16</sup> Idem Article 2 paragraph 4

<sup>17</sup> Idem Article 3 paragraph 1

<sup>18</sup> Article 5 paragraph 1 Wages, Hours of Work and Manning (Sea) Convention (Revised), 1949 (No. 93), not ratified by Romania, English text is available at [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C093](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C093).

<sup>19</sup> Article 6 paragraph 1 Wages, Hours of Work and Manning (Sea) Convention (Revised), 1958 (No. 109), not ratified by Romania, English text is available at [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C109](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C109).

<sup>20</sup> Wages, Hours of Work and Manning (Sea) Recommendation, 1958 (No. 109) not ratified by Romania, English text is available at [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_INSTRUMENT\\_ID:312447](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312447)

<sup>21</sup> Seafarers' Wages, Hours of Work and the Manning of Ships Recommendation, 1996 (No. 187), not ratified by Romania, English text is available at [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_INSTRUMENT\\_ID:312525:NO](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312525:NO);

<sup>22</sup> Idem Article 3.

<sup>23</sup> Standard A2.2 paragraph 1 MLC 2006

<sup>24</sup> Guideline B2.2.4 paragraph 1 MLC 2006

<sup>25</sup> Article 1 lit. a Forty-Hour Week Convention, 1935 (No. 47) not ratified by Romania, English text is available at [https://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100\\_INSTRUMENT\\_ID,P12100\\_LANG\\_CODE:312192,en:NO](https://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_INSTRUMENT_ID,P12100_LANG_CODE:312192,en:NO)

<sup>26</sup> Article 3 Seafarers' Hours of Work and the Manning of Ships Convention, 1996 (No. 180) published in the Official Gazette of Romania, Part I No. 34 of January 28, 2000.

hours in a 24-hour period and 72 hours in a 7-day period<sup>27</sup>. The minimum number of hours of rest shall not be less than 10 hours in a 24-hour period and 77 hours in a 7-day period<sup>28</sup>. The working hours of seafarers and other workers shall be 8 hours, with one rest day per week and rest on public holidays<sup>29</sup>. MLC 2006 incorporated from Convention 180/1996 the standards on working and rest time limits and added the requirement for a table on the organisation of work on board<sup>30</sup>. For seafarers under 18 years of age, the Convention states that the hours of work shall not exceed 8 hours a day and 40 hours a week<sup>31</sup>. The Seafarers' Annual Leave with Pay Convention, 1976 (No. 146) stipulates that seafarers are entitled to paid annual leave of at least 30 calendar days for a year of service<sup>32</sup>. The MLC 2006 envisages a different way of calculation that facilitates a higher level of ratification. For this purpose, paid annual leave is calculated on the basis of a minimum of 2.5 calendar days per month of employment<sup>33</sup>. The MLC 2006 remains the only relevant ILO instrument for seafarers' hours of work, rest and leave.

### 1.8. Medical care

The Health Protection and Medical Care (Seafarers) Convention, 1987 (No. 164) lays down seafarers' right to free medical care<sup>34</sup> and guarantees the right to medical examination at the ship's ports of call<sup>35</sup>. In accordance with the provisions of Convention 1987 (No. 164), the health protection and medical care of seafarers shall be comparable to that provided to land-based workers<sup>36</sup>. The MLC 2006 consolidates the main elements of the Health Protection and Medical Care (Seafarers) Convention, 1987 (No. 164), developing and updating certain basic principles. The MLC 2006 maintains the principle of guaranteeing free health care and provides for prompt access to necessary medicines, diagnostic and treatment services, as well as medical information and knowledge<sup>37</sup>. Shipowners' Liability (Sick and Injured Seamen) Convention, 1936 (No. 55) provides that shipowners shall be liable for the sickness or injury of seafarers between the date of their employment and the date of termination of their employment and for their death resulting from sickness or injury<sup>38</sup>. The shipowner shall bear the medical expenses of the seafarers until they recover or until such time as the illness or disability has become permanent<sup>39</sup>. The MLC 2006 revises the provisions of Convention 1936 (No. 55). The MLC 2006 extends the shipowner's liability in respect of sickness and injury suffered by seafarers between the date of commencement of employment and the date on which they are deemed to be repatriated or resulting from their employment, between those dates<sup>40</sup>. MLC 2006 introduces a system of financial security that guarantees that shipowners will provide compensation in the event of the death or long-term disability of seafarers due to occupational injury, illness, or occupational hazard<sup>41</sup>.

<sup>27</sup> Idem Article 5 paragraph.1

<sup>28</sup> Ibidem.

<sup>29</sup> Idem Article 4

<sup>30</sup> Standard A2.3 paragraph.10. MLC 2006.

<sup>31</sup> Guideline B 2.3.1 paragraph.1 lit.a. MLC 2006.

<sup>32</sup> Article 3 paragraph 3 Seafarers' Annual Leave with Pay Convention, 1976 (No. 146) not ratified by Romania, English text is available at [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C146](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C146).

<sup>33</sup> Standard A2.4 paragraph 2 MLC 2006.

<sup>34</sup> Article 4 lit. C Health Protection and Medical Care (Seafarers) Convention, 1987 (No. 164) not ratified by Romania, English text is available at [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_INSTRUMENT\\_ID:312309](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312309)

<sup>35</sup> Idem Article 4 lit.d.

<sup>36</sup> Idem Article 4 lit.b.

<sup>37</sup> Standard A4.1 alin.1 lit. b. MLC 2006.

<sup>38</sup> Article 2 paragraph 1 Shipowners' Liability (Sick and Injured Seamen) Convention, 1936 (No. 55), not ratified by Romania, English text is available at [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C055](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C055)

<sup>39</sup> Idem Article 4 paragraph 1

<sup>40</sup> Standard A4.2 lit. a MLC 2006.

<sup>41</sup> Idem Standard 4.2 paragraph.1 lit. b.

### 1.9. *Health and safety at work and prevention of industrial accidents*

The Prevention of Accidents (Seafarers) Convention, 1970 (No. 134) requires the competent authorities of the Member States to investigate and report industrial accidents properly and to establish a detailed statistical analysis of such accidents<sup>42</sup>. The Convention states that the ship's master must appoint one or more qualified people or set up a qualified committee from the ship's crew to be in charge of preventing accidents<sup>43</sup>. These people or committees will work under the authority of the master. The MLC 2006 revises and consolidates the main elements of Convention 1970 (No. 134). Pursuant to the new Convention, Member States must ensure that seafarers working on ships flying their flag have occupational health protection and live, work, and train on board ship in a safe and hygienic environment<sup>44</sup>. The MLC 2006 aligns the relevant requirements with the ILO legislative framework, namely the ILO code of practice entitled Accident prevention on Board Ship at Sea and in Port, 1996, and its subsequent versions, and other ILO and international standards, guidelines, and codes of practice on occupational safety and health protection<sup>45</sup>.

### 1.10 *Social Security*

The Social Security (Minimum Standards) Convention, 1952 (No. 102) lays down minimum standards for each of the social risks for which support is granted, with regard to the conditions and periods for which social security benefits are provided and the minimum benefits to be granted in the event of the occurrence of risks<sup>46</sup>. Convention, 1952 (No. 102) does not apply to seafarers<sup>47</sup>. Seafarers are protected by the provisions of the Seafarers' Pensions Convention, 1946 (No. 71)<sup>48</sup>, Social Security (Seafarers) Convention (Revised), 1987 (No. 165)<sup>49</sup> and the MLC, 2006. The Seafarers' Pensions Convention, 1946 (No. 71) makes provision for the establishment of a pension scheme for seafarers who retire from sea service. Pensions are paid to seafarers at the end of their period of service on reaching the age of 55 or 60, depending on the provisions of the scheme<sup>50</sup>. Under the provisions of the Social Security (Seafarers) Convention (Revised), 1987 (No. 165) seafarers are entitled to at least three social security benefits from among the benefits which Member States may grant: medical care; sickness benefit; unemployment benefit; old-age benefit; employment injury benefit; family benefit; maternity benefit; invalidity benefit; survivors' benefit<sup>51</sup>. In relation to the provisions of the Social Security (Seafarers) Convention (Revised), 1987 (No. 165), the MLC 2006 does not set concrete standards for social security benefits for seafarers. According to MLC 2006, seafarers are entitled to social protection mainly from the State in whose territory they are domiciled<sup>52</sup>.

## 2. **Compliance with International Maritime Organisation (IMO) Regulations**

Maritime labour is also regulated by international organisations other than the ILO. The IMO has developed International Convention on Standards of Training, Certification and Watchkeeping for Seafarers,

<sup>42</sup> Article 2 Prevention of Accidents (Seafarers) Convention, 1970 (No. 134) published in Official Gazette No.86 of August 2, 1975.

<sup>43</sup> Idem Article 7.

<sup>44</sup> Regulation 4.3 paragraph.1.MLC 2006.

<sup>45</sup> Idem Guideline B4.3.1 paragraph.1.

<sup>46</sup> Social Security (Minimum Standards) Convention, 1952 (No. 102) adopted on 28 June 1952 in Geneva by the International Labour Organization's General Conference, ratified by Law No. 115 of April 24, 2009, published in the Official Gazette No. 325 of May 15, 2009.

<sup>47</sup> Idem Article.77.

<sup>48</sup> Seafarers' Pensions Convention, 1946 (No. 71) not ratified by Romania, English text is available at [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C071](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C071)

<sup>49</sup> Social Security (Seafarers) Convention (Revised), 1987 (No. 165) not ratified by Romania, English text is available at [https://www.ilo.org/dyn/normlex/en/f?p=1000:12100::NO:12100:P12100\\_INSTRUMENT\\_ID:312310](https://www.ilo.org/dyn/normlex/en/f?p=1000:12100::NO:12100:P12100_INSTRUMENT_ID:312310) .

<sup>50</sup> Article 3 paragraph 1 lit.a Seafarers' Pensions Convention, 1946 (No. 71).

<sup>51</sup> Article 3 Social Security (Seafarers) Convention (Revised), 1987 (No. 165).

<sup>52</sup> Standard A 4.5 paragraph.3 MLC 2006.



1978 (STCW)<sup>53</sup>. According to the MLC 2006, ships must have at least one seafarer in charge of medical care and administration of medication qualified in medical care in accordance with the STCW Convention<sup>54</sup>. With regard to the training and qualification of seafarers, the MLC 2006 provides for a transfer of responsibility to the IMO. Pursuant to the MLC 2006, training and certification of seafarers in accordance with the mandatory instruments adopted by IMO (STCW Convention) will be considered as meeting the requirements of the MLC 2006<sup>55</sup>. Compliance is also revealed by the similarity of the provisions on working and resting hours. According to the STCW Convention, seafarers must be provided with a rest period of at least 10 hours in a 24-hour period and 77 hours in a 7-day period<sup>56</sup>. Under the provisions of the International Convention for the Safety of Life at Sea (SOLAS) of November 1, 1974, ships are required to carry on board a certificate attesting the existence of a minimum safe manning level<sup>57</sup>. The provision is included in the 2006 MLC Convention.

### **3. Compliance with and application of the MLC 2006 in national regulation—labour law and national maritime law.**

The provisions of the Labour Code and the maritime legislation adopted by Romania are in line with the provisions of the MLC 2006, but the particularities of maritime labour require the adoption of specific legislation in line with the requirements of the MLC 2006. There are a number of differences arising from the specific nature of work on board ships. Seafarers' employment contracts may be for an indefinite period, for a definite period, or for a single voyage<sup>58</sup>. By comparison, the provisions of the Labour Code stipulate that the duration of the employment contract may be indefinite or definite<sup>59</sup>. In accordance with the provisions of the MLC 2006, the seafarers' individual employment contract must contain the following elements: the seafarer's full name, date of birth or age and place of birth; the shipowner's name and address; the place and date of conclusion of the individual employment contract; the capacity in which the seafarer is employed; the total amount of the seafarer's wages or, where applicable, the formula, if any, used to calculate them; the amount of paid annual leave or, where applicable, the formula used for calculating it; the term of the contract and the conditions of its termination, in particular the health protection and social security 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 required by national law<sup>60</sup>. The particulars of the seafarers' employment contract are similar to the provisions of the Labour Code.

The minimum period of notice shall be seven days for seafarers and shall be determined in accordance with the legislation of the Member States after consultation with the shipowners' and seafarers' organisations concerned<sup>61</sup>. According to the Labour Code, in the case of resignation, the notice period cannot exceed 20 working days<sup>62</sup>. From the point of view of the minimum age of employment, the regulations of the Labour Code comply with international regulations, i.e. the Minimum Age Convention, 1973 (No. 138). In relation to these provisions, the MLC 2006 provides for a minimum age of 16 years for a person to be employed on board a ship, without the possibility of exemptions<sup>63</sup>. Similar to the provisions of the Labour Code<sup>64</sup>, seafarers' wages

<sup>53</sup> International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 ratified by Law No. 107/1992 published in the Official Gazette No. 258 of October 15, 1992.

<sup>54</sup> Standard A4.1 paragraph.4 lit. c., Guideline B4.1.1 paragraph.1 lit. a-b. MLC 2006; Regulation VI/4 STCW Convention.

<sup>55</sup> Regulation 1.3 paragraph.3 MLC 2006.

<sup>56</sup> Section A-VIII/1 paragraph.2 STCW Code

<sup>57</sup> Article 14 International Convention for the Safety of Life at Sea (SOLAS), 1974 published in the Official Bulletin No.21 of March 7, 1979.

<sup>58</sup> Standard A 2.1 paragraph.4 lit. g MLC 2006.

<sup>59</sup> Article 12 Labour Code.

<sup>60</sup> Standard A 2.1 paragraph 4 lit. a-k MLC 2006.

<sup>61</sup> Standard A 2.1 paragraph 5 MLC 2006.

<sup>62</sup> Article.81 Labour Code

<sup>63</sup> Regulation 1.1 paragraph 2 MLC 2006.

<sup>64</sup> Article.166 Labour Code

are paid at intervals not exceeding one month or at other regular intervals<sup>65</sup>. The minimum rate of wages for seafarers shall be determined by reference to the minimum monthly basic pay for able seafarers. The basic wage for a calendar month's service for an able seafarer shall not be less than the amount periodically established by the Joint Maritime Commission or other body authorized by the Governing Body of the International Labour Office<sup>66</sup>. Normal working hours at sea and in port should not exceed 8 hours per day<sup>67</sup>. The provisions comply with the Labor Code, which stipulates that for full-time employees, the normal duration of work time is 8 hours per day and 40 hours per week<sup>68</sup>. The maximum legal duration of working time may not exceed 48 hours per week, including overtime<sup>69</sup>. For seafarers, the maximum number of hours of work shall not exceed 72 hours in a period of 7 days<sup>70</sup>. The MLC 2006 provides a way of calculating seafarers' leave that facilitates the implementation of the Convention. Paid annual leave is calculated on the basis of a minimum of 2.5 calendar days per month of employment<sup>71</sup>. The Labour Code stipulates that the minimum duration of annual leave is 20 working days<sup>72</sup>.

According to the Labor Code, the employer has the obligation to ensure the safety and health of the employees in all aspects related to work<sup>73</sup>. The employer is responsible for the prevention of occupational risks<sup>74</sup>, the training of employees<sup>75</sup>, and the guarantee and control of health and safety at work<sup>76</sup>. The MLC 2006 requires states to adopt legislation, taking into account applicable international instruments, and to lay down rules relating to the protection of safety and health at work and the prevention of accidents on board ships flying their flag<sup>77</sup>. In terms of social security, the MLC 2006 requires states to ensure that all seafarers and, under national law, their dependants benefit from social security<sup>78</sup>. At the time of ratification, the protection to be provided by each state must include at least three social security benefits<sup>79</sup>.

The MLC 2006 was ratified by Romania through Law No. 214 of July 21, 2015<sup>80</sup>. Ordinance No. 50/2022 of 14 April 2022 regulating maritime labour ensures the implementation of the MLC 2006 and its 2014 amendments<sup>81</sup>. These provisions ensure compliance with the requirements regarding the working and living conditions on board ships under the Romanian flag. The provisions guarantee six of the social security benefits provided for in the Convention, namely: medical care, sickness benefit, employment injury benefit, unemployment benefit, old-age benefit, family benefit<sup>82</sup>. Seafarers' recruitment and placement services are required to ensure at all times that the shipowner has a valid financial guarantee to cover the related costs in the event of the abandonment of seafarers in a foreign port<sup>83</sup>. Other normative acts adopted by Romania refer

<sup>65</sup> Standard A 2.2 paragraph 1. MLC 2006.

<sup>66</sup> Guideline B 2.2.4 paragraph. 1 MLC 2006.

<sup>67</sup> Guideline B 2.2.2 paragraph. 1 lit a MLC 2006.

<sup>68</sup> Article.112 Labour Code.

<sup>69</sup> Article.114 paragraph1 Labour Code.

<sup>70</sup> Standard A2.3 paragraph 5 MLC 2006.

<sup>71</sup> Standard A 2.4 paragraph 2. MLC 2006.

<sup>72</sup> Article 145 Labour Code.

<sup>73</sup> Article 175 Labour Code.

<sup>74</sup> Article 177. Labour Code.

<sup>75</sup> Article 180 Labour Code.

<sup>76</sup> Article 181-182 Labour Code.

<sup>77</sup> Regulation 4.3 paragraph 3 MLC 2006.

<sup>78</sup> Regulation 4.5 paragraph 1 MLC 2006.

<sup>79</sup> Standard A 4.5 paragraph 2 MLC 2006.

<sup>80</sup> Maritime Labour Convention (MLC 2006), adopted on February 23, 2006 in Geneva at the 94th session of the International Labour Organization, as well as the 2014 amendments to the Maritime Labour Convention (MLC 2006), approved on June 11, 2014 at the 103rd session of the International Labour Organization in Geneva, ratified by Law 214 of July 21, 2015, published in the Official Gazette of Romania, Part I, No. 636 of July 21, 2015. 382 of April 19, 2022.

<sup>81</sup> Emergency Ordinance No. 50/2022 of April 14, 2022 for the Regulation of Maritime Labor published in the Official Gazette No. 382 of April 19, 2022.

<sup>82</sup> Idem Article. 65.

<sup>83</sup> Idem Article.12.

to the flag state control of the vessels flying the Romanian flag<sup>84</sup> and the observance of the obligations incumbent on Romania as a flag state according to the provisions of the Maritime Labour Convention<sup>85</sup>. National legislation can be brought in line with the international standards set by the MLC 2006, including through the future adoption of a Romanian Seafarers' Statute. By Government Decision No 276/2002, the Tripartite National Maritime Committee was set up<sup>86</sup>. The National Tripartite Maritime Committee is composed of the competent public authorities, through representatives designated by the Ministry of Public Works, Transport and Housing and the Ministry of Labour and Social Solidarity; the employers' organisation, through representatives designated by the Romanian Shipowners' Association and the Association of Crewing Agencies; the seafarers' organisation, through representatives designated by the Free Trade Union of Seafarers in the Commercial Maritime Fleet, affiliated to the International Transport Workers' Federation (I.T.F.), and through the representative of the International Transport Workers' Federation (maritime transport) for Romania. The National Tripartite Maritime Committee has advisory status at national level in the field of labour and living conditions of Romanian seafarers on board Romanian or foreign flagged vessels. In order to manage the safety and health protection of seafarers on board ships flying the Romanian flag, in accordance with the provisions of the MLC 2006, a guide was adopted on 19 March 2018<sup>87</sup>. The purpose of the guide is to bring to the attention of seafarers, shipowners or persons with designated responsibilities for occupational safety and health on board ships the issues covered by the Maritime Labour Convention (MLC 2006) relating to the prevention of accidents and diseases arising out of work and activity on board ship or in port. The Romanian Naval Authority (RNA) has an active role in the implementation of protection and prevention programmes to promote safety and health at work<sup>88</sup>.

In order to ensure the protection of seafarers and the compliance of national regulations with international labour and maritime regulations, we propose, *de lege ferenda*, the adoption-by law-of the legal status of seafarers. In Romania, there is currently no statute that exhaustively provides for the rights and obligations of seafarers in accordance with the provisions of the MLC 2006 and in particular, taking into account national particularities. We propose that the new law include the following provisions:

- (i) the responsibilities of shipowners who hire seafarers from countries that have not ratified the MLC 2006;
- (ii) seafarers' retirement age and the possibility of early retirement;
- (iii) incorporating the maternity benefit into the Romanian State's recognised social security benefits;
- (iv) clarification of the conditions under which maritime personnel may be dismissed;
- (v) distinct provisions for working hours at sea and in port, with a minimum of 30 days paid annual leave.
- (vi) The Seafarers' Statute will bring together the legal liability of seafarers, which is, at present, contained in separate pieces of legislation.
- (vii) the reinstatement of disciplinary liability for seafarers who are subject to a legislative vacuum.

The structure of the proposed legal statute for seafarers is: Part I: General provisions (scope, definitions, protection of personal data); Part II-Minimum requirements for work on board ship, Chapter 1-Minimum age; Chapter 2-Medical fitness for service at sea (fulfilment of medical conditions; refusal of medical certificate; appeals); Chapter 3: Vessel manning, qualifications, and crew list (minimum safe manning, crew list,

<sup>84</sup> The Order of the Minister of Transport No. 1388/2014 on the amendment of the Annex to the Order of the Minister of Public Works, Transport and Housing No. 1894/2002 for the approval of the Manual on flag state control of ships flying the Romanian flag, published in the Official Gazette, Part I, No. 750 of October 15, 2014;

<sup>85</sup> Order of the Minister of Transport No. 1225/2015 on observance of Romania's obligations as flag State under the Maritime Labour Convention (MLC 2006), published in the Official Gazette, Part I, No. 900 of December 3, 2015.

<sup>86</sup> Government Decision No. 276/2002 on the establishment and functioning of the National Tripartite Maritime Committee, published in the Official Gazette, Part I, No 221 of April 2, 2002.

<sup>87</sup> Guide of March 19, 2018 for the management of the safety and health protection of seafarers on board ships flying the Romanian flag, according to the provisions of the Maritime Labour Convention (MLC 2006), published in the Official Gazette No. 300 of April 3, 2018.

<sup>88</sup> *Idem* Article.3 paragraph 2.



certificates and documents of competency, and basic training); Chapter 4- Recruitment and Placement (Shipowner's obligations, Seafarer recruitment and placement services); Part III a- Conditions of Employment, Chapter 1- seafarers' individual employment contract (particulars of the contract, employer's obligation to inform regarding employment, record of employment, termination of the individual employment contract de jure, by dismissal, by resignation, by mutual consent, notice); Chapter 2: Presence on Board, Shore Leave, Chapter 3- Wages (entitlement to payment of wages, account of the payments due, overtime). Chapter 4- Hours of work and hours of rest (hours of work and hours of rest at sea, hours of work and hours of rest in port, derogations, suspension of hours of work or hours of rest, maximum legal working hours, minimum legal rest periods, table with the shipboard working arrangements), Chapter 5 Leave (entitlement to leave, duration of paid annual leave, location where seafarers may take annual leave, travel expenses); Chapter 6- Repatriation and abandonment of seafarers (entitlement to repatriation, repatriation of young seafarers, destination of repatriation, repatriation expenses; obligation to provide a financial guarantee for seafarers abandoned on Romanian shipowners' ships); Chapter 7 - Procedure in the Event of the Death of Seafarers (death of crew members; personal effects of deceased crew members); Chapter 8- Vocational training (agreement for vocational training, entitlement to remuneration, termination, notice), Part V -Accommodation, recreational facilities, food and catering; Chapter 1- Accommodation and recreational facilities (entitlement to accommodation, communication facilities), Chapter 2- Food and Catering (entitlement to Food, Inspections); Part VI- Health protection, medical care, welfare; Chapter 1- Medical care on board ship and ashore (Protection and medical care of seafarers, suspension of entitlement to medical care, termination of entitlement to medical care, payment of wages during illness or injury, repatriation in case of illness); Chapter 2- Shipowner's liability for health protection and medical care (medical equipment, monitoring, radio or satellite medical consultations), Chapter 3 -Health and safety protection and industrial accidents prevention (general aspects of occupational safety and health protection, rules on occupational safety and health protection and prevention of accidents on board ships, ship's safety committee, safety and health education of young seafarers), Chapter 4- Access to shore-based welfare facilities; Part VII- Order and discipline on board, Chapter 1: Order on board Chapter 1- Order on board (responsibilities of the master, duties of crew members), Chapter 2 -Right of complaint, on-board complaint procedure; Part VIII -Liability of seafarers (criminal liability, contraventional liability, disciplinary liability). The draft legislation contains a number of new features. With regard to social security rights, seafarers on board ships flying the Romanian flag are entitled to the following social protection measures granted in accordance with national legislation, medical care, sickness benefit, employment injury benefit, unemployment benefit, old-age benefit, family benefit. We propose granting maternity benefit in view of the significant number of female seafarers. Another proposal that we are considering – for compliance with mlc requirements – is for the Romanian state to offer comparable benefits to seafarers who do not have their domicile on national territory, according to the national legislation and practice, through insurance, bilateral and multilateral agreements, or other effective means, taking into account the provisions of the applicable collective labour agreements. The retirement age for seafarers should be 65 years. Seafarers should benefit from the possibility of early retirement as a form of recognition of the difficult working and living conditions on board ships. With regard to the termination of the individual employment contract by dismissal, we propose the following cases: professional misconduct; theft or other serious offence related to the navigation regime; disciplinary liability for non-fulfillment of professional obligations as a result of repeated disobedience; presence on board in a drunken state; physical violence against the other crew members. We propose that seafarers should be entitled to paid annual leave of at least 30 days, not 20 days as in the current regulation.

#### **4. Arrangements for verifying compliance and implementation**

States are required to implement their responsibilities under the MLC 2006 in respect of ships flying their flag<sup>89</sup>. Specifically, states should establish an effective system for the inspection and certification of maritime

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<sup>89</sup> Regulation 5.1. MLC 2006.

working conditions that ensures the working and living conditions of seafarers on ships flying their flag; meet and continue to meet the criteria and requirements of the MLC 2006<sup>90</sup>. Compliance of the flag State with the provisions of the Convention shall be attested by the issue of the maritime labour certificate accompanied by the declaration of maritime labour compliance<sup>91</sup>. Procedures shall be in place on board ships flying the flag of a Member State to enable the fair, effective and expeditious handling of any complaint made by seafarers concerning an alleged infringement/violation of the provisions of the Convention, including seafarers' rights<sup>92</sup>. Through inspections of foreign-flagged ships calling at the ports of Member States, port state control provides a means of continuous verification of compliance with enforcement in Member States<sup>93</sup>. Inspection in ports shall be limited to the control of the maritime labour certificate and the declaration of conformity of work in the maritime sector<sup>94</sup>. If non-conformities are found, the vessel is subject to a more detailed inspection. The master of the vessel is informed of the deficiencies found and the time limit within which they must be rectified<sup>95</sup>. When the non-conformities are major or constitute a serious or repeated violation of the provisions of the MLC 2006, including seafarers' rights, the ship shall be detained until the deficiencies are rectified<sup>96</sup>.

## 5. Conclusions

The MLC 2006 incorporates the fundamental principles set out in the ILO's international labour conventions on forced labour, freedom of association, collective bargaining, discrimination in employment and occupation, and youth work. The MLC 2006 revises according to the specificities of the maritime sector and consolidates the conventions adopted by the ILO in the field of labour. The ILO and IMO have worked together to ensure full compliance between the MLC 2006 and the international maritime conventions. There is partial conformity between the provisions of the Labour Code and the provisions of the MLC 2006, the differences being justified by the particularities of work in the maritime sector. The development of a Seafarers' Statute is imperative in order to align the provisions of the MLC 2006 with national legislation.

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<sup>90</sup> Regulation 5.1.1 paragraph 1 MLC 2006.

<sup>91</sup> Regulation 5.1.1 paragraph 4 MLC 2006.

<sup>92</sup> Regulation 5.1.5 paragraph 1 MLC 2006.

<sup>93</sup> Regulation 5.2.1 paragraph 1 MLC 2006.

<sup>94</sup> Regulation 5.2.1 paragraph 2 MLC 2006.

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