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PROTECTION OF UKRAINIAN SEAFARERS' RIGHTS AT THE NATIONAL AND INTERNATIONAL LEVELS

The characteristics, occupation and profession of person, his or her location are, no doubt, absolutely not important, because the legal mechanism has no limitations, although it has its own set of means (methods and tactics) to provide the same opportunity for people to be protected, in spite of some factors, for example, distance from their place of residence. Besides, a ship is a subject to legal regulation even on the open seas, hence the seamen on it is also. Thus, a unique legal tool connects the society in a single legal field with universal signs and codes that ensure the same interpretation of legal norms despite the level of legal understanding. Therefore, the mechanism for protecting the rights of seafarers is the same in Ukraine (national legislation) and in the world (such international organizations, as IMO, ITF, SSD, etc.).

For the great majority of people, as a rule, human rights have intrinsic properties that are realized consistently and fully only, if there are certain guaranteeing factors in the system, where the state performs a key role.

In general, the protection of human rights is based on the international and state legal system. Furthermore, it is noticeable that knowledge of people of their rights and the possibilities for their protection, first and foremost plays an important role in the mechanism of people's rights protection. In addition, basically, the protection is a measure of security.

Definitely, every person obtains legal rights and obligations, and seafarers also. Moreover, their specific working and liv-

ing conditions at sea requires special protection, which they not always have.

The purpose of the article is to demonstrate the level of seafarer's rights protection in order to put empirical aspects into practice.

Some aspects of the administrative-legal regulation of maritime legal relations, material security, social protection are reflected in the works of scientists in the fields of the theory of state and law, constitutional law, labor law, maritime law, social security law, international law. In particular, S.S. Alekseyev, N.B. Bolotin, N.D. Hetmantseva, V.N. Gutsulyak, S.L. Efimov, V.V. Zhernakov, I.V. Zub, S.S. Karinsky, S.Ya. Kozak, A.C. Cocina, A.M. Kolodiya, S.O. Kuznetsova, L.I. Lazor, O.G. Murashina, A.M. Nomokonova, A.Yu. Oliinik, P.D. Orenenko, S.M. Prilipko, V.I. Prokopenko, O.S. Savich, O.V. Smirnov, N.M. Stakhovskaya, B.S. Stikynsky, Yu.O. Frytsky, G.I. Chanesheva, A.M. Shemyakin, et al.

Inter alia, the Marine Transport Workers' Trade Union of Ukraine held the informational lecture on "Protection of Ukrainian Seafarers' Rights: who is aware – is armed!" for the cadets of "National University Odessa Maritime Academy" 04/11/2016. This, anyway, assumes increased interest among marine specialists and vindicate the relevance of research.

The first thing needs to be said is that since the emergence of advanced navigation, the World Ocean always served as the main means of communication between people, the development of their trade and economic ties. In modern con-

ditions, especially the merchant marine fleet, carrying out the main a lot of international cargo transportation, is closely connected with all economic and structural changes in the world economy, with the development of individual countries and the continents, with the conjuncture of markets [1, p. 8]. On the other hand, we can observe that ad initio the sea is a source of increased danger, which also entails social danger, and sailors are a weak link in the system of state and social protection of Ukrainians, therefore, for frequent sailors, they are afraid to count on the help of the state. When a sailor falls into trouble (for instance, an arrest of a ship, pirate captivity), the state's assistance must be prompt and effective, as all hope – to the homeland. Sailors are serving in water spaces in

specific conditions of physical and mental stress associated with long-term divorce with the family, a sharp change in climatic and time zones, a special type of its implementation (watch method), emergency and emergency work, etc. [2]. It is noticeable that seafarers are recognized as a special category of worker [3], because seafarer activities are a special type of service that is carried out on a professional basis, subject to availability of appropriate education, vocational training, age, health status, certificates, diplomas and seamen's identity cards. Nevertheless, one should accept, that professional activity of seafarers is carried out in accordance with the Statute of service on sea-going vessels (Article 54 of the Code of Merchant Shipping of Ukraine) and is regulated by certain official duties, and is carried out by a clear marking and organization of watch keeping in order to ensure the safety of navigation [4].

The potential of Ukraine as a maritime state is largely determined by the presence of highly skilled specialists [5, c. 3]. Meanwhile, the attractiveness of Ukrainian sailors for foreign shipowners is determined by high professionalism, endurance, communication skills, ability to make non-standard solutions at a lower cost for their maintenance [6]. Never-

theless, this leads to their popularity as professionals. Meantime the government doesn't take measures to protect them. Indeed, since Ukraine is the leading and the largest supplier of skilled personnel in the maritime market, Ukrainian seamen doubtlessly need legal protection of their rights abroad [7, p. 14–16]. Furthermore, it should be noted that Ukraine is a party of 3 fundamental Conventions, regulating the international shipping regime, whereas the Convention on Labor in Maritime Navigation (Bill of Rights) has not been ratified by it, that's why Ukrainian seamen are deprived of the opportunity to enjoy the basic rights enshrined in Art. 4 of the Convention [8]. However, in spite of this, the mechanism of protection exists.

It is clear from these observations that seafarers' activities are primarily related to staying outside Ukrainian state. This confirms the idea that it is impossible to secure their rights without applying the provisions of international maritime law, which does Ukraine's accession to important international and legal documents and their implementation into national legislation.

In general the development of the world maritime shipping needs rational reaction of the state to protect its citizens, in particular, on the regulation of relations, that arise between Ukrainian sailors and foreign shipowners, the possibility of application to the disputed legal relations of the flag state of the ship, country of employment, the law of the country of registration of the employer – the shipowner, etc. [7, p. 8].

The peculiarities of the legal protection of seafarers as a means of domestic and international public and private law are determined by the complexity of their protection mechanisms.

In any case, it is important to mention that seafarers have the following rights: the right to life, freedom from forced labor, freedom from torture, cruel, inhuman or degrading treatment, freedom from discrimination, the right to a legal remedy and access to justice, freedom of association and the right to collective bargaining, the right to strike, the right



to an employment contract, the right to a free employment services and continuity employment, the right to identity documents and the shore life, the right to safe and healthy working conditions, the right to a fair wage, the right to acceptable working hours and holidays, the right to health and medical care, the right to social security and welfare, the right to repatriation [9, p. 53–77].

Consequently, seafarers use common, inherent to all citizens, labor, and special rights, which are fulfilled at the international and national (regional) levels. Like every human being, they entitled to fundamental human rights, whereas they additionally entitled an exclusive package of working and seafarers' rights, implemented by international organizations [10, p. 70]. So, the professional activity of sailors is regulated both by national and international norms, which are of a mandatory nature or are applied in the state in accordance with ratification. Therefore, sources of seafarers' rights are legislation of the flag state, the legislation of the port state, state of which sealers are citizens, individual and collective contracts of employment and international law.

Certainly, we are going to divide seafarer's rights into several groups – universal, labor and special.

So, universal rights are:

1. the right to life (is guaranteed by the article 3 of Universal Declaration of Human Rights (UDHR), article 6 of International Covenant on Civil and Political Rights (CCPR), article 2 (1) of American Convention on Human Rights (ACHR), article 2 of The Human Rights Act, article 27 of the Ukrainian Constitution);

2. freedom from torture, cruel, inhuman or degrading treatment are prohibited by the article 5 of UDHR, article 7 of CCPR, article 5 (2) of ACHR, article 3 European Convention on Human Rights (ECHR), article 3 of The Human Rights Act;

3. freedom from discrimination (article 14 of The Human Rights Act + ILO C110, ILO C111);

4. the right to a legal remedy and access to justice is guaranteed by the article 8 of UDHR, article 6 of ECHR, articles 8 and 25 of ACHR. For seafarers some of the most important constituent elements of their right to a fair trial are their rights to have free interpretation and translation services; to have their legal rights explained to them; to have legal representation during pre-trial proceedings as well as trial proceedings; and when cooperating in a no-blame investigation to have their communications with the investigators kept confidential;

5. freedom of association and the right to collective bargaining (article 11 of The Human Rights Act + ILO C87, ILO C98);

6. right to strike (article 22 of CCPR + ILO C87);

7. the right to health and medical care, social services and other forms of social protection (Art. 22 and 25 of the UDHR + ILO C73, ILO C16, ILO C164).

8. the right to social security and welfare (Art. 25 UDHR, Art. 12 (1) ESC + ILO C165, ILO C56)

Labor rights:

1) freedom from forced labor (article 4 of The Human Rights Act + ILO C29, ILO C105);

2) the right to an employment contract. The seafarer's right to a labor agreement is enshrined in the Seamen's Employment Agreement № 22, and the form of the contract is established by ITF-regulation at the international level, ILO C22;

3) the right to a free employment services and continuity employment (ILO C9, ILO C179, ILO C145);

4) the right to safe and healthy working conditions. The right to a safe and secure workplace that meets safety standards – in Ukrainian law it is the duty of the shipowner in accordance with l. Article 57 CMS, and at the international level, Part 1 of the paragraph 3 of the European Social Charter and Art. 23 of the Universal Declaration of Human Rights. The right to fair employment conditions is specified in part 1 of paragraph 2 of

the European Social Charter. Furthermore, ILO C147, ILO P147, ILO R155;

5) the right to reasonable working hours and holidays (Art. 7(d) CESC + ILO C47, ILO C146, STCW Convention);

6) the right to a fair wage (Art.23 UDHR + ILO R109, ILO R187, ILO C95).

Special rights:

a) the right to repatriation. Proceeding from the fact that the right to repatriation in the Ukrainian legislation is fixed only in Art. 55 and art. 42 Code of Merchant Shipping of Ukraine (CMS), and at the international level this issue is regulated by ILO Conventions № 23, 147 and 166, the provision on the repatriation of seafarers at the national level has not been fully reflected.

b) the right to identity documents and the shore life (ILO C108).

Expressively, we have got the full list of seafarer's rights. Eventually, the scope of attention of seafarers' rights varies according to the level of interpretation. Accordingly, it's important for practical understanding, how the mechanism of protection works.

It is vital to point that mechanism of protection consists of seafarer's rights, their obligations and interests, governmental rights, interests and obligations. This should play a major role for legislators, who frequently forgot about their duties.

Ukrainian seamen holding valid certificates are served by the court on domestic and foreign owners, who goes under the national and "comfortable" flags of other states [7, p. 14]. A number of key issues arise from this statement. For instance, application of special rules of international private law, norms of the flag state, operational complaint for violating seamen's rights.

The first thing that needs to be said is that Ukrainian flag is not the worst at the world marine working market. Moreover, the Ukrainian flag is attractive to foreign shipowners because of the access to the one of the largest legal markets of sailors' employment in the world and low requirements of Ukrainian legislation to

the level of staff remuneration at its high degree of professionalism.

The real problem is expressed in inactivity of state bodies. However, in accordance with international standards in Ukraine, a system of state authorities was formed that, in turn, called to solve the issues of ensuring the constitutional rights of sailors, as well as to prevent the occurrence of such negative phenomena as exposure in the pirate captivity. Furthermore, Article 3 of the Constitution of Ukraine proclaims that "person, his/her life and health, honor and dignity, inviolability and safety are recognized in Ukraine the highest social value <...> The affirmation and provision of rights and person's freedoms is the main responsibility of the state" [11].

One way of another, Ukraine should take care of the safety of Ukrainian sailors in preventive way, not post factum, when the tragedy has already happened.

It goes without saying, the contemporary level of protection of the rights of sailors at the national level is half-baked at this point. That's the way things are going.

Protection at international level is modern and effective contrary to the national level of seaman's rights protection. So, the best thing that Ukrainian legal bodies can do is start working and do their best because no pain, no gain.

The particularities of the legal protection of seamen's rights are complicated not only when seamen are on a ship under the flag of a state of nationality outside the territory of their own state (in the high seas, in inland sea waters and the territorial sea of a foreign state), which is explained by the lack of the ability to apply promptly to law enforcement and the judiciary the authorities of their own state, but above all in situations, where they are a foreign element in relation to the flag state of a ship, that is, when they are hired on a ship under the flag of a foreign state and, accordingly, subordinate to the labor law of this state.

Sailors, as well as other employees, have state and social guarantees that give them the right to free medical care,



compulsory insurance, social and household services, as well as measures to protect the state from violence and threats, for example, protection from pirate attacks exclusively for maritime service.

The legislation of Ukraine contains state and social guarantees, but there are almost no mechanisms for obtaining them, because they require global changes and improvements. Therefore, in relation to seafarers it is necessary to strengthen state guarantees and social security, while hiring them for service – by developing incentive programs and increasing the attractiveness of the maritime profession, establishing reliable medical care, compulsory state insurance and proper social and living conditions, providing information and education literature, the development of research projects on the study of long-term quarries at sea, etc., since the service on the navy could not function without the presence of the state and social protection of the rights and interests of seamen [5, p. 157]. Today it is very important to develop a seafarer’s directory in which reflect the possible mechanisms of protection of their rights as most of the seamen are not aware and legally not competent, and to strengthen the state and social protection of seamen it is advisable to create centers for the protection of the rights of Ukrainian seamen, as with free and paid advice.

For instance, the Working Group on Legal Assistance to Seamen at the Legal Clinic of the National University “Odessa Law Academy” is constantly preparing expert opinions on topical issues related to the problematic aspects of work and the possibilities for effective protection of the rights and interests of seafarers. Lawyers are involved not only in the analysis of legislation and international agreements, but also in the provision of urgent assistance to each specific seaman, who has fallen into a difficult situation [12, p. 11]. Because of this, legislation is aimed at ensuring the safety of a seafarer and ensuring his immediate access to medical care on the shore and on board, creating financial guarantees

for seafarers from the consequences of illness, injury or death in connection with official activities, provision of safe and hygienic conditions on board the ship, providing seafarers with access to coastal facilities and services for the care of their health and well-being and taking measures to provide seafarers with access to social protection [13, p. 120].

Overall, the mechanism of seafarer’s rights protection exists whereas it doesn’t work because of the following reasons:

1) absence of governmental control over the implemented international agreements in the field of maritime law;

2) shook Ukraine’s position on the world stage in the maritime labor market;

3) seafarers obtain set of rights, but they are not respected because they are violated;

4) seaman not always know their rights, don’t get their individual contracts or signed their employment contract not carefully read before;

5) most Ukrainian seamen choose working under “comfortable flags”, whereas the labor conditions not always correspond to minimum international standards;

6) in spite of a set of accidents with seafarers Ukrainian government does not prevent crime at sea;

7) Commissioner for Human Rights in marine sphere is well-known thanks to annual reports, while her practical performance is not so popular;

8) for today the process of legal aid rendering by legal services, governmental bodies and international organization is not properly worked out. As things stand now, thousands of Ukrainian seafarers are waiting for death sentences in foreign jails for fabricated cases.

That’s why the problem of protecting the rights of seamen cannot be solved by the efforts of individual states and the effectiveness of taking measures depends on the combination of national means with international cooperation. Certainly, only close interconnection and control at all levels will help protect the rights of seafarers.



After all, the mechanism of seafarers' rights and Ukrainian seaman need the governmental control and support, modern minimal international standards.

Key words: protection of seafarers, international legal regulation, protection of labor rights of seafarers, International Labor Organization, international legal norms.

The article discusses some problematic aspects of seafarers' rights protection at national and international levels in Ukraine. The necessity of guarantee of marine specialists' rights by dint of legal instruments has been demonstrated. The package of seaman legal rights is investigated. The protection levels of seafarer's rights are illustrated. The mechanism of seafarer's rights protection has been illuminated.

У статті розглядаються деякі проблемні аспекти захисту прав моряків на національному та міжнародному рівнях в Україні. Була продемонстрована необхідність забезпечення прав морських фахівців за допомогою юридичних інструментів. Досліджено перелік юридичних прав моряків. Ілюструються рівні захисту прав моряків. Висвітлено механізм захисту прав моряків.

В статье рассматриваются некоторые проблемные аспекты защиты прав моряков на национальном и международном уровнях в Украине. Была продемонстрирована необходимость обеспечения прав морских специалистов с помощью юридических инструментов. Исследован перечень юридических прав моряков. Иллюстрируются уровни защиты прав моряков. Освещен механизм защиты прав моряков.

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