

Comparative Analysis of Seafarers' Collective Agreements in the Republic of Croatia and Montenegro*

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Abstract: Seafarers represent a special category of workers, since their living and working conditions differ in many respects from those of other workers. Therefore, the legal regulation of the employment status of seafarers is particularly important. In the Republic of Croatia and Montenegro, there is no comprehensive legal act regulating the working, social and living conditions of seafarers. Relevant provisions are contained in various legal regulations. Collective agreements are of crucial importance in regulating the employment status of seafarers. In the Republic of Croatia, the *National Collective Agreement for Croatian Seafarers on Board Ships in the International Shipping (2021-2022)* entered into force in 2021. In Montenegro, the *Collective Agreement* for ship crew concluded at the end of 2020 with the employer *Crnogorska plovidba a.d. Kotor* is still in force. In this paper, the author provides an overview of the collective bargaining process and focuses on the comparative analysis of collective agreements.

Keywords: Employment status, Seafarers, Legal acts & collective agreements.

1. Introduction

The employment status of seafarers is very specific and differs significantly from that of land-based workers. The working and employment conditions of seafarers also depend on the ship, the jurisdiction of the ship, the crew, the ship owner, but also on the flag state union that promotes and protects the labour and social rights of maritime workers.¹

Therefore, the protection of seafarers is crucial to the safety of shipping and, consequently, to the protection of the marine environment, seafarers' health and fundamental human rights. For this reason, *the International*

¹ Andijana Bilić, Vanja Smokvina, Problems and Perspectives of Seafarers' labour agreements in the light of Maritime Labour Convention with special reference to Croatian legislation, Collection of papers-3rd International Scientific Conference on Maritime Law, Contemporary challenges of navigation, Split 2021, p.17

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Labour Organisation (ILO) adopted the *Maritime Labour Convention (MLC Convention)* in 2006, which is the main international agreement governing the employment status of seafarers.²

The paper analyses the employment status of seafarers in the Republic of Croatia and Montenegro and collective agreements in international shipping. The particularly important Dubrovnik Statute of 1272 and the Kotor Statute of the 14th century regulated the shipping of both countries. After World War I and World War II, they were part of the same state and had the same legal system. Although they became independent relatively recently, the favourable Croatian and Montenegrin legal acts have their roots in the regulations of the former Yugoslavia. Therefore, there are many similarities in the current legal systems of both countries.

Today in the Republic of Croatia and Montenegro there is no complete law regulating the working, social and living conditions of seafarers, but such provisions could be found in several laws. Currently, there are about 22,500 seafarers in the Republic of Croatia,³ who make up 1.5% of the total number of employees and generate more than one billion euros in revenue.⁴ According to the *Union of Captains of Montenegro*, there are currently about 6,000 seafarers in Montenegro, whose revenues account for 12% of the total state budget.⁵ It can be concluded that seafarers have a great impact on the economy in both countries, so it is extremely important to regulate their employment status. The most important step in regulating the status of seafarers was taken by ratifying the *Maritime Labour Convention (MLC)* and aligning national legislation with its provisions.⁶ Ratification of the *Maritime Labour Convention* is crucial as the state ensures that ships have the *seafarers' certificate of employment* and *Declaration of Maritime Labour Compliance*.⁷ The Republic of Croatia ratified the *MLC* in February 2013 and Montenegro in February 2015.

² Ibid, p.13

³ Of the total number of seafarers in the Republic of Croatia, 15500 seafarers work in international shipping and about 7000 in national shipping

⁴ official website of the Croatian Seafarers, www.sph.hr (accessed on 18th October 2021)

⁵ Official website of the *Union of Seafarers of Montenegro* - www.unijapomoraca.com (accessed on 22nd October 2021)

⁶ According to Art.V para 1 of the MLC, each state that has ratified the MLC is obliged to apply and implement laws, regulations, or other measures to meet its obligations under the MLC with respect to ships and seafarers under its jurisdiction.

⁷ For more information on certification of seafarers and declaration of maritime labour compliance, see Ranka Petrinović, Trpimir Perkušić, Tony Vuković, *Inspection of Seafarers' working Conditions in Accordance with MLC 2006 in Ports of Paris MOU Signatories*, Collection of papers – 3rd International Scientific Conference on Maritime Law, Contemporary Challenges of Navigation, Split, 2021, p.190

In the first part of the paper, the author discusses the collective bargaining that precedes the conclusion of collective agreements and the collective agreements themselves. The second part deals with *the National Collective Agreement for Croatian Seafarers on Board Ships in International Shipping (2021-2022)*. The third part analyses *the Collective Agreement with the employer Crnogorska plovidba a.d. Kotor*. Special emphasis is placed on a comparative analysis of the two collective agreements and their impact on improving the working, social and living conditions of seafarers.

2. Collective bargaining and collective agreements in general

2.1. Collective bargaining

Collective bargaining agreements have become an indispensable part of today's labour act and have an important economic, political, social and humanitarian function. A collective bargaining process precedes the conclusion of a collective bargaining agreement. Collective bargaining can be defined as a method of regulating wages, hours, and other terms and conditions of employment through direct negotiations between the union and the employer. The result of the negotiations is usually a written contract that applies to all employees, union members, etc.

According to the new ILO Conventions, collective bargaining is any negotiation between an employer, a group of employers or employers' organisations on the one hand, and workers' organisations on the other. The aim is to establish terms and conditions of employment and/or to regulate relations between employers and workers and/or to regulate relations between employers or their organisations and one or more workers' organisations.

The parties negotiate directly or through joint commissions (negotiating bodies). Bargaining bodies may be at different levels (industry, activity, state) or larger systems in different organisational and associational forms.⁸

The legal obligation of the parties is to negotiate in good faith⁹, therefore it is the duty of the union to voluntarily enter into the collective bargaining agreement. The objective is to establish and adopt a collective agreement that improves working conditions and legal status. The persons representing the parties must have a power of attorney. If one of the parties

⁸ Marinko Đ. Učur, Collective bargaining and extension of the application of the collective agreement (authorization of the collective agreement), Proceedings of the Faculty of Law, University of Rijeka, vol. 27, no. 1, Rijeka, 2006, p. 548

⁹ Labour Act of the Republic of Croatia, Art. 193

is an employers' association or a superior employers' association,¹⁰ the representative must submit a list of employers who are members of the association, on whose behalf he/she negotiates, i.e. concludes a collective agreement.¹¹

The subject of the actual negotiations are parts of the collective agreement concerning wages, social benefits, material and other rights of employees, and working conditions. However, the procedural elements of the collective agreement, such as the timing of the conclusion of the collective agreement are no less important.

The goal of collective bargaining is to reach a quality agreement which is often achieved through compromise or by relaxing some of the parties' original demands. The goal of concluding a collective bargaining agreement ensures broad application of the agreement and brings operational and long-term solutions and reliability.¹²

2.2. Collective agreements in general

The collective agreements came into view and filled the gap in the legal system. The conclusion of collective agreements ensured labour peace.

Supply and demand for labour can be better controlled, workers are better protected, and working conditions are improved through cooperation between the social partners.

A collective agreement is a written agreement between a trade union and an employer that contains provisions on the terms and conditions of employment, payment arrangements, working hours, and the rights and obligations of the parties to the agreement.¹³ A collective agreement has its own name, subject matter, content and form. The subject matter is the employer, several employers or their associations, a trade union, several trade unions or higher-level employee associations. The content of the collective agreement is divided into two parts: normative and contractual.¹⁴ It can be concluded for a definite or indefinite period of time, but also with an open term. The essential purpose of collective agreements is to enable

¹⁰ For more information on the superior employee association, see Art. 2. Act on representativeness of employers' association and trade union organisations OG No. 93/14, 26/15

¹¹ Labour Act of the Republic of Croatia, Art. 197

¹² Marinko Đ. Učur, Collective bargaining and extension of the application of the collective agreement (authorization of the collective agreement), Proceedings of the Faculty of Law, University of Rijeka, vol. 27, no. 1, Rijeka, 2006, p. 550

¹³ Ivo Rozić, *Collective labour law*, JP NIO Official Gazette of BiH, Sarajevo, 2013, p. 33-34

¹⁴ Tintić, Nikola, *Labour and Social law*, The book first: labour relations (I), Official Gazette, Zagreb, 1969, p. 263

employees and employers to regulate the functioning of labour relations in practice. It also provides the opportunity to choose better working conditions and employment rights than those required by law or contained in the employment agreement. The seafarers' collective agreement establishes the most important aspects of seafarers' employment. It provides the direct legal basis for the protection and realization of the rights, duties and responsibilities of individual employees - seafarers and their shipowners.¹⁵

According to *Labour Act (LA)*¹⁶ in the Republic of Croatia, a collective agreement regulates the rights and obligations of the parties to the collective agreement. It contains legal provisions that may regulate the content, commencement and termination of the employment relationship, as well as staff council matters.¹⁷

In Montenegro, the collective agreement regulates the rights, obligations and responsibilities of the parties that have concluded such an agreement. It also regulates their mutual relations and other issues of great importance for employees and employers.¹⁸

The definitions of collective agreements are similar in both countries, with minor nomotechnical and linguistic ambiguities.

The labour acts of both countries prescribe that collective agreements must be in writing and published.¹⁹ Collective agreements can be concluded for an indefinite or definite period of time.²⁰ In the Republic of Croatia, a definite term means that the agreement may not be concluded for a period exceeding five years.

3. National Collective Agreement for Croatian Seafarers on Board Ships in the International Shipping Trade (2021-2022)

In the Republic of Croatia, there is no comprehensive legal act regulating the working, social and living conditions of seafarers. Provisions on the labour, social and living rights of Croatian seafarers are contained in several

¹⁵ Mirela Šarac, Andrija Crnković, Legal working status of crew members during the centuries- a comparative overview, Proceedings - 3rd International scientific conference Contemporary challenges of navigation, Split, 2021, p. 326

¹⁶ Labour Act of the Republic of Croatia, OG No. 93/14, 127/17, 98/19

¹⁷ Ibid, Art. 192

¹⁸ *Labour Act of the Republic of Montenegro*, Official Gazette of Montenegro No. 74/2019 and 8/2021, Art.181

¹⁹ LA Art. 195. and Art. 202, para 1; *Labour Act of Montenegro* Art. 181 para 2 and Art. 186 para 1

²⁰ LA Art 198; LA of Montenegro Art.187

regulations. The most important are the *Maritime Code*,²¹ *National Collective Agreement for Croatian Seafarers on Board Ships in the International Shipping Trade*,²² *National Collective Agreement for Croatian Seafarers on Passenger Ships and Ferries*,²³ *Ordinance on the Application of the Seafarers' Labour Convention from 2006*²⁴, *International Agreements* which were concluded and ratified under the *Constitution of the Republic of Croatia* and the *Labour Act*.

The provisions of the *Maritime Code*, the *National Collective Agreement for Croatian Seafarers on Board Ships in International Shipping* and the *International Agreements* concluded and ratified in accordance with the *Constitution of the Republic of Croatia* take precedence over the *Labour Act*.²⁵

Collective agreements are characterised by a number of specific provisions concerning the public law nature of seafarers' employment, such as the right to repatriation, food, accommodation, bedding, registration of employment agreement, special health conditions, safety at work, etc. For seafarers, the ship is not only their workplace, but also their home for the duration of their professional activity. *The National Collective Agreement for Croatian Seafarers on Board Ships in International Shipping (hereinafter: The National Collective Agreement)*²⁶ was concluded on December 30, 2020, entered into force on January 1, 2021 and is valid until December 31, 2022. *The National Collective Agreement* is concluded in writing between two lawful contracting parties: Seafarers' Union of Croatia and representatives of Croatian Shipowners' Association. Seafarers' Union of Croatia is in Rijeka and its main task is to improve and protect the rights, interests and social position of Croatian seafarers.²⁷ Seafarers' Union of Croatia is a member of the International Transport Workers' Federation (ITF) and must adhere to the minimum standards set out in the ITF Basic Collective Agreement. *Croatian Shipowners' Association Mare Nostrum* was founded on February 5, 1991 on the initiative of 14 shipping companies under the name *Mare*

²¹ *Maritime Code*, official gazette No 181/2004, 76/2007, 146/2008, 61/2011, 56/2013, 26/2015, 17/2019

²² National collective agreement for Croatian seafarers in international navigation, Official Gazette No. 94/2015, 119/2018, 6/2021

²³ National collective agreement for Croatian seafarers on passenger ships and ferries, available on: <http://www.nspbbh.hr/cms>

²⁴ Ordinance on the application of the Seafarers' Labour Convention, 2006, Official Gazette No 122/16, 42/19

²⁵ *Maritime Code*, quote, Art. 125, para 7

²⁶ The National collective agreement for Croatian seafarers on board ships in the international shipping trade (2021 -2022), Official Gazette, No 6/2021.

²⁷ *Seafarers' Union of Croatia*, available on: <https://sph.hr/> (accessed on 18th October 2021)

Nostrum - Croatian Maritime Shipping Company Ltd Zagreb. Today *Mare Nostrum* unites ten members of the most important Croatian shipping companies.²⁸

The Parties have concluded appropriate collective agreements for seafarers in international shipping which consider the specifics of shipowners, ships and seafarers, but also the specifics of the seafarers' union of Croatia and its ITF membership. *The National Collective Agreement* is an independent source of law for Croatian seafarers and seafarers of Croatian nationality with permanent or temporary residence in the Republic of Croatia who work on board ships in international shipping duly registered in either the Croatian or another ship register. *The National Collective Agreement* also applies to seafarers who are nationals of other EU Member States, considering the implementation of Regulation (EC) No. 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems.²⁹ It contains 43 articles and consists of *General* and *Special Addendum*. *The General Addendum* is the supplement to the Collective Agreement that is binding on all members of the *Mare Nostrum Association* and all employers. *The Special Addendum* is the supplement to the Collective Agreement that is binding only on the member who signed *Special Addendum* and on the employer.

The National Collective Agreement has essential features of the collective agreement in general, but also contains a number of provisions that are important for seafarers. Article 3 of *the National Collective Agreement* regulates the employment agreement that each seafarer must enter into with his or her employer before boarding the ship. *The Maritime Code* uses the term employment agreement.³⁰ The seafarers' employment agreement may be concluded for an indefinite or definite period. If it is concluded for a definite period, it may not exceed six months, depending on the requirements of navigation; it may be shortened to five months or extended to seven months.³¹ In the event of a conflict between the general provisions and the individual employment agreement, the general provisions shall prevail if they are more favorable to the seafarers. *The National Collective*

²⁸ The members of the association are the following shipowners: Jadrolinija Rijeka; Adriatic Maritime Service d.d. River; Rapska plovidba d.d. Rab; Atlantska plovidba d.d. Dubrovnik; Tankerska plovidba d.d. Zadar; Jadroplov d.d. Split; Brodospas d.d. Split; Brodosplit-Plovidba Ltd. Split; Alpha Adriatic d.d. Pula (former Uljanik Plovidba d.d. Pula), Croatian Register of Shipping and Golar Viking Management Split as associate members. These shipowners operate 127 ships.

²⁹ The National Collective Agreement, Art 2, para 2 and 3

³⁰ More on ship's crew see *Maritime Code*, Art. 125-164

³¹ The National Collective Agreement, Art. 3 para 3

Agreement shall apply to all employment agreements, including those concluded prior to its entry into force. The rights and obligations of the seafarer begin from the day of embarkation, i.e. from the day (hour) of the beginning of the voyage, if the ship is outside the territorial waters of the Republic of Croatia.

The provisions of Article 6 of *the National Collective Agreement* shall govern the signing and duration of the employment relationship. As a rule, the day of signing the agreement does not coincide with the beginning of hiring. From the day a seafarer commences his voyage to the ship, he/she is entitled to his *pro rata* wages and daily voyage allowance for the entire duration of the voyage. Disembarkation from the ship means that the seafarer ceases to perform his/her duties. At the same time, it means termination of employment. A seafarer shall be employed for a period not exceeding 9 months in any 12-month period, depending on the operational requirements, voyage routes and type of ship, in accordance with *Special Addendum* (3).³² An employment agreement may be concluded for one or more trips not exceeding seven months in total, except for trainees, for whom the employment agreement may be concluded for a period of 12 months.³³ The manner of concluding such an agreement is one of the exceptions (when concluding a agreement for a certain period) under *the Labour Act*.³⁴

Under *the National Collective Agreement*, there are three ways to terminate employment: upon expiration of the agreement, when the seafarer signs off due to illness or injury after a medical examination, and when the seafarer or the employer terminates employment.

The National Collective Agreement specifies the reasons for termination of employment by the seafarer and the employer.

The seafarer may terminate the agreement with the employer or demand disembarking:

– by notifying the employer in writing one month in advance, in the presence of two witnesses, of his or her termination or disembarkation (this is a termination without notice);

³² *The National Collective Agreement* in Art. 6 para 5 provides that in case of force majeure and / or circumstances beyond the control of the flag state of the ship or employer such as pandemic, epidemic, war, natural disasters, etc., the period of embarkation of seafarers is extended until it is safe to disembark in accordance with *Special Addendum* (3), with the consent of the seafarer.

³³ *The National Collective Agreement*, Art. 3 para 3

³⁴ Učur, M. (2003). *Seafarers' employment status*. Rijeka: The Faculty of Law.

- if the seafarer's spouse, child, or parent suddenly becomes seriously ill during the voyage;
- if the seafarer was employed for a particular voyage on a particular ship and the voyage conditions have changed significantly in the meantime;
- if the ship is underway in a war zone;
- if the ship has been immobilised for 30 days or more;
- due to the employer's failure to comply with the provisions of *the National Collective Agreement*.

The employer may terminate the agreement with the seafarer:

- by written notice of termination one month in advance in the presence of two witnesses;
- after the complete loss of the ship through storage or sale of the ship;
- due to a serious breach of the seafarer's duty to work;
- in case of the seafarer's inability to perform his/her duties and work professionally and qualitatively (the seafarer should be offered the opportunity to find another job and conclude a new contract).³⁵

In addition to the duration and method of termination of the employment relationship, *the National Collective Agreement* regulates other employment relationship issues, such as: working hours, overtime, holiday, rest periods, wages, family allowances, annual leave, watch-keeping, manning, short-term manning, service in warlike operations, effects of manning, termination of employment, repatriation, food, bedding and medical care, and the like.

One of the most important items covered by seafarers' collective agreements is the calculation of wages. According to Article 11, the total wages of each crew member on the foreign voyage may not be calculated lower than the amounts specified in the wage tables of the *General Addendum* (1). For ships less than 6,000 GT and/or 3,000 kW, the wages of each crew member shall be agreed and calculated on the basis of the consolidated minimum wages as set forth in the International Labour Organisation³⁶, Joint Maritime Commission (JMC) Resolution of November 19 and 20, 2018 and the joint interpretation by the International Shipping Federation (ISF).³⁷ Each seafarer covered by *the National Collective*

³⁵ Termination of the contract with the Master is specially regulated.

³⁶ According to Art. 1 of *The National Collective Agreement* minimum total wage means the total wage in respect of regular working hours, guaranteed overtime work and holiday pay

³⁷ On wages, see *The National Collective Agreement* Art. 11

Agreement is entitled to a family allotment in accordance with the provisions of Standard A. 2.2, paragraph 5 of the Maritime Labour Convention.³⁸

Among the specifics of seafarers' collective agreements are *items belonging to seafarers* and *repatriation*. The seafarer is considered to have the necessary things in his/her possession from the time of hiring and later when leaving the ship, which often have a significant material value. If a seafarer suffers total or partial loss of or damage to his personal property for any reason not attributable to his own fault, he/she is entitled to compensation from the employer. The seafarer must prove that the property is for his/her personal use, and the maximum amount of compensation is \$3,000. *Repatriation* is the right of the seafarer to return to the place specified in the employment agreement (residence, stay, homeport) after signing off. It includes costs borne by the employer and consists of a basic wage and a *per diem*. Repatriation shall be granted to a seafarer at the end of the agreed period of service on board, at the end of employment, in case of total loss or sale of the ship. A seafarer shall also have the right to repatriation if he/she has committed a serious breach of duty or several minor injuries, and if the seafarer himself/herself requests premature termination of the employment agreement. In these cases, the employer is obliged to repatriate the seafarer at his own expense, and he has the possibility to recover the costs of repatriation together with all other expenses incurred from the seafarer's unpaid wages.³⁹

Pursuant to Article 27 of *the National Collective Agreement* and in accordance with *MLC*, the employer must provide adequate insurance coverage for the payment of compensation arising from the provisions of the collective agreement.⁴⁰

In addition, most of the seafarers' complaints relate to accommodation, food, lack of recreational facilities, and poor internet connections that prevent them from communicating normally with their family members. Therefore, *the National Collective Agreement* provides for accommodation, recreational facilities, meals and catering services that meet the standards of the ILO Maritime Labour Convention, Rule 3.1 - Accommodation and Recreational Facilities and Rule 3.2 - (Meals and Catering Services).⁴¹

³⁸ Refers to the transfer of all or part of the earnings to their families, dependents, or beneficiaries; STCW Convention 2006.-quote; *The National Collective Agreement*, Art.11 and 12

³⁹ Ibid, Art. 20

⁴⁰ On the mandatory financial guarantee, see Petrinović Ranka; Lovrić Ivana, *New law on the right of seafarers in case of abandonment and repatriation*, Proceedings of the 1st International Scientific Conference on Maritime Law - ISCLM 2016, p. 276 - 308

⁴¹ The National Collective Agreement, Art. 28.

Nowadays, one of the main obligations of the employer is to enable the seafarer to communicate with his family. He must have access to free telephone calls and the Internet for the entire duration of his/her stay on board, considering the safety of navigation.

A special point, regulated only in the collective agreement for seafarers, is navigation in high-risk areas. The company shall inform the seafarer when the ship is or may be sailing to warlike operations and high-risk areas. The seafarer has the right not to sail into such an area. In this case, the seafarer will be repatriated at the employer's expense with benefits accrued to the date of return to his homeport or port of assignment. Seafarers shall also receive an allowance equal to 100% of their basic wage for the duration of their stay in high-risk areas. The seafarer is entitled to double compensation for disability and death caused by shipping in such areas.⁴²

In the event of illness, the seafarer is entitled to sick pay equal to the basic wage up to a maximum of 120 days after returning home.⁴³ In addition, *the National Collective Agreement* contains provisions in favour of the employer that relate to medical care. The doctor designated by the employer must certify seafarers' sick pay. If the seafarer refuses the examination without a justified cause, sick pay will be retained. If the seafarer suffers an accident resulting in death or a specified degree of disability during the term of his employment agreement, the employer shall pay the amount specified in the *General Addendum* (3) of the employment agreement.⁴⁴ The Employer shall not pay the compensation referred to in the *General Addendum* if the seafarer's death was caused by his/her intentional actions or if the death was the result of his/her alcohol and/or drug abuse.⁴⁵

The National Collective Agreement has been concluded for a period of two years. If either party does not terminate it, the collective agreement shall remain in force after the expiration of its term until it is terminated or a new collective agreement is concluded. The parties have also agreed to review and examine the terms of *the National Collective Agreement* at least once a

⁴² Ibid., čl. 17.

⁴³ *The National Collective Agreement* Art. 23 para 1 provides for the possibility that a seafarer will not be entitled to sick pay if the employer proves that the illness is the result of a previous illness or medical condition which the seafarer failed to report during the medical examination to determine the ability to board the ship.

⁴⁴ *The National Collective Agreement* Art. 26 para 2 regulates that the Employer shall transport the seafarer's posthumous remains as well as the burial costs at his/her own expense.

⁴⁵ *The National Collective Agreement* Art. 26.

year. In September 2021, it was agreed to collectively negotiate amendments to the provisions on seafarers' rights.⁴⁶

The National Collective Agreement was drafted in Croatian and English. In the event of any incompatibility between the two versions, the Croatian version shall prevail for the interpretation and implementation of its provisions.⁴⁷

4. The collective agreement of Crnogorska plovidba a.d. Kotor

In Montenegro and the Republic of Croatia there is no complete legal act regulating all rights and obligations arising from the seafarers' employment agreement. The provisions on labour, social and life rights of Montenegrin seafarers are contained in several regulations. The most important are the *Labour Act*,⁴⁸ *The Branch Collective Agreement for Maritime Transport and Port Transshipment Services*,⁴⁹ and two collective agreements of Barska plovidba a.d. and *Crnogorska plovidba a.d. Kotor*. Also, important are the provisions of specific Ordinances such as: *Ordinance on detailed conditions, Methods and procedures for issuing licenses for mediation in the employment of seafarers, Ordinance on safety conditions at the workplace and accommodation of crew members and other persons on board, Ordinance on detailed conditions related to stocks of medicines and medical equipment for the provision of medical assistance on ships*.

Collective agreements for seafarers in Montenegro are characterized by the fact that each employer has concluded its own collective agreement with employee representatives. *The Branch Collective Agreement for Maritime Transport and Port Transshipment Services between the Independent Trade Union of Maritime and Transport Workers of Montenegro and the Association of Maritime Chamber of Commerce of Montenegro* was concluded on May 25, 2004. *The Independent Trade Union of Maritime Shipping and Transport Workers of Montenegro* is based in Bar and is a member of the International Transport Workers Federation (ITF). By joining the ITF, it has adhered to the minimum standards set out in the ITF Core Collective Agreement. The ITF Collective Agreement for Shipping governs the rights and obligations of

⁴⁶ At the time of paper writing, amendments to *the National Collective Agreement* have not been adopted yet.

⁴⁷ The National Collective Agreement Art. 42 para 2

⁴⁸ Labour Act, gazette of Montenegro No. 74/2019 and 8/2021

⁴⁹ Branch collective agreement for maritime transport and port transshipment services, OG of Montenegro No. 40/04 and 41/05

seafarers.⁵⁰ Seafarers are all employees working on board ships in international shipping.⁵¹

The Collective Agreement for Ship's Crew with the Employer Crnogorska plovidba a.d. Kotor (hereinafter: *The Collective Agreement of Crnogorska plovidba*) was concluded on December 25, 2020 and entered into force in January 2021. *The Collective Agreement of Crnogorska plovidba* is a written agreement between the employer *Crnogorska plovidba a.d. Kotor*⁵² and the trade union organization of *Crnogorska plovidba a.d. Kotor*.⁵³ It applies to all seafarers who have signed it.⁵⁴ *The Collective Agreement of Crnogorska plovidba* is a collective agreement with the employer, but it is similar to other collective agreements for seafarers. The agreement contains a number of provisions that are not included in other collective agreements. *The Collective Agreement of Crnogorska plovidba* consists of 34 articles and three annexes.⁵⁵

Pursuant to Article 2, paragraph 2 of the collective agreement of *Crnogorska plovidba*, a seafarer is any person employed or engaged in work on board in any capacity. All provisions apply to seafarers from the day of their employment on board until their return to their place of residence. Unlike the national collective agreement of the Republic of Croatia, *the Collective Agreement of Crnogorska plovidba* provides an employment agreement only for a certain period of time⁵⁶. This means that according to its provisions, an employment agreement of unlimited period cannot be concluded. One of the most important requirements for concluding an employment agreement is a medical certificate issued by a licensed doctor.⁵⁷

Based on the employment agreement, the seafarer can be hired. Article 4 of *the Collective Agreement of the Crnogorska plovidba* regulates the duration of the employment relationship. The employment agreement is concluded with the officers for five months and with the other crew

⁵⁰ Ibid, Art. 4 para 1

⁵¹ Ibid, Art 4. para 1

⁵² *Crnogorska plovidba a.d. Kotor* is a joint stock company owned by the Government of Montenegro, i.e. its Ministry of Maritime Affairs and Transport. It operates in the international open maritime market in accordance with the principles and standards of the international open maritime market. The company owns two ocean-going ships, *Kotor* and *21st of May*

⁵³ Since May 2012, the trade union organization of *Crnogorska plovidba a.d. Kotor* has entered the register of representative trade unions at the Ministry of Labour and Social Welfare of Montenegro.

⁵⁴ The Collective Agreement of *Crnogorska plovidba* Art. 2

⁵⁵ The first Appendix refers to the employment agreement, the second contains a tabular overview of the salaries of employees on board and the third refers to public and other holidays.

⁵⁶ The Collective Agreement of *Crnogorska plovidba*, Art. 3 para 2

⁵⁷ Ibid, Art. 3 para 3

members for seven months. It is important to note that the employer may transfer seafarers from one ship to another, shorten or extend the employment agreement by one month, depending on the requirements of shipping. The peculiarity of the *Collective Agreement of Crnogorska plovidba* is the probationary period. The probationary period is the first eight weeks of the first employment. At the end of the probationary period, the employer and the seafarer have possibility to terminate the employment agreement.⁵⁸ Article 6 of *the Collective Agreement of Crnogorska plovidba* regulates two reasons for termination of the employment contract: the first reason is the expiration of the employment agreement; the second reason is the illness or injury of the seafarer. Moreover, the reasons for which the employer and the seafarer have the right to terminate the established employment agreement are exhaustively listed.

The employer may terminate the agreement with the seafarer:

- by giving 30 days' written notice to the seafarer with a notice period of 30 days;
- due to unreasonable conduct of the seafarer;
- in case of loss or sale of the ship;
- in case of scrapping of the ship for a period exceeding one month.

The seafarer may terminate the agreement:

- by written notice to the employer with a notice period of 30 days;
- if the ship sails in a war zone/high risk area;
- if the ship is detained for a period of 30 days or more due to deficiencies specified in ILO Conventions.

As previously pointed out, *the Collective Agreement of Crnogorska plovidba* is similar to other collective agreements relating to seafarers. It regulates working hours, guaranteed overtime, holidays, rest periods, wages, family allotments, annual rest, watch-keeping, composition and number of crew members, navigation in war operations areas, things owned by crew members, repatriation, medical attention, food, bedding and accommodation. The wage of a crew member is stipulated and calculated by Article 11 of *the Collective Agreement of Crnogorska plovidba*. The wage is paid in amounts determined in Addendum No. 2, which is an integral part of the Collective Agreement. The seafarer shall be entitled to repatriation including basic wage, the daily travelling allotment (*per diem*) from the date he/she commences his/her trip until the return to his place of residence. The

⁵⁸ Ibid, Art.5

deadline for calculating the salary is 30 days, and it is calculated in euros. Also, seafarer shall be allowed an allotment note payable at monthly intervals as advance payment of 100% of his basic wage.⁵⁹

Seafarers spend almost all their time on board, so it is natural for them to have certain things in their possession. If a seafarer suffers loss or damage to his/her personal effects for a reason not his/her fault, he/she is entitled to compensation from his employer up to a maximum of \$3,000.⁶⁰ In order to live a normal life on board, it is essential to provide adequate food, accomodation and recreation facilities for crew members. Therefore, the employer has committed through the *Collective Agreement* to provide seafarers with quality food, adequate accommodations, bedding, and rooms for rest and recreation. It is essential to ensure regular communication between the seafarers and their family via the Internet.⁶¹

Repatriation under the provisions of the *Collective Agreement of Crnogorska plovidba* shall be made in such a manner as to meet all reasonable requirements for the comfort of seafarers. A seafarer has the right to repatriation in the following cases: upon expiry of the employment agreement for a certain period of time, in case of illness or injury, loss or sale of the ship.⁶² A seafarer also has the right to repatriation if he/she has committed a serious breach of duty or if he/she has been proven to seriously violate one of the obligations under the employment agreement. In such cases, the employer is obliged to repatriate the seafarer at his/her own expense, and he/she has the option to bear the costs of repatriation.

As far as navigating in war zones is concerned, *the Collective Agreement of Crnogorska plovidba* regulates this issue similarly to *the National Collective Agreement of the Republic of Croatia*. Seafarers must be informed that the ship may enter a high-risk area. In this case, each seafarer has the right not to enter this area. In this case, the seafarer will be returned at the expense of the employer.⁶³ According to *the Collective Agreement of Crnogorska plovidba*, the war and warlike operations and the high-risk areas are areas published in the ITF report, while according to *the National Collective Agreement of the Republic of Croatia*, these areas are announced by the Joint War Committee.⁶⁴

⁵⁹ Ibid, Art.12

⁶⁰ Ibid, Art.17

⁶¹ Ibid, Art.26 and 29

⁶² Ibid, Art.18

⁶³ Ibid, Art.16

⁶⁴ The Joint War Committee (JWC) consists of insurance representatives from the Lloyd's and IUA markets. It usually meets quarterly to update and distribute areas where owners are required to notify

In the event of illness of the seafarer, the same rules apply as in the *National Collective Agreement of the Republic of Croatia*. The seafarer is entitled to sickness benefit for part of his/her full salary until the day of repatriation. He/she is entitled to sick pay for a maximum of 130 days after repatriation.⁶⁵ Sick pay is evidenced by a medical certificate, which must be certified by a doctor appointed by the employer.⁶⁶ For seafarers with a certain degree of disability, the employer shall pay the compensation specified in the table in Article 22 of the *Collective Agreement of Crnogorska plovidba*. The doctor designated by the employer determines the degree of disability. If the seafarer does not agree with the opinion of the employer's doctor, the seafarer, the employer and the trade union shall appoint an independent doctor. The cases in which the employer is not required to pay the compensation for the seafarer's disability are also listed in the table in Article 22.

The employer shall not pay compensation if the seafarer's death was caused by his intentional acts or if the death was due to alcohol and/or drug abuse. *The Collective Agreement of Crnogorska plovidba* also regulates the commission of a criminal act by the seafarer during employment. Article 25 of *the Collective Agreement of Crnogorska plovidba* precisely defines the rights and obligations of the master of the ship when the seafarer commits a criminal offense.

The only significant difference from the *National Collective Agreement* is the duration of the collective agreement. *The Collective Agreement of Crnogorska plovidba* is concluded for an indefinite period, while the *Collective Agreement of the Republic of Croatia* is valid for two years. The provisions of *the Collective Agreement of Crnogorska plovidba* shall remain in force until the parties adopt a new collective agreement.⁶⁷ Finally, it should be noted that *the National Collective Agreement* was also drafted in English, while *the Collective Agreement of Crnogorska plovidba* is drafted only in Montenegrin.

insurers of travel. The Joint War Committee last inspected the areas in April 2021, and in its circular of 29 April 2021 detailed the areas with the assumed increased war risk.

⁶⁵ The Collective Agreement of Crnogorska plovidba, Art. 19

⁶⁶ Ibid, Art. 20

⁶⁷ Ibid, Art. 34

5. Conclusion

Maritime science has been a driving force throughout the world for centuries and is considered one of the most important economic activities. Ships, seafarers and shipping companies play the most important role in the successful management of maritime affairs. Compared to other workers who perform their jobs in land-based economic activities, seafarers have a special employment status that is closely regulated. The greatest success in regulating the employment status of seafarers was achieved with the *Maritime Labour Convention* (MLC), which entered into force in 2006. The Republic of Croatia and Montenegro have ratified the Maritime Labour Convention and aligned their national legislation with its provisions. Both countries have taken a major step forward in ensuring the two most important tasks in the maritime sector, namely the protection of seafarers and the safety of shipping.

In addition to the Maritime Labour Convention, seafarers' collective agreements are a major source of rights governing the employment status of seafarers. In this paper, the author analyses the collective agreements for seafarers in the Republic of Croatia and Montenegro who work aboard ships in international shipping. Seafarers are an important category of workers in both countries, as their income has a significant impact on the state budget and the economy in general. In the Republic of Croatia, *the National Collective Agreement for Croatian Seafarers on Ships in International Shipping (2021-2022)* is in force, while in Montenegro, *the Collective Agreement for Ship's Crew with the Employer Crnogorska plovidba a.d. Kotor* is in force.

The National Collective Agreement for Croatian Seafarers on Ships in International Shipping (2021-2022) is a continuation of the successful and continuous social dialogue between the Croatian Shipowners' Association *Mare Nostrum* and the *Seafarers' Union*, which results in new national collective agreements for Croatian seafarers in international shipping almost every two years. In Montenegro, on the other hand, the practise is reversed in the adoption and duration of collective agreements for seafarers. Therefore, *the National Collective Agreement for Croatian Seafarers on Ships in International Shipping (2021-2022)* regulates in more detail a number of relations that are very important for seafarers, such as wages, food, accommodation, communication of seafarers with their families, ship safety committee, etc.

The parties in *the National Collective Agreement for Croatian Seafarers on Ships in International Shipping (2021-2022)* are *the Croatian Shipowners' Association Mare Nostrum* and *the Seafarers' Association of Croatia*. They

entered into the agreement in good faith to promote harmonious relations between employers and seafarers. The collective agreement regulates issues such as hiring, length of employment, wages, sick pay, meals, accommodation, bedding, insurance, service in high-risk areas, repatriation, etc.

The author also points out that both countries have worked out in detail the nature of seafarers' employment agreements and the termination of employment. The collective agreements differ in terms of their duration. For example, *the Collective Agreement of the Republic of Croatia* can be concluded for a definite or indefinite period, while the *Collective Agreement of Montenegro* can only be concluded for a definite period. The collective agreements in both countries regulate their issues in accordance with the provisions of the MLC and the ITF Basic Collective Agreement.

It is important to note that the provisions of these collective agreements guarantee minimum seafarers' rights. When concluding an individual employment agreement, the provisions will favour the seafarers by applying the principle *in favorem laboratores*.

From the analysis carried out, it can be concluded that in both countries the collective bargaining of the contracting parties, especially the trade unions, leads to the conclusion of collective agreements that significantly improve the employment status of seafarers. Improvement of working conditions is a guarantee of fair and humane relations on board, which is important for the safety of shipping and protection of the marine environment.

The Republic of Croatia and Montenegro should make additional efforts, in particular by adopting positive measures that would enable better training of seafarers, facilitate their mobility and generally improve the image of maritime activity. The goal would be seafarers who, through systematic education and good training, would continue the long and successful tradition of good and well-trained seafarers in international shipping.

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