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COMPLIANCE WITH AN ENFORCEMENT OF MARITIME LABOUR CONDITIONS – THE POLISH LEGAL PERSPECTIVE

Abstract:

The Maritime Labour Convention (MLC 2006) entered into force in 2013. The MLC 2006 aims at creating a single, coherent global instrument, consolidating existing International Labour Organisation conventions,¹ and as well constitutes one of the main international maritime instruments of the International Maritime Organization, together with the International Convention for the Safety of Life at Sea (SOLAS), the International Convention for the Prevention of Pollution From Ships (MARPOL) and the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW).²

Seafarers are entitled to lodge complaints on board a ship in case of non-compliance with the legal standards, procedures, or guidelines set forth in the MLC 2006, including seafarers' human rights.³ The complaint system must include safeguards against victimisation.

In 2015, the regulations of the MLC 2006 were implemented into a new Polish Act on Maritime Labour (MLA 2015). One of the most innovative aspects of the MLA 2015, as far as ILO Conventions are concerned, is the certification of seafarers' living and working conditions on board ships, regulated in Chapter 8 of the Act (entitled: MLC documents and inspections and controls of the ship), as well as the on-board complaint procedure described in a detailed manner in Chapter 9 of the new Act.

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Text of the Maritime Labour Convention, 2006, as amended (MLC, 2006), available at: <http://ilo.org/global/standards/maritime-labour-convention/lang--en/index.htm> (accessed 30 May 2017).

¹ M.L. McConnell, D. Devlin, C. Doumbia-Henry, *The Maritime Labour Convention, 2006: A Legal Primer to an Emerging International Regime*, Martinus Nijhoff Publishers, Leiden-Boston: 2011, pp. 37-62.

² F. Piniella, J.M. Silos, F. Bernal, *Who will give effect to the ILO's Maritime Labour Convention, 2006?*, 152(1) *International Labour Law* 61 (2013); J. Whitlow, R. Subasinghe, *The Maritime Labour Convention, 2006: A model for other industries?*, 7(1-2) *International Journal of Labour Research* 118 (2015).

³ D.B. Stevenson, *Maritime Labour Law*, in: M. Fitzmaurice, N. M. Gutiérrez, I. Arroyo, E. Belja, (eds.), *The IMLI Manual on International Maritime Law, Vol. II, Shipping Law*, Oxford University Press, Oxford: 2016, pp. 209-212.

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INTRODUCTION

The Act of 5 August 2015 on Maritime Labour (MLA 2015)⁴ consists of thirteen Chapters. The eight main Chapters (numbered 2 to 9) follow the Regulations and Standards set out in five Titles of the Maritime Labour Convention (MLC 2006). The MLC 2006 comprises three different but related parts: the Articles, the Regulations, and the Code. The Articles and Regulations set out the core rights and principles and the basic obligations of Members ratifying the MCL 2006. The Code contains the details for the implementation of the Regulations. It comprises Part A (mandatory Standards) and Part B (non-mandatory Guidelines). The provisions of Title 1 (Minimum requirements for seafarers to work on a ship) are covered by Chapters 2 and 3 of the MLA 2015. The provisions of Title 2 (Conditions of employment) are contained in Chapter 4. The provisions of Title 3 of the Convention (Accommodation, recreational facilities, food and catering) are included in Chapter 5. The provisions of Title 4 (Health protection, medical care, welfare and social security protection) are contained in Chapters 6 and 7 of the Act. The final provisions of the Convention, contained in Title 5, (Compliance and enforcement), are included in Chapters 8 and 9 of the MLA 2015.

The MLA 2015 regulates: the rights and duties of the parties to an employment relationship on board seagoing ships of Polish nationality; job agency for people looking for jobs on seagoing ships; requirements as to documentation related to work on seagoing ships; conditions of life and work of seafarers on seagoing ships of Polish nationality; and protection of health and social security protection of seafarers (Article 1.1).

The MLA 2015 contains a few new subjects, particularly in the area of occupational safety and health aimed at meeting contemporary concerns, such as the effects of noise and vibration on workers or other workplace risks, but in general the Act aims at maintaining the standards provided for in the current instruments (ILO Conventions) at their present level.

The provisions relating to flag State inspection, including the use of recognized organizations, are built upon the existing ILO maritime labour inspection Convention (No. 178). The potential for inspections in foreign ports (port State control) in Chapter 8 of the MLA 2015 is based on applicable maritime Conventions, in particular Convention No. 147 – the Merchant Shipping (Minimum Standards) Convention of 1976 and the Conventions adopted by the International Maritime Organization (IMO) and the regional port State control agreements (PSC MOU).⁵

However, the MLA 2015 builds upon them to develop a more effective approach to these important issues, consistent with other international maritime Conventions that

⁴ Ustawa o pracy na morzu [Maritime Labour Act], Official Journal (Dz. U.) 2015, Item 1569.

⁵ See www.imo.org.

establish standards for quality shipping with respect to issues such as ship safety and security and protection of the marine environment. The MLA 2015, in its final provisions, contains a system of penalties for breaching the provisions adopted in the Act, to ensure they are implemented and to give the MLC 2006 full and complete effect.

1. CERTIFICATION SYSTEM

A maritime labour certificate, complemented by a declaration of maritime labour compliance (DMLC Parts I and II), is considered to constitute *prima facie* evidence that the ship has been duly inspected by the flag State's competent authority and that the requirements of the MLC 2006 relating to working and living conditions of the seafarers have been met to the extent certified. As was also explained before, the MLC 2006 does not specify the legal form for implementation of the system to be established under Title 5. However the language of the MLC 2006 provisions, for example "shall require", combined with the nature of labour inspection and certification, indicates that the form should be mandatory under the national legal system.

The main requirements addressed are as follows:

- ships must carry a valid maritime labour certificate and the associated two-part DMLC, if the ship is 500 gross tonnage or over and is engaged in international voyages, or if it operates from a port, or between ports, of another country (or for ships under 500 gross tonnage or operating only on domestic voyages, if requested by the shipowner);
- the maritime labour certificate must certify that the working and living conditions of the seafarers on the ship have been inspected and meet the requirements of the country's laws or regulations or other measures implementing the Convention. Unlike in the case of an interim maritime labour certificate, a DMLC must be attached to the maritime labour certificate. Part I of the DMLC, which is to be drawn up by the competent authority, identifies the national requirements in 14 areas listed in the MLC 2006 Appendix A5.1; Part II, which is drawn up by the shipowner and certified by the competent authority or recognized organization, identifies the measures adopted to ensure ongoing compliance with those national requirements;
- the inspections related to issuance of the maritime labour certificate have to be carried out and, in prescribed circumstances, the certificate ceases to be valid or must be withdrawn.

Article 89 of the MLA 2015 states that the ship's compliance with the requirements of the Act and MLC 2006 with respect to working and living conditions of seafarers is certified by a maritime labour certificate. This certificate shall be issued, upon the shipowner's request, by the director of the maritime office competent for the ship's home port, for a period not to exceed five years. The certificate shall be issued based on positive inspection results of the working and living conditions of seafarers on the ship, undertaken by the inspection authority. A refusal to issue the certificate shall be

based on an administrative decision. The certificate's validity shall be confirmed by the director of the maritime office competent for the ship's home port, upon the inspection referred to in Article 94.

According to Article 89(6), the certificate shall be declared invalid when:

- the inspections of working and living conditions of seafarers, referred to in Article 94, did not take place on time;
- the validity of the certificate has not been confirmed;
- the ship changed its nationality;
- the shipowner ceased to be responsible for the ship's operation;
- the ship's construction or equipment have been significantly changed, affecting the working and living conditions of seafarers.

The competent director of the maritime office may invalidate the certificate if the ship does not comply with the requirements of the Act or MLC Convention provisions and the shipowner did not undertake the required corrective measures. When taking a decision on invalidating the certificate, the type and nature of irregularities detected and the frequency of their occurrence should be taken into consideration.

According to Article 90 of the MLA 2015, an Interim Maritime Labour Certificate is issued for a ship which: is newly built, after placed into operation; changed its nationality; on which the shipowner took over the responsibility for its operation.

The director of the maritime office competent for the ship's home port shall issue, upon the shipowner's request, a temporary certificate for the period required to obtain a certificate, but for no longer than six months, which period may not be exceeded.

The interim certificate may be issued when:

- the inspection of working and living conditions of seafarers on the ship, undertaken by the director of the maritime office, gave positive results;
- the shipowner demonstrated that the procedures applied on the ship are appropriate and in accordance with the requirements of the Act and MLC Convention;
- the ship's master is aware of the MLC Convention requirements referring to the working and living conditions of seafarers on the ship and the obligations connected with their implementation;
- the director of the maritime office competent for the ship's home port received necessary information which enables the preparation of a declaration of maritime labour compliance.

A refusal to issue an interim certificate shall be based on an administrative decision. The interim certificate shall become invalid under the circumstances referred to in Article 89(6)(1) and Article 89(6)(3)-(5).

Article 91 of the MLA 2015 provides that a declaration of maritime labour compliance must confirm that the following provisions are complied with on the ship: provisions on the minimum age to be employed on the ship; medical certificates; professional qualification of seafarers; a seafarer employment agreement; job agency, time of work and rest, composition of the ship's crew; conditions of accommodation, food and meals preparation; on-board recreational facilities; health and safety at

work; medical care; payment of remuneration and other benefits; as well as complaint procedures.

This declaration shall consist of the following elements:

- Part I – prepared by the director of the maritime office competent for the ship's home port, containing a confirmation that the ship complies with the requirements of the MLC Convention and of the MLA 2015 with respect to working and living conditions of seafarers on the ship, with an indication of appropriate provisions in the national law or solutions principally equal, or exemptions granted by the competent body to a given ship;
- Part II – prepared by the shipowner and stipulating the measures established in order to ensure compliance with the requirements determined in Part I of the declaration.

The declaration shall be issued, upon the shipowner's request, by the director of the maritime office competent for the ship's home port, after verifying the information provided by the shipowner in Part II of the declaration, based on the positive results of an inspection concerning the working and living conditions on the ship.

The declaration shall be annexed to the certificate and kept on board the ship.

According to Article 92, a ship of a gross tonnage (GT) of at least 500 GT, involved in international shipping or shipping between ports of another country, shall have a certificate or an interim certificate and a declaration. For a ship of a gross tonnage of less than 500 GT, the certificate, the interim certificate and the declaration shall be issued upon the shipowner's request. The certificate, the interim certificate and the declaration shall be issued in Polish and in English and, along with a copy the other language version, be shown in a visible place available for seafarers on the ship. The original of the certificate or the interim certificate and the declaration shall be kept with other documents of the ship and made available upon request of the competent authorities or upon the request of employers and employees organisations. A fee shall be charged for the inspection and the issuance of the certificate, the interim certificate, and the declaration. The fee shall constitute state budget revenue.

The minister responsible for maritime economy shall issue, by way of regulation, a specimen of the certificate, the interim certificate, and the declaration (Parts I and II), taking into account the requirements provided for in this respect in the MLC 2006.

2. ON-BOARD COMPLAINT PROCEDURES

The MLC 2006 sets out the flag State's obligation to establish a system related to the receipt of complaints by the competent authority.⁶ The MLC 2006 covers two areas of dealing with complaints:

- the requirements for an on-board complaint procedure for seafarers to use;
- the requirements for a port State to receive a complaint from a seafarer.

⁶ MLC, Section 5.1.5.

Compliance with the MLC 2006 requirements is a matter for ship inspection and certification.⁷ The flag States require ships to have “on-board complaint procedures.”⁸ A formal and appropriate complaint procedure for the fair, effective and expeditious handling of seafarers’ complaints shall be made available on board by the shipowner. The procedures must allow seafarers to lodge complaints about any breach of the requirements of the MLC 2006, including, *inter alia*:

- ships must have on-board procedures for the fair, effective and expeditious handling of seafarers’ complaints alleging breaches of the requirements of the Convention;
- all seafarers must be provided with a copy of the on-board complaint procedures applicable on the ship;
- the procedures must seek to resolve complaints at the lowest level possible, but seafarers must have the right to complain directly to the master and to appropriate external authorities;
- victimization of seafarers for filing complaints must be prohibited;
- seafarers must have the right to be accompanied or represented during the complaint procedure.

In order to ensure that complaints may be resolved at the lowest possible level, the Polish MLA 2015 provides an appropriate complaint procedure. According to Article 96 of the Act seafarers have the right to lodge complaints about the non-provision of adequate conditions of life and work on a ship. Taking any actions against seafarers in connection with their complaints is prohibited. The person to whom a seafarer lodged a complaint must ensure the confidentiality of the source of the complaint. Article 97 specifies that a complaint may be lodged by a seafarer personally, through an authorised person, or a representative of ship’s crew if one is delegated. A seafarer can lodge a complaint to his/her immediate superior or to the ship’s master. The seafarer’s immediate superior shall examine the complaint forthwith. If the decision on the complaint by the immediate superior is not satisfactory to the seafarer, he/she shall be entitled to lodge a complaint to the ship’s master. The ship’s master shall examine the complaint within 14 days from the date of receipt. If settlement of the complaint on the ship is impossible, the ship’s master shall immediately forward the complaint to the shipowner. The shipowner shall examine the complaint within 30 days from the date of receipt. Records of complaints shall be kept on ship (Article 98).

Regardless of the seafarer’s right to lodge a complaint to his/her immediate superior or to the ship’s master, the seafarer may also lodge a complaint to the inspection authority in the port at which the ship calls, and to the employment agency through which the seafarer was employed on the ship. When a seafarer lodges a complaint to the inspection authority, the inspector from the flag state inspectorate shall take action with a view to initial assessment of the complaint. The inspector from the flag

⁷ *Ibidem*, Section 5.1.3 and 5.1.4.

⁸ *Ibidem*, Regulation 5.1.5.

state inspectorate shall not disclose that the inspection is carried out as a result of the complaint. The preliminary assessment of a complaint shall, depending on its nature, include verifying whether complaint procedures provided for in the MLC 2006 had been applied on the ship.

The inspector from the flag state inspectorate shall make every effort to examine the complaint on board the ship. If a complaint is not resolved on the ship and the ship's master fails to forward the complaint to the shipowner in accordance with Article 97(6), the inspection authority shall immediately inform the shipowner, specifying the time limit for the shipowner's response and provision of a corrective action plan. If it is not possible to resolve a complaint as a result of the measures taken in accordance with Paragraph 6, the inspection authority may, by way of administrative decision, detain the ship in port and notify competent organisations of shipowners or seafarers, respectively, and the State Labour Inspectorate or the State Sanitary Inspection of the complaint.⁹

If a complaint is lodged with the employment agency, the agency shall explain the complaint with the shipowner, and if it is impossible to clarify the complaint, if it contains information referred to in Article 24(1)(1) or (3), the agency shall notify the director of the maritime office. The director of the maritime office shall check how the employment agency explains the complaints lodged by seafarers during the audits referred to in Article 18(4) and (5).

3. MLC INSPECTIONS

According to the Article 94(1) of the MLA 2015, a ship of a gross tonnage of at least 500 GT involved in international shipping or shipping between ports of another country must have a maritime labour certificate, and ships which are not obliged to have such a certificate but on the request of the owner have received it, shall be subject to the following inspections:

- initial – carried out to obtain either the certificate or the interim certificate for the first time;
- periodical – carried out to confirm the validity of the certificate between the second and the third anniversary date, referred to in Article 5(22) of the Act on Maritime Safety;
- renewal – carried out in connection with the expiration of a certificate, in order to issue a new one, no later than 3 months before the expiration of the certificate;
- *ad hoc* – carried out for an additional verification of the working and living conditions of seafarers on the ship.

All of these inspections are carried out by the Flag State Control inspectors. So far the Polish maritime administration (i.e. the minister competent for the maritime

⁹ Most of the above provisions apply to the port State inspectors. These provisions are included in Article 56a of the Polish Act of 18 August 2011 on Maritime Safety (Official Journal 2016, Item 281).

economy) has not delegated its responsibilities and has not authorized any recognized organization to carry out, on its behalf, inspections or issue certificates. It is fully responsible for the inspection and certification of the working and living conditions of the seafarers concerned on ships that fly the Polish flag.

In the case of the *ad hoc* inspections, when the results of the inspection are not satisfactory - which means that the working or living conditions of seafarers on the ship do not comply with the requirements of the provisions of the MLC 2006 as well as the MLA 2015 - the FSC inspector may, by way of an administrative decision, detain the ship in port.¹⁰

4. PENALTIES

According to Standard A5.1.4 (Inspection and enforcement) of the MLC 2006, which provides in its point 17 that “Adequate penalties and other corrective measures for breaches of the requirements of this Convention (including seafarers’ rights) and for obstructing inspectors in the performance of their duties shall be provided for and effectively enforced by each Member”, Article 110(2) point 3 of the Polish MLA 2015 states that a ship’s master who violates provisions on the examination of complaints with respect to work and life conditions of the seafarers on a ship shall be liable to a fine whose amount does not exceed 20 times the average salary in the national economy for the preceding year, as published by the President of the Central Statistical Office in the Official Journal of the Republic of Poland “Monitor Polski” for pension purposes. Moreover, Article 115 (1) of the MLA 2015 in its point 4 provides that whoever, being a shipowner or acting on the shipowner’s behalf, violates the provisions concerning procedures for examining seafarer’s complaints referred to in Article 97 and Article 99 shall be liable for a fine ranging from PLN 1,000 to PLN 30,000.

CONCLUSIONS

Under international law States are obliged to fulfil their international legal obligations laid down in the treaties to which they are parties. The elements of international maritime law influence the internal effect and application of international maritime labour law in domestic laws. International law, and international human rights in particular, play an important role at the national level and have a clear impact on the domestic law. There is also a vast and comprehensive literature on the relationship between international maritime law and human rights. This has important implications for all national authorities.

¹⁰ Article 57 (1) of the Act of 18 August 2011 on Maritime Safety [Ustawa o bezpieczeństwie morskim], Official Journal 2016, Item 281.

The implementation of the Maritime Labour Convention in national legislation was effected by the entry into force of the new Polish Act on Maritime Labour (MLA 2015) and the regulations issued on its basis. The Polish system for the inspection and certification of maritime labour conditions ensures that the working and living condition for seafarers on board Polish flagged ships are compliant with the standards of the MCL 2006, as well as that the national requirements will be compliant with and follow the measures laid down in the Declaration of Maritime Labour Compliance. Consequently, the MLA 2015 provides that complaints will be handled confidentially and analysed immediately according to an established on-board complaint procedure.