

ANNO CXXII – TERZA SERIE
FASCICOLO II – APRILE - GIUGNO 2020

IL DIRITTO MARITTIMO

RIVISTA TRIMESTRALE DI DOTTRINA GIURISPRUDENZA LEGISLAZIONE
ITALIANA E STRANIERA
FONDATA NEL 1899 DA FRANCESCO BERLINGIERI

DIREZIONE E REDAZIONE:
GENOVA - VIA ROMA, 10

AMMINISTRAZIONE:
BOLOGNA - VIA SANTO STEFANO 43

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Scritto sottoposto a referaggio anonimo – This writing has been submitted to blind peer review

SOCIAL RIGHTS OF CROATIAN SEAFARERS UNDER THE ACT ON THE AMENDMENTS TO THE CROATIAN MARITIME CODE OF 2019

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ABSTRACT

The new Act on the Amendments to the Croatian Maritime Code of 2019 brings several new provisions concerning the subject of the social rights of Croatian seafarers. These provisions are a continuation of the social reform for Croatian seafarers initiated by the Act on the Amendments to the Croatian Maritime Code of 2007. The provisions on the social rights of Croatian seafarers of 2019 stipulate the possibility of the Ministry of the Sea, Transport and Infrastructure participating in coverage of the costs of salaries and contributions of seafarer trainees during the traineeship and the cases of “inability” to realise the required 183 days of sailing for the year for which the income tax is determined. The purpose and objective of this paper is to analyse the provisions on the social rights of Croatian seafarers regulated by the Act on the Amendments to the Croatian Maritime Code of 2019. The new provisions on the social rights of Croatian seafarers are compared with the solutions that preceded them. Considering that the pension reform entered into force in the Republic of Croatia in early 2019, the paper also includes an analysis of the provisions on seafarers’ pension that have not changed when the Act on the Amendments to the Croatian Maritime Code of 2019 entered into force. It is concluded that the provisions on the social rights of Croatian seafarers under the Act on the Amendments to the Croatian Maritime Code of 2019 represents an improvement of the protection of the social rights of Croatian seafarers. In order to provide even greater protection, it is proposed to further upgrade the social rights of Croatian seafarers within the Croatian maritime legislation. Future rights should go in the direction of protecting the social rights of women in seafaring.

SUMMARY : 1. Introduction. – 2. A review of the basic legal issues regulated by the Maritime Code of 2019. – 3. Regulation of the social rights of seafarers. – 3.1. Novelties concerning the subject of seafarer trainees. – 3.2. New solutions concerning the subject of “inability” to realise 183 days of sailing for the exemption from tax obligation. – 3.3. Seafarers’ pension. – 4. Proposals for the direction of further upgrading of the social rights of seafarers. – 5. Conclusion. – Bibliography.

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1. *Introduction*

When it comes to the social rights of Croatian seafarers (hereinafter: seafarers), it took time for Croatian maritime legislation to recognise the particularities of seafaring and the needs of seafarers. It was not until 2007 that the passing of the Act on the Amendments to the Maritime Code¹ (hereinafter: Maritime Code of 2007) established the inclusion of seafarers in the health and pension system and the system of the payment of contributions for mandatory insurances, which laid the foundation for the so-called social reform for seafarers.

According to Article 14 of the Maritime Code of 2007, all seafarers on board ships in international navigation, regardless of the ship's nationality, are equal in their rights and obligations with respect to pension and health insurance. The obligation of Croatian employers to register their seafarers directly to the Croatian pension and health insurance institutes (hereinafter: the Institutes) remains. However, in addition to those seafarers who were then insured within the mandatory insurance system, the competent harbour master's offices shall submit applications for registration and deregistration of the seafarers on board ships in international navigation to the Institutes, regardless of the ship's nationality, whose employer is a foreign legal person, if the seafarer is domiciled in the Republic of Croatia. Exceptionally, those seafarers who are insured under the pension or health insurance of a country with which the Republic of Croatia has a social insurance contract do not register for mandatory pension and health insurance in the Republic of Croatia, but submit a certificate issued by a foreign social security holder to the competent harbour master's office.

As stipulated by Article 14 of the Maritime Code of 2007, a seafarer in international navigation shall be a contribution debtor and payer of the contributions for mandatory insurances according to a monthly basis for calculating the contributions, which is stipulated and published by the minister of sea, transport and infrastructure. The amount of the monthly basis for the calculation of the contribution shall be determined according to the salary that the seafarer would receive for the same or similar jobs on board a ship in national navigation².

Also, in the context of the implementation of the social reform for seafarers, the provision of Article 13 of the Maritime Code of 2007 is important. The said provision refers to cases of "inability" to realise 183 days of sailing for the exemption from the tax obligation of seafarers based on work on board a ship in international navigation.

¹ Official gazette of the Republic of Croatia *Narodne novine* no. 76/07.

² E.g. the monthly basis for the calculation of the contributions for mandatory insurances of seafarers in international navigation for 2019 is stipulated by the Order on the monthly basis for the calculation of contributions for mandatory insurances of a crew member on board a ship in international navigation for 2019 (official gazette of the Republic of Croatia *Narodne novine* no. 5/19; hereinafter: the Order). According to the Order, the monthly basis for the ship master, chief engineer, first mate and first engineer is HRK 7.703,00, and the lowest basis in the amount of HRK 3.210,24 is stipulated for the navigating cadet, engineering cadet, other cadets, sailors, cleaners and cabin boy.

The described legal provisions guarantee all Croatian seafarers social security, because the social rights of seafarers were not even a subject of special standardisation in the Croatian maritime legislation until the entry of these provisions into force.

From current point of view, we know that the provisions on the social rights of seafarers from the Maritime Code of 2007 represent the beginning of the social reform for seafarers and that these rights have been amended several times after 2007. Specifically, the provisions on the social rights of seafarers also include the Act on the Amendments to the Croatian Maritime Code of 2008³ (hereinafter: the Maritime Code of 2008) and the Act on the Amendments to the Croatian Maritime Code of 2011⁴ (hereinafter: the Maritime Code of 2011), and the Act on the Amendments to the Croatian Maritime Code of 2015⁵ (hereinafter: the Maritime Code of 2015)⁶. Finally, the latest amendment to the Maritime Code was implemented by virtue of the Act on the Amendments to the Maritime Code of 2019⁷ (hereinafter: the Maritime Code of 2019)⁸. The Maritime Code of 2019, in addition to the full range of legal issues it regulates, contains several provisions concerning the subject of the social rights of seafarers.

If we review the dynamics of the standardisation of the legal provisions on the social rights of seafarers, we will notice that a long time passed from the introduction of the social reform for seafarers in 2007 to the last amendment in 2019.

The purpose and objective of this paper is to analyse the provisions on the social rights of Croatian seafarers regulated by the Maritime Code of 2019. The new provisions on the social rights of seafarers are compared with the solutions that preceded them. Considering that the pension reform entered into force in the Republic of Croatia in early 2019, in addition to the latest provisions on the social rights of seafarers from the Maritime Code of 2019, we will also refer to the provisions on seafarers' pensions that have not changed with the entry of the Maritime Code of 2019 into force. Overall, conclusions on the current quality of regulation of the social rights of seafarers will be presented and further upgrading of these provisions within the Croatian maritime legislation will be suggested.

2. *A review of the basic legal issues regulated by the Maritime Code of 2019*

Apart from the novelties concerning the subject of the social rights of seafarers, the Maritime Code of 2019 regulates a number of other legal issues. The purpose of its adoption was to make Croatian maritime shipping competitive on the

³ Official gazette of the Republic of Croatia *Narodne novine* no. 146/08.

⁴ Official gazette of the Republic of Croatia *Narodne novine* no. 66/11.

⁵ Official gazette of the Republic of Croatia *Narodne novine* no. 26/15.

⁶ In addition to these amendments, the Act on the Amendments to the Maritime Code (Official gazette of the Republic of Croatia *Narodne novine* no. 56/13) was adopted in 2013. However, it does not contain provisions on the social rights of seafarers.

⁷ Official gazette of the Republic of Croatia *Narodne novine* no. 17/19.

⁸ Maritime Code of 2019 was adopted at the 11th session of the Croatian Parliament on 8 February 2019, with 98 votes in favour and one against.

international market and stimulating the development of the maritime economy. In that sense, European Union acts⁹ have been transposed into the Croatian legislation; the provisions regulating the withholding tax have been amended and special provisions have been stipulated to ensure exemption from the application of the provisions of the Bankruptcy Act¹⁰; a single centralised register of shipping in electronic form has been introduced and the possibility of submitting an application for entry into the register of shipping has been liberalised; individual issues in the nautical tourism sector have been regulated better and in more detail; the definition of a boat and a yacht has been changed, and the term 'large passenger yacht' has been defined; new tax treatment for yacht crew members in international sailing has been introduced; the yacht and boat charter contract and berth contract are standardised as titled contracts; issues related to the acquisition of ownership of a wreck or sunken item by the state have been regulated; the limits of the ship operator's liability for certain maritime claims have been harmonised with the provisions of the Convention on Limitation of Liability for Maritime Claims of 1976, as amended (by Protocol of 1996 as amended in 2012); individual activities of the navigation safety services have been stipulated, and provisions regulating the activities of anticipation, prevention, restriction, readiness to respond to sudden instances of sea pollution have been adopted; also, the issues of ship lay-up and pilotage have been additionally regulated and the existing misdemeanour provisions have been supplemented with the Misdemeanour Act¹¹.

3. *Regulation of the social rights of seafarers*

The Maritime Code of 2019 devoted several provisions to regulating the social rights of seafarers. These provisions can be divided into two groups: novelties concerning the subject of seafarer trainees and new solutions concerning the subject of "inability" to realise 183 days of sailing for the exemption from tax obligation. The provisions on seafarers' pension regulated by the Maritime Code of 2011 are also in force and have not changed with the Maritime Code of 2019 entering into force. Seafarers' pension is an important issue in the field of social rights, which is exempted from the general regulations on pension insurance and left to the standardisation in the Maritime Code, so we consider it necessary to include the provisions on seafarers' pension within the subject of the social rights of seafarers.

3.1. *Novelties concerning the subject of seafarer trainees*

Article 48 of the Maritime Code of 2019 stipulates that the Ministry of the Sea, Transport and Infrastructure *may* participate in covering the costs of salaries and

⁹ The list of European Union acts transposed into the Croatian legislation is exhaustively listed in Article 1 of the Maritime Code of 2019.

¹⁰ Official gazette of the Republic of Croatia *Narodne novine* no. 71/15, 106/17.

¹¹ Official gazette of the Republic of Croatia *Narodne novine* no. 107/07, 39/13, 157/13, 110/15, 70/17.

contributions for mandatory pension and health insurance of seafarers during the traineeship and the conditions for determining the right to coverage of the costs are laid down by the minister in an ordinance.

The provision of Article 48 of the Maritime Code of 2019 emphasises the word *may*, in the sense that the Ministry of the Sea, Transport and Infrastructure *may* (and does not have to) participate in the coverage of the costs of salaries and contributions. Considering the opportunity given by the Maritime Code of 2019 to the Minister of the Sea, Transport and Infrastructure, it was to be expected that the minister would act according to the provision and pass an *ordinance* laying down the conditions for the coverage of the costs of salaries and contributions of seafarer trainees. This ordinance would allow seafarer trainees to apply for secured budget appropriations and use them for the purposes for which they were intended.

The entry of the provision of Article 48 into the Maritime Code of 2019 was preceded by the following circumstances. From the very beginning of the implementation of the Measures of Active Employment Policy of the Croatian Employment Service, the trainees for the positions on the deck, in the engineering or electrical department had been excluded or discriminated compared to all other professions that had the opportunity to apply for the vocational training for work without employment. Not before late 2014 did the Government of the Republic of Croatia adopt the programme of co-financing the embarkation of trainees for the positions on the deck, in the engineering or electrical department on ships in international and national navigation for 2015. The same programme provided funds for co-financing the shipowners' costs for the trainee embarkation. This programme was just a temporary measure without permanent nature. Therefore, the Maritime Code of 2019 finally stipulates that the Ministry of the Sea, Transport and Infrastructure may participate in covering the costs of salaries and contributions of trainees during the traineeship, and the minister shall determine the conditions for establishing the right to cover the costs by a special regulation¹².

Pursuant to the provision of Article 48 of the Maritime Code of 2019, the Ministry of the Sea, Transport and Infrastructure adopted the expected Ordinance on exercising the right to the coverage of costs of salaries and contributions of seafarer trainees during traineeship¹³ (hereinafter: the Ordinance)¹⁴. The first measure stipulated by the Ordinance is the co-financing of the costs of mandatory contributions of seafarer trainees on board ships in international navigation for the period from 1 January 2019 to 1 November 2019, provided that they have paid an advance of the mandatory contributions for that period. Furthermore, in October 2019, the Ministry of the Sea, Transport and Infrastructure issued a Call for seafarer

¹² L. MIŠIĆ, *Što novo donosi Pomorski zakonik?*, in *Pomorski vjesnik*, no. 93, May 2019, pp. 4-5.

¹³ Official gazette of the Republic of Croatia *Narodne novine* no. 97/19.

¹⁴ About the circumstances of adopting the Ordinance, see L. MIŠIĆ, *Vježbenici: Hoćemo novi Pravilnik!*, in *Pomorski vjesnik*, no. 94, August 2019, p. 4-5.

trainees to apply for the budget appropriations in the total amount of HRK 2,130,680.00 to cover the costs of the contributions for the traineeships in 2019. Also, the Call for the coverage of the costs of contributions for the traineeship will be followed by the second Call for the submission of applications for the participation in the co-financing of the boarding of trainees in international navigation of the Ministry of the Sea, Transport and Infrastructure, which will enable future seafarer trainees to apply for the co-financed costs of the salaries and contributions of seafarer trainees for the duration of the traineeship¹⁵.

By adopting the Ordinance and the Call, the first, and soon the second, the Ministry of the Sea, Transport and Infrastructure will fully comply with the provision of Article 48 of the Maritime Code of 2019.

3.2. *New solutions concerning the subject of “inability” to realise 183 days of sailing for the exemption from tax obligation*

In the context of the social rights of seafarers, it is important to analyse the provision of Article 49 of the Maritime Code of 2019 concerning the subject of “inability” to realise 183 days of sailing for the exemption from tax obligation.

The Maritime Code of 2007 already regulated the circumstances for exempting seafarers in international navigation from income tax. According to Article 13 of the Maritime Code of 2007, a seafarer in international navigation, regardless of the nationality of the ship, who is domiciled or a resident in the Republic of Croatia, is obligated to pay tax on employment income according to income earned by working on board a ship in international navigation. If the seafarer has sailed for 183 days or more in the year for which the income tax obligation is being determined, he shall be exempted from the obligation to pay income tax. In order to achieve the required 183 days for the year for which the income tax obligation is determined, the seafarer could also include the days of sailing from the previous year, which he did not count in the 183 days in the previous year as they were excessive, then the days spent travelling from the place of residence to the place of boarding, days required for the return trip, days of treatment for illness or injury incurred on the way to boarding, on board the ship or on return from the ship, and days spent in vocational training abroad.

Due to the different interpretation of the term *excessive days*, the provision of Article 13 of the Maritime Code of 2007 was amended by Article 13 of the Maritime Code of 2011. A new paragraph was added to the provision, stating that days spent on the trip from the place of residence to the point of boarding, days required for the return trip, days of treatment for illness or injury incurred on the way to boarding, on board the ship or on return from the ship, and days spent in vocational training abroad that were not counted in the 183 days in the previous year may be added to the 183 days of sailing.

¹⁵ D. ZEC, *Pribvačena inicijativa SPH – vježbenicima će se refundirati plaćeni doprinosi za obvezna osiguranja* in *Pomorski vjesnik*, no. 95, November 2019, p. 9.

However, due to a series of absurd situations that the practice has brought during the time of the application of the provision, a more equitable regulation of the tax regime for seafarers in international navigation was necessary. Therefore, Article 49 of the Maritime Code of 2019 amended the provision on the cases of “inability” to realise the required 183 days of sailing for the year for which the income tax obligation is determined.

The Maritime Code of 2019, article 49, stipulates that the following shall be included for the purpose of achieving the necessary 183 days of navigation in the year for which income tax obligation is established: days of navigation, days spent travelling from the place of residence to the place of embarkation, days necessary for the return trip, days of treatment due to illness or injury occurring while travelling to the place of embarkation or on board or during return, or treatment due to illness or injury occurring after disembarkation or before embarkation which would prevent the obtaining of a certificate of medical fitness for navigation, and days spent in vocational training abroad or in the country, as well as days until the expiration of the employment contract that have not been realised because the shipowner left the crew members or the termination of the employment contract due to business-related reasons. These provisions differ compared to the previous decision under the Maritime Code of 2007 with regard to the realisation of 183 days. For example, in the previous decision under the Maritime Code of 2007, there was no provision for calculating the days spent in training in the country, or the days of treatment for illness or injury incurred after the boarding or before boarding that would prevent the obtaining of the certificate of medical fitness for sailing.

Also, according to Article 49 of the Maritime Code, in the case of abduction and captivity, retirement or death of a crew member in the tax year, the condition of navigation in the duration of 183 days for that tax year shall be deemed fulfilled.

Furthermore, according to Article 49 of the Maritime Code, days of navigation, days spent travelling from the place of residence to the place of embarkation, days necessary for the return trip, days of treatment due to illness or injury occurring while travelling to the place of embarkation, on board or during return, days of treatment due to illness or injury occurring after disembarkation or before embarkation which would prevent the obtaining of a certificate of medical fitness for navigation, days spent in vocational training abroad or in the country, as well as days until the expiration of the employment contract that have not been realised because the shipowner left the crew members or the termination of the employment contract due to business-related reasons, which were not included in the 183 days in the previous year, can be added to the days necessary for the exemption from the tax obligation.

Despite the extended number of reasons taken into consideration for inclusion in the 183 days, it is clear that not all life circumstances have been covered. E.g. in a situation such as the illness of a close family member due to which the seafarer does not sail, those who experience such a situation will be handicapped with a smaller income, on which they will pay tax, the same as so far. This gives the impression that the provision should be extended in such a way that more life circumstances, such as

the situation described above, are taken into consideration for inclusion in the 183 days. This would allow seafarers to plan their sailing more easily and to be eligible for tax exemption in a year when they could not sail and realise an income due to a justified reason. Another option is simply to abolish the 183-day limit and allow seafarers to plan their sailing as their life circumstances allow.

3.3. *Seafarers' pension*

With regard to the seafarers' pension, it was proposed that the seafarers' pension also be regulated by general regulations within the "pension reform" which is being implemented in the Republic of Croatia. This would ultimately mean that seafarers would also realise the right to pension at the age of 65 in the near future¹⁶. This age limit would be reduced according to the following model: 5 years of navigation for a reduction of the age limit by 1 year. The result would be that seafarers could retire at the age of 64 after 15 years of navigation.

However, this model was considered unacceptable and the standardisation of the seafarers' pension was left to a separate regulation, i.e. the Maritime Code. As noted earlier, the provisions on seafarers' pension are regulated by the Maritime Code of 2011, and these provisions have not been amended by the Maritime Code of 2019. In other words, the provisions on the seafarers' pension from the Maritime Code of 2011 are current, i.e. in force after the adoption of the Maritime Code of 2019.

According to the provisions on seafarers' pension, Article 14 of the Maritime Code of 2011, every 12 months spent on board as a seafarer on a ship in international navigation and national navigation, are counted toward the insurance period as 15 months for a seafarer, regardless of the nationality and type of the ship and regardless of the boarding characteristics. The age limit for a seafarer's entitlement to old-age pension under the Pension Insurance Act¹⁷ is 60 years, provided that the seafarer has realised at least 15 years of insurance period on board as a seafarer in international navigation and national navigation.

At the same time, according to Article 14 of the Maritime Code of 2011, a seafarer in international navigation is an additional contribution debtor and payer of the contribution for an extended insurance period according to the monthly basis for the calculation of mandatory insurance contribution, which is stipulated and published by the minister. Obligations include the additional pension insurance contribution for an extended insurance period and an additional pension insurance contribution on the basis of individual capitalised savings for an extended insurance period (for the insured person of that insurance). The rate of the additional contribution for an extended insurance period shall be calculated in accordance with the corresponding

¹⁶ These conditions for retirement are stipulated by the Act on the Amendments to the Pension Insurance Act, Official gazette of the Republic of Croatia *Narodne novine* no. 102/19, after the referendum on changes to the conditions for retirement and the initiative "67 is too much".

¹⁷ Official gazette of the Republic of Croatia *Narodne novine* no. 157/13, 151/14, 33/15, 93/15, 120/16, 18/18, 62/18, 115/18, 102/19.

rate of increase of the insurance period with the application of the general law regulating contributions. The additional contribution for the extended insurance period is calculated and charged by the Tax Administration. Let us add that, for seafarers in national navigation, the employer is the additional contribution debtor and payer of the contribution for the extended insurance period.

While working on the adoption of the Maritime Code of 2019, there was talk of regulating the issue of the addition to the seafarers' pension, but its standardisation was not covered by the Maritime Code of 2019, but was left for the possible continuation of negotiations between the social partners.

4. *Proposals for the direction of further upgrading of the social rights of seafarers*

The new provisions of the Maritime Code of 2019 on seafarer trainees and cases of "inability" to realise 183 days of sailing for the exemption from the tax obligation have made a progress in the regulation of the social rights of seafarers. The fact that the issue of the regulation of the seafarers' pension was exempted from the general regulations on pension insurance and left to a special regulation also supports the improvement of the way in which the social rights of seafarers are regulated. However, it might be useful to put forward the recommendation in terms of thinking about the next phase of the social reform for seafarers. We believe that we should not leave these rights of the seafarers in the current state for the next, for example, five or more years because the issue of the social rights of seafarers requires constant legal intervention.

For example, let us focus on women in seafaring. The social rights of women in seafaring have not been subject to special legal regulation in the Republic of Croatia so far. The fact is that there has been an increasing number of women in seafaring in the past years in general. Also, there is an increasing number of women completing maritime study programmes in the Republic of Croatia and they most often board passenger ships in international navigation. Therefore, we believe it is already necessary to discuss the promotion of solidarity and the common struggle of women for social justice, which should be carried out through the national legal regulation – the Maritime Code.

Women in seafaring have already started the fight for the protection and promotion of women's interests in collective contracts, agreements and the Croatian legislation, and against discrimination against women in the maritime sector¹⁸, and it is now up to the Ministry of the Sea, Transport and Infrastructure to consider regulating women's rights in general, and certainly their social rights, within the Croatian maritime legislation.

¹⁸ Within the Seafarers' Union of Croatia there is also the Women's Section of the Seafarers' Union of Croatia. The purpose and objectives of its operation are laid down in the *Ordinance on the Work of the Women's Section of the Seafarers' Union of Croatia*.

5. *Conclusion*

In the conclusion, we could summarise everything aforementioned, so, we will once again highlight the most significant changes introduced in the part concerning the social reform for seafarers.

1. The Maritime Code of 2019 stipulates that the Ministry of the Sea, Transport and Infrastructure may participate in covering the costs of the trainee's salary and contributions during the traineeship. In this sense, the Ordinance was adopted according to which trainees will be refunded for the paid contributions for mandatory insurances (health and pension). Pursuant to the Ordinance, the first Call was published to allow seafarer trainees to apply for budget appropriations for covering the costs of contributions for the traineeship, after which the second Call will be adopted, for the submission of applications for participation in the co-financing of the trainees' boarding in international navigation.

2. In order to realise the required 183 days of navigation for the year for which the income tax obligation is determined, the provision of the Maritime Code of 2019 has been improved compared to the previous solution from the Maritime Code of 2007 and 2011. New situations are considered for inclusion in the 183 days: days spent in training in the country and days of treatment for illness or injury incurred after boarding or before boarding that would prevent the issuance of a certificate of medical fitness for navigation, abduction, captivity, etc. Despite the extended number of reasons, the provision did not cover all life circumstances that would represent a justified reason why a seafarer did not sail or generate income, nor the conditions for exemption from the tax obligation. As an example, we listed an example of illness of a close family member which is not included in the justified situations that exempt a seafarer from paying taxes. Such cases of "inability" to realise the required 183 days of navigation are a "common ground" with the social rights of seafarers, so in order to further improve the social rights of seafarers, it is necessary to reconsider the situations that could be included in the required 183 days.

3. The regulation of the seafarers' pension is within the scope of the Maritime Code. In the course of the pension reform, initiated in early 2019, the provisions on the pension have not been amended by the Maritime Code of 2019. The provisions on seafarers' pension of 2011 remain in force. According to them, seafarers are entitled to a pension at the age of 60 and after 15 years of navigation. Had this issue been resolved by general regulations, seafarers would realise the right to pension later, at the age of 64, after 15 years of navigation. During the adoption of the Maritime Code of 2019, there was also talk of regulating the issue of the seafarers' pension supplement, but the resolution of that issue was not covered by the Maritime Code of 2019.

These provisions on the social rights of seafarers have been improved compared to the first provisions on the same rights in the Maritime Code of 2007. However, there is room for further initiatives in terms of greater protection of the social rights of seafarers, as this is a problem that requires constant legal monitoring and legal intervention. As an example of a further direction in regulating the social rights of

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seafarers, we mentioned women in seafaring and the need for special legal regulation of their social rights. We hope that, when drafting the next amendments to the Maritime Code, the issue of the social rights of women in seafaring will be taken into consideration.

ISSN 0012-348x