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LEGAL SOURCES OF THE CROATIAN LAW ON LIABILITY FOR DAMAGES CAUSED BY PHYSICAL INJURY, DEATH OR HEALTH IMPAIRMENT OF A CREW MEMBER (SEAMAN)

The crew of maritime ship includes the captain and other personnel who are entered in the crew list to perform different duties on ship. In this paper, the authors analyse and compare the legal sources of the Croatian law on liability for damages caused by physical injury, death or health impairment of a crew member (seaman or seafarer). The authors describe legal provisions contained in the derogated Maritime Code (1994), the present Maritime Code (2004) and the Civil Obligation Act (2005). In their concluding remarks, they point out that the Croatian legal solutions could be regarded as being very successful.

Key words: Croatian law; Liability for damages; Physical injury; Death; Health impairment; Crew member.

1. INTRODUCTION

The legislation of the Republic of Croatia recognizes two kinds of navigation: maritime navigation and inland navigation. The maritime navigation is regulated by the *Maritime Code* (hereafter: MC '04)¹ while inland navigation is regulated by the *Navigation and Inland Ports Act* (hereafter: NIPA '07).² Maritime navigation is defined as the navigation that takes place at sea and on the coastal rivers of the Adriatic river basin in Croatia, to the boundaries of waters navigable from the seaward side (Art. 5 (1) MC '04). Inland navigation is defined as navigation that takes places on inland waterways (such as rivers, canals and lakes, except for the rivers within the Adriatic

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¹ See Maritime Code, *Official Gazette of the Republic of Croatia* (hereafter: OGCR), No. 181/04, 76/07, 146/08, 61/11, 56/13, 26/15 and 17/19.

² See Navigation and Inland Ports Act, OGCR, No. 109/07, 132/07, 51A/13 and 151/14.

basin covered by the maritime navigation) – Art. 4 NIPA '07. Accordingly, there are naval waterborne vessels (ships, warships, yachts and boats) – (Art. 5 (1) MC '04) and inland waterborne vessels (ship, boats, rafts and floating facilities) – (Art. 4 NIPA '07). Regardless of the type of navigation, the most significant vessel is a ship. In order to provide for safe navigation, a ship must have a relevant minimal number of crew members. The crew includes the captain and other personnel entered in the crew list to perform different duties on board (art. 125 (1) MC '04, art. 46 (1) NIPA '07).³ There are many interesting areas related to the crew member: the concept of crew member, the envisaged requirements they must meet in order to performing their duties, the boarding requirements, the violated rights related to the living and working conditions on board, repatriation (return journey), the protection of employment rights and interests arising from labour relations, the liability for damage caused by physical injury or death, and the (international) jurisdiction in adjudicating disputes arising from compensation claims.

In this paper authors analyse the Croatian maritime legal provisions dealing with the damages caused by physical injury or death of a crew member or due to health impairment. MC '04 was passed by the Parliament on December 8th, 2004 and came into force on December 29th, 2004. MC '04 is a systematic statute, containing 1032 articles (organized in 12 chapters).⁴ It is the second time that Republic of Croatia has codified maritime law and law of the sea in a single comprehensive enactment. MC '04 derogated the *Maritime Code* from 1994 (hereafter: MC '94).⁵ To comprehend the provisions of liability for death or physical injury of crew members in the MC '04 it is necessary to provide how this matter had been regulated in the MC '94.

³ For maritime navigation see in detail D. Bolanča, *Prometno pravo Republike Hrvatske*, Split 2016, 6 etc. For inland navigation see D. Bolanča, *Hrvatsko plovidbeno upravno pravo*, Split 2015, 125–153.

⁴ MC '04 deals with: maritime and submarine areas of the Republic of Croatia (the law of the sea), safety of navigation, procedures concerning the registration of ships, property law concerning vessels (ownership, liens and mortgages), limitation of ship owner's liability, contracts and other obligations relating to ships (carriage of goods by sea, carriage of passengers and their luggage), collisions at sea, salvage, general average, marine insurance, the enforcement of maritime claims and the conflict of laws – see D. Pavić, *Pomorsko imovinsko pravo*, Split 2006, 29 etc.

⁵ See Maritime Code, OGRC, No. 17/94, 74/92 and 43/96. For more details see D. Bolanča, A. Luttenberger, “Some Views on the New Croatian Maritime Code”, *Zbornik radova Pravnog fakulteta u Splitu*, 1-2/1995, 113–117, D. Bolanča, “The New Croatian Maritime Code”, *Acta Juridica Hungarica*, 1-2/1997, 60–63, I. Grabovac, *Pomorski zakonik s poslovnim kazalom*, Zagreb 1994, 20–31, P. Stanković, G. Stanković, *Croatia*, in *International Encyclopaedia of Laws – Transport Law*, Haag 2000, 37–171.

2. MC ‘94 AS *LEX SPECIALIS*

The main provision of the liability for personal injury or death of seaman (crew member of maritime ship) was Art. 161 of the MC ‘94. It had consisted new provision on the ship operator’s liability for the crew members’ death or physical injury.⁶ The ship operator’s liability was based on his presumed negligence - Art. 161 (1), meaning he had to prove that damage was caused without his fault. In cases where damage was made in connection with a dangerous object, Art. 161 (2) refers to the general principles of liability. According to the Croatian *Civil Obligations Act* (hereafter: COA ‘91),⁷ as *lex generalis*, the strict liability rules were applied (Art. 174 and Art. 177).⁸ The same principle of liability was applicable in cases where damage was caused as a result of unexisting conditions for safe work – Art. 161 (3). The exception of the ship operator’s liability was the fault of crew member.⁹ Ship operator was defined as “*a natural person or a legal entity who as the holder of the ship is in charge of navigation ventures, the presumption being, until the opposite is proved, that the ship operator is the person entered in the register of ship as the owner of the ship*” – Art. 5 (26) MC ’94. Art. 161 (4) regulated jurisdiction of commercial courts to adjudicate matters relating exclusively to crew members and captain, who was also a member of the ship’s crew.¹⁰

⁶ The MC’94 derogated *The Maritime and Inland Navigation Act* of Republic of Croatia (*OGRC*, No. 53/91), hereafter: MINA ’91. This derogated Act regulated the mentioned matter on different way in Art. 127. The ship operator was liable for personal injury or death of a crew member caused by his fault or that of the person for whom the ship operator is responsible for (*proved liability*) – para. 1. The fault was presumed (until the opposite was proven) if the death or personal injury of a crew member was caused directly or indirectly due to marine perils (*presumed liability*) – para. 2. See in detail V. Brajković *et al.*, *Zakon o pomorskoj i unutrašnjoj plovidbi (s napomenama i komentarskim bilješkama)*, Zagreb 1981, 59–60, D. Bolanča, “Radnopravna materijalna odgovornost pomoraca”, *Zbornik radova Pravnog fakulteta u Splitu*, 1-2/1991, 219–220; B. Lukšić, “Odgovornost brodara za smrt i tjelesne ozljede člana posade broda”, *Privreda i pravo* 5-6/1985, 287–288.

⁷ See Civil Obligations Act, *OGRC*, No. 53/91, 73/91 and 3/94.

⁸ In cases where damage is caused in connection with a dangerous object or dangerous activity was assumed that it was a result of such object or activity except when it was proven that they could have been the cause of damage (P. Klarić, *Odštetno pravo*, Zagreb 1996, 51–56.).

⁹ I. Grabovac, 142; B. Jakaša, “Nekoliko napomena uz Pomorski zakonik”, *Uporedno pomorsko pravo* 1-4/1994, 64; D. Bolanča, *Pomorsko pravo (odabrane teme)*, Split 1999, 90–92.

¹⁰ This paragraph had the controversial interpretations, but Croatian judicial practice has definitively established the jurisdiction of commercial courts. In this view, commercial courts had no jurisdiction over disputes involving seaman who are not members of a ship’s crew. It was municipal courts that had jurisdiction of the subject matter to hear another type of cases – so S. Šimac, “Stvarna nadležnost suda iz članka 161. stavka 4. Pomorskog zakonika te o pojmovima pomorac i član posade broda”, *Zbornik radova Pravnog fakulteta u Splitu*, 3-4/1999, 607–618; D. Bolanča, “Pravni temelj odgovornosti za štetu zbog tjelesne ozljede

The MC '94 had not regulated the damages caused by sickness of crew members on board of ship. The problem was solved by using the provisions of labour acts as *lex generalis*. According to Art. 102 (1) of the Croatian *Labour Act*¹¹ an employee had the right to claim compensation in a competent court if he suffered damage at work or in connection with work, as it was in line with the general principles of liability.¹² *The Croatian Protection at Work Act*¹³ adopted the employer's strict liability in conformity with the general principles of liability under COA (Art. 15).¹⁴ The COA '91¹⁵ was *saedes materiae* in the above mentioned matter and it founded the rules of the presumed negligence (Art. 154 (1))¹⁶ or strict liability rules (Art. 174 and Art. 177)¹⁷ as general principles of liability.¹⁸

3. MC '04 AS LEX SPECIALIS

3.1. Definition of a crew member and seafarer (seaman)

MC '04 states that the ship crew consists of the master and other persons embarked to do work on board and are registered on the crew list – Art. 125 (1). A crew member of a ship carrying out activities related to safety of navigation of a ship may be a person of adequate age, having acquired the appropriate vocation and having a relevant certificate of competency for carrying out duties on board a ship – Art. 131 (1). A certificate of qualifications for conducting tasks on board shall be issued only to a person physically and mentally fit to complete the task on board, not addicted to drugs

i smrti člana posade broda s posebnim osvrtom na smisao postojanja odredaba članka 161. Pomorskog zakonika”, *Osiguranje*, 4-5/1998, 21–22, G. Stanković, “Neka pitanja stvarne nadležnosti sudova u pomorskim sporovima”, *Pomorski zbornik* 3-4/1996, 220.

¹¹ See Labour Act, *OGRC*, No. 38/95 and 54/95.

¹² See I. Crnić, *Zakon o radu*, Zagreb 1995, 76–78.

¹³ See *The Croatian Protection at Work Act*, *OGRC*, No. 59/96.

¹⁴ See S. Šimac, “O odgovornosti brodara za štetu nastalu zbog bolesti člana posade broda”, *Zbornik radova Pravnog fakulteta u Splitu* 2-3/2001, 216–217.

¹⁵ See *supra* fn. 7.

¹⁶ Art. 154 (1) of COA '91 stated that “*whoever causes damage to another person is obliged to make a compensation for it unless he proves that the damage was not caused by his own fault*”. Presumed was only the legal standard of negligence of the particularly conscientious man or *culpa levis*. The plaintiff had to prove the defendant's negligence in the omission to do something which a reasonable man guided by consideration which ordinarily regulated the conduct of human affairs would do, or in doing something which a prudent and reasonable man would not to do (*culpa lata*). The burden of proof of the wilful act also lay with the plaintiff – see I. Crnić, *Naknada štete*, Zagreb 1995, 116.

¹⁷ See *supra* fn. 8.

¹⁸ See also B. Jakaša, “Nekoliko pogleda na temelj imovinsko-pravne odgovornosti”, *Zbornik radova Pravnog fakulteta u Zagrebu* 2-3/1977, 126.

or alcohol, all of which shall be determined by medical examinations and periodical check-ups (Art. 131 (6)). The conditions for the acquisition and the renewal of certificates of competency are determined by applying the principles of the *International Convention on Standards of Training, Certification and Watchkeeping for Seafarers* (1978), amended in 1995 (hereafter: STCW ‘78/95).¹⁹ The seafarer’s book must be possessed by master or crew of member. The seafarer’s book is a personal document of a person to whom it has been issued, proving the status in which a crew member boarded a ship and the duration of seagoing service – Art. 137 (1).²⁰

The labour, living and social conditions for seafarers are regulated with a collective agreement – Art. 125 (4).²¹ MC ’04 transposed some acts of the European Union into Croatian legislation: *Council Directive 2009/13/EC of 16 February 2009 implementing the Agreement concluded by the European Community Shipowners’ Associations (ECSA) and the European Transport Workers’ Federation (ETF) on the Maritime Labour Convention, 2006, and amending Directive 1999/63/EC*.²² Also, Croatian legislator accepted *Maritime Labour Convention* in 2006 (hereafter: MLC ’06) and has partially aligned its national legislation with its provisions.²³ The MLC ’06 covers a

¹⁹ STCW ‘78/95 sets minimum qualification standards for masters, officers and watch personnel on seagoing merchant ships and large yachts. STCW ‘78/95 was adopted in 1978 by conference at the *International Maritime Organization* (IMO) in London, and entered into force in 1984. The Convention was significantly amended in 1995 – see C. Young, “Comprehensive Revision of the STCW Convention: An Overview”, *Journal of Maritime Law and Commerce* 1/1995, 1–3; M. Babić, M. Marković, “Što donose izmjene i dopune STCW konvencije”, *Uporedno pomorsko pravo* 1-4/1995, 247–256. The Republic of Croatia adopted STCW ‘78/95 (*OGCR*, No. 1/92). See in detail I. Vio, “Konvencije i rezolucije Međunarodne pomorske organizacije koje se odnose na članove posade broda i njihova implementacija u Republici Hrvatskoj”, *Zbornik radova sa Četvrtog znanstveno-stručnog skupa “In memoriam prof. dr. sc. Vjekoslav Šmid – Aktualnosti građanskog prava, prava u turizmu, pomorskog prava, prava mora i upravnog prava”* (ur. J. Čizmić, Ž. Radić, V. Seršić), Split 2013, 166–169.

²⁰ The seafarer’s book shall be issued to a person that: a) is 16 years of age and b) is physically and mentally fit and capable of carrying out certain activities on a maritime craft pursuant to a special regulation – art. 137 (4) – see D. Bolanča, R. Naprta, *More naše plavo, Članovi posade broda (pomorci)*, *Zbirka propisa*, Zagreb–Split 2013, 213–263.

²¹ See *Nacionalni kolektivni ugovor za hrvatske pomorce na brodovima u međunarodnoj plovidbi (2019–2020)*, *OGRC*, No. 119/18.

²² Council Directive 2009/13/EC of 16 February 2009 implementing the Agreement concluded by the European Community Shipowners’ Associations (ECSA) and the European Transport Workers’ Federation (ETF) on the Maritime Labour Convention, 2006, and amending Directive 1999/63/EC, *Official Journal L* 124 20th May 2009, 30–50.

²³ MLC ’06 was adopted in Geneva in 2006, and entered into force in August 2013. The mentioned Convention represents the consolidation and modernization of the standards set in as many as 37 conventions previously adopted by the *International Labour Organization* (ILO). The Republic of Croatia ratified it in 2009 (*OGRC* No. 11/09). More about MLC ’06 see D. Petrović, “Globalna prava za pomorce: nova konvencija o radu u oblasti po-

wide range of subjects such as seafarers’ working conditions, accommodation, health care and social protection. One of the most important novelties of the MLC ’06 is wider definition of seafarer: “*seafarer means any person who is employed or engaged or works in any capacity on board of ship to which this Convention applies*” – Art. II (f).

As we could see, the MC ’04 uses two terms: “crew member of the ship” and “seafarer”. STCW ’78/95 and MLC ’06 deals only with the concept of “seafarer”. In law doctrine and judicature, the crew member of the maritime ship became synonym for the term “seaman”.²⁴ The terms “seaman” and “seafarer” are synonyms, but these terms and the term “crew member of the ship” are not. The term seaman (seafarer) is wider than the crew member of the ship.²⁵

3.2. The basis of liability

Any damages caused by physical injury or death of a crew member or due to health impairment which a crew member suffers while working or in relation to his employment on board shall be the responsibility of the ship operator unless the latter provides evidence that damages have occurred to no fault of this – Art. 145 (1).

The types of damages of a crew member are: *physical injury or death* (same as in derogated MC ’94)²⁶ and *health impairment*, as a novelty. The last type of damage covers the damages caused by sickness of crew members on board of ship.²⁷ Sickness of crew members is not a rare phenomenon on board. There are an increased number of cases where sick crew members claim compensation for damage suffered because of sickness. The

morstva”, *Naše more* 1-2/2006, 29–33; M. Učur, “Konvencija MOR-a o radu pomoraca (2006)”, *Pravo u gospodarstvu* 6/2010, 1603–1632, A. Vidović, A. Karamarko, “Konvencija o radu pomoraca, 2006.”, *Kapetanov glasnik* 20/2010, 65–68; A. Luttenberger, B. Rukavina, “Oživotvorene Konvencije o radu pomoraca (2006)”, *Zbornik radova sa Četvrtog znanstveno-stručnog skupa “In memoriam prof. dr.sc. Vjekoslav Šmid – Aktualnosti građanskog prava, prava u turizmu, pomorskog prava, prava mora i upravnog prava”*(ur. J. Čizmić, Ž. Radić, V. Seršić), Split 2013, 85–100; R. Petrinović, I. Lovrić, “Osiguranje pomoraca prema novoj Konvenciji o radu pomoraca”, *Poredbeno pomorsko pravo* 169/2015, 145–170; J. Nikčević Grdinić, *Pravni aspekti sigurnosti plovidbe*, Beograd 2015, 117–118; E. Ruozzi, “Toward a Growing Protection of Social Rights of Seafarers: The Amendments to the Maritime Labour Convention, 2006 Concerning Financial Security for Abandoned Seafarers and for Death and Long Term Disability”, *Diritto Maritimo* 2-4/2015, 519–551.

²⁴ See V. Tomljenović, *Pomorsko međunarodno privatno pravo (Izvanugovorna odgovornost za štetu i problem izbora mjerodavnog prava)*, Rijeka 1998, 316–317.

²⁵ See J. Lovrić, “Pomorac, što to danas znači?”, *Naše more* 3-4/1990, 89; I. Grabovac, *Enciklopedija pojmova pomorskog prava*, Split 1991, 158; M. Učur, 56; D. Bolanča, (1999), 64, S. Šimac, (1999), 615.

²⁶ See *supra* fn. 6.

²⁷ See *supra* fn. 11.

consequences of numerous diseases are often very serious and can amount to disabling the crew member for further embarkation and seafaring, which means a permanent loss of job. That was a reason of enacting the new type of damages, the health impairment, in MC '04.²⁸

The ship operator's liability is based on a presumed liability (negligence), because he has to prove that damage was caused without his fault. The damage does not have to incur on working place or in connection with work, and also it does not have to happen on ship.²⁹

The ship operator shall be held liable for damages referred to in Art. 145 (1), caused by a dangerous things or by dangerous activities according to general rules of liability for damages caused by a dangerous things or by dangerous activities, as well as for such damage as the crew member suffers at work or in connection with the work aboard due to the lack of safe working conditions – Art. 145 (2).³⁰ Two cases of strict liability are provided in this Article.

The first case concerns damages caused by dangerous things or dangerous activities. MC '04 instructs us to general liability rules in Croatian *Civil Obligations Act* (hereafter: COA '05).³¹ Liability for damages resulted from things or activities representing a major source of danger for the environment shall be imposed regardless of the fault - Art. 1045 (3). Damages caused by dangerous thing or dangerous activity shall be considered as resulting from that thing or activity, unless it has been proved that they have not caused the damages – Art. 1063. The owner shall be liable for damage resulting from a dangerous thing, and the person engaged in the respective activity shall be liable for damage resulting from a dangerous activity – Art. 1064. From these provisions of the COA '05, we can conclude that ship operator is strictly liable. The reasons for exclusion of ship owner liability are: *vis maior*, action of the injured party and action of third party – Art. 1067 (1) and (2).³²

²⁸ S. Šimac, (2005), 40–41.

²⁹ I. Vio, *Građanska odgovornost za štetu zbog smrti, tjelesne ozljede ili narušenja zdravlja člana posade broda* (doctoral thesis), Split 2012, 100–102.

³⁰ Art. 145 (2) states that ship is not dangerous thing. However, particular activity on ship in maritime navigation can be dangerous activity. The individual part of the ship can be dangerous thing also. These are *quaestionem facti* in maritime judicature – see more P. Kragić, D. Jerolimov, “Odgovornost za smrt i tjelesne ozljede člana posade – razvoj hrvatskih pravnih rješenja”, *Poredbeno pomorsko pravo*, 169/2015, 207–221.

³¹ See Civil Obligations Act, OGRC, No. 35/05, 41/08, 125/11 and 78/15. The COA '05 derogated the COA '91 (see *supra* fn. 7 and 8).

³² (1) The owner shall be released from liability if he proves that the damage results from another unforeseeable cause not incident to the thing, which could not be prevented, avoided or eliminated. (2) The owner shall be released from liability if he proves that the damage has occurred exclusively due to an action of the injured party or a third party, which the former could not foresee and the consequences of which could not be avoided or eliminated – about strict liability from COA '05 see I. Crnić, *Zakon o obveznim odnosima (napomene, komentari)*.

The second case refers to damages caused by the lack of safe working conditions. The ship operator is strictly liable also under provisions of the general rules on liability for dangerous things or activities. In this case some preconditions must be met. The damage must arise on working place or in connection with work. It has to happen on ship. Finally, the damage must be caused by lack of safe working conditions (eg. unseaworthiness, improperly secured cargo).

3.3. The persons liable for damage

Art. 145 (1) and (2) mentions only ship operator as responsible person. However, Art. 145 (3) states that ship operator, ship owner, manager, company and employer are jointly and severally liable³³ for damages provided in paragraphs 1 and 2.

Ship operator is a natural person or legal entity that, in the capacity of a ship a possessor³⁴ undertakes a maritime venture on the presumption that, until proved otherwise, a shipper is a person registered in the register of ship as a ship the owner – Art. 5 (6).³⁵ The verification of the ship operator attribute is frequently *probatio diabolica*.³⁶

Ship owner is a person registered in the register of ship³⁷ as a ship owner - Art. 200 (1).³⁸ According to that, identification of the ship owner is simple.

Ship manager is a natural or legal person managing business and/or is in charge of technical maintenance of the ship and/or hiring the ship crew – Art. 5 (33).³⁹ The ship manager attribute is determined through contract between ship owner and ship manager.

Company means a natural or legal person that has assumed the responsibility for managing a ship from the ship owner and that has by assuming this re-tari, sudska praksa i prilozi), Zagreb 2006, 762–767; V. Gorenc et al., *Komentar Zakona o obveznim odnosima*, Zagreb 2014, 1749–1758.

³³ Detailed about joint and several liability see I. Crnić, 99–105.

³⁴ More about term “possessor of ship” see P. Kragić, D. Jerolimov, 177–179.

³⁵ More about term “ship operator” see B. Milošević, “Brodar kao subjekt plovidbe”, *Naše more* 1-2/1990, 82–84; I. Grabovac, *Ogledi o odgovornosti brodara*, Split 1997, 7–12; A. Vuković, “Institut brodara: hrvatski pomorski brend ili relikt prošlosti?”, *Naše more* 5-6/2013, 129–132; V. Skorupan, “Novine u pravnom reguliranju odgovornih osoba u hrvatskom Pomorskom zakoniku iz 2004.”, *Zbornik Pravnog fakulteta u Zagrebu* 5/2006, 1329–1343.

³⁶ S. Šimac, 51.

³⁷ Register of ships means a single register of maritime crafts of Croatian nationality in which maritime crafts and maritime crafts under construction, other than warships and ships under construction built for the purposes of the Armed Forces of the Republic of Croatia or foreign armed forces are entered - Art. 5 (59).

³⁸ About “ship owner” see J. Marin, “Pravo vlasništva na brodu”, *Zbornik Pravnog fakulteta u Zagrebu* 4/1997, 407–425, V. Skorupan, 1358–1360.

³⁹ See *Ibid.*, 1347–1349; D. Pavić, 52–54.

sponsibility assumed the authorities and liabilities in accordance with the *International Safety Management Code* (ISM Code)⁴⁰ – Art. 5 (16). The substance of the *Safety Management Certificate* of ship⁴¹ determines the company’s attribute.

Employer means a person that has concluded or signed an employment contract with a seafarer in his name – Art. 5 (34).⁴² The identity of the employer is given in the employment contract.

3.4. The jurisdiction of courts

The competent courts to conduct all proceedings between a crew member (or master) and the ship operator or the manager or the company shall be commercial courts authorised for maritime proceedings (Art. 164). Therefore, regarding the jurisdiction of commercial courts MC '04 kept the solution from derogated MC '94.⁴³ However, the present Act added new Art. 988a that states: “*in case of disputes for the compensation of damage resulting from personal injury or loss of life of a crew member or from endangerment of health suffered by a crew member during work or in relation to his work on the ship, a Croatian court shall have international jurisdiction provided that the plaintiff has residence in the territory of the Republic of Croatia*”. However, this provision is inconsistent⁴⁴ with general principles contained in *Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters*.⁴⁵

⁴⁰ ISM Code provides an international standard for the safe management and operation of ships at sea. ISM Code is part of the *International Convention for the Safety of Life at Sea*, 1974, including *Protocol of 1978* and *Protocol of 1988* – see Ž. Kiperaš, “ISM kodeks – primjena od strane države zastave”, *Uporedno pomorsko pravo* 1-4/1996, 73–82; D. Ćorić, “International Safety Management Code – Međunarodni kodeks o sigurnom upravljanju, (prijevod)”, *Uporedno pomorsko pravo* 1-4/1996, 84–97; I. Grabovac, *Plovidbeno pravo Republike Hrvatske*, Split 2003, 75–76; D. Bolanča, “Protection and Preservation of the Marine Environment in the Republic of Croatia (national legislation, international legislation and EU law)”, *Megatrend revija* 5/2012, 26–27. P. Amižić, D. Bolanča, “Novi Pomorski zakonik Republike Hrvatske i pitanje unifikacije pomorskog prava”, *Zbornik radova Pravnog fakulteta u Splitu* 1/2007, 48.

⁴¹ More about term “company” see D. Bolanča, *Prometno pravo Republike Hrvatske*, Split 2016, 71–72; V. Skorupan, 1349–1353.

⁴² *Ibid.*, 1353–1358, P. Kragić, D. Jerolimov, 175–176.

⁴³ See *supra* fn. 10.

⁴⁴ So P. Kragić, D. Jerolimov, 185–186.

⁴⁵ Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, *Official Journal L* 12, 16th January 2001, 1–23. See in detail H. Sikirić, “Priznanje sudskeih odluka po Uredbi Vijeća (EZ) br. 44/2001 od 22. prosinca 2000. o sudskej nadležnosti i priznanju i ovrsi odluka u građanskim i trgovackim predmetima”, *Liber Amicorum Krešimir Sajko* (ur. H. Sikirić, V. Bouček, D. Adrian; M. Petrak), Zagreb 2012, 267–308.

4. NIPA '07 AS LEX SPECIALIS

In inland navigation,⁴⁶ the ship operator is liable for personal injury or death of a crew member caused by his fault or that of the person for whom the ship operator is responsible for (*proven liability*) – Art. 59 (1). The fault is presumed (until the opposite is proven) if the death or personal injury of a crew member is caused directly or indirectly due to shipwreck, collision, stranding, explosion, fire or defect of crafts (*presumed liability*) – Art. 59 (2).⁴⁷ As we can see, the basic principle is proved liability of ship operator, while presumed liability is exception in above numbered maritime accidents. The person liable for damages is a ship operator only. However, ship operator is liable in case of the fault of his employees. The ship operator is responsible for two types of damages suffered by the crew member, physical injury and death, but not their health impairment.⁴⁸

5. CONCLUDING REMARKS

The crew member (seafarer or seaman) has a crucial position for the safety of the ship, for the shipload and the region where the ship is located. There are many international and national regulations set out in order to protect the rights of the crew member and to facilitate his working conditions. One of the most important areas in maritime law is one relating to liability for death and personal injury of crew. The MC '04 provides that ship operator is liable for crew claims on presumed liability (negligence). If the death or injury is caused by dangerous things or by dangerous activities, the ship operator is strictly liable under provisions of the general law on liability for dangerous things or by dangerous activities from COA '05. The same principle of liability is applicable if the damage is caused by lack of safe working conditions (lack of safety measures at work). In relation to derogated Act, the present Act improves quality of the legal protection for crew member of maritime ship. First, the types of damages are not only the physical injury or death because now the health impairment is included also. Second, the group of persons liable for damages has been expanded. The ship operator is not the only responsible person. Besides him, for damages are liable ship owner, manager, company and employer. All of the named persons are jointly and severally liable for the crew claims. The Croatian legal solutions in maritime navigation could be regarded as being very successful. Especially in compar-

⁴⁶ See *supra* fn. 3.

⁴⁷ Frequently maritime accidents are listed in this Article – see D. Pavić, 300–301.

⁴⁸ See B. Činčurak Erceg, “Deliktni statut u hrvatskom pravu plovidbe unutarnjim vodama – de lege lata i de lege ferenda”, *Pravni vjesnik* 3-4/2012, 91–118; D. Bolanča, „Pravni položaj člana posade broda“, *Zbornik radova „Pravo u funkciji zaštite slabijeg“* 4/2015, 493–494.

ison with the crew members in inland navigation, who are in a considerably less favourable position than the crew members in maritime navigation.

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PRAVNI IZVORI HRVATSKOG PRAVA ODGOVORNOSTI ZA ŠTETU PROUZROKOVANU TJELESNOM POVREDOM, SMRĆU ILI ZDRAVSTVENOM NESPOSOBNOŠĆU ČLANA POSADE NA MORU

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Ključne riječi: *Hrvatsko pravo; Odgovornost za štetu; Fizička povreda; Smrt; Zdravstvena nesposobnost; Član posade.*