

Ukrainian Supreme Court Judicial Practice in Cases Arising from Disputes between Foreign Shipowners or Protection and Indemnity Clubs, and Seafarers or Seafarers' Next of Kin

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ABSTRACT

The article analyses Supreme Court judicial practice in cases arising from disputes between foreign shipowners, protection and indemnity clubs, seafarers or seafarers' next of kin. Ukraine is among the top five states who provide seafarers working on board vessels flying overseas flags. According to different assessments, the number of Ukrainian seafarers working on board foreign shipowners' vessels may vary from 80,000 to 100,000 persons. This results in a significant number of cases considered by Ukrainian courts where the plaintiff is a Ukrainian seafarer or his/her next of kin, and the defender is a foreign shipowner and/or protection and indemnity club. Examining the peculiarities of these disputes is the aim of this research. Particular attention is devoted to the application of overseas states' law by Ukrainian courts of different instances, as well as the procedure of establishing the content of its provisions.

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KEYWORDS

Supreme Court, court disputes, protecting seafarers' rights, shipowner, maritime claim, maritime activity, genuine link, foreign state law, duties of the flag state, Ukraine



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Introduction

Disputes caused by a breach of the terms of Ukrainian seafarers' employment agreements concluded with foreign shipowners are mostly considered by Ukrainian courts of general jurisdiction over the place of the seafarer's registry. Therefore, a common conflict-of-law rule regarding the vessel's flag state application to arising disputes, included in the employment agreement, is sometimes not considered.

However, Ukrainian courts should apply Article 5 of the Law of Ukraine "On Private International Law", which considers the content of the autonomy of will (*lex voluntatis*) as the principle of private international law.

According to the Supreme Court, in cases provided for by law, participants in legal relations may independently choose the law applicable to the content of legal relations.

In legal relations with a foreign element, arisen on the basis of the legal relations with the chosen by the parties hereto of the overseas state's law, applicable to such relations, both the content of the legal relations and its interpretation are considered by the overseas law, chosen by parties according to the principle of the autonomy of will.

Due to the fact that the number of disputes considered by Ukrainian courts arising between Ukrainian seafarers and their next of kin, and foreign shipowner and protection and indemnity clubs have increased within the last years, it is necessary to analyze the Supreme Court judicial practice for the period from 2018–2023.

1. Supreme Court Decree dated November 17, 2023, Case No. 946/1903/20***Summary of claims and decisions made by the courts of the first and appeal instances***

In March 2020, the plaintiff submitted to the court the statement of claim against the Company "BENELUX OVERSEAS INC." and Protection and Indemnity Club "THE WEST OF ENGLAND SHIP OWNERS MUTUAL INSURANCE ASSOCIATION" on the indemnity of harm caused by the death of a natural person, and compensation due to death and moral damage.

The claim was justified by the fact that on March 06, 2019, the son of the plaintiff and the Company "BENELUX OVERSEAS INC." concluded an employment agreement, according to which the son was employed in the capacity of the second engineer on the vessel "GAS AEGEAN", IMO No. 9545209, carrying the flag of Liberia, for the term of 4 months with the possibility of prolongation to 5 months (at the owner's discretion).

On July 08, 2019, while working, the plaintiff's son and another crewmember died on board the vessel, which at that time was en route to Sri Lanka. According to the death certificate and autopsy report, conducted by the general medicine office of the general hospital of the city of Trinkomalee, Sri Lanka, the death was caused by diacetone alcohol acute poisoning. Neither of the mentioned documents determined directly the route of the toxic substance into the seafarer's body (by inhalation or absorption through the eyes, skin, or otherwise).

In addition, on the initiative and the order of the shipowner, an investigation into the cause of death was conducted. The results of this formed the basis of the final report, which stated that an accident on board the vessel occurred, namely the death of two seafarers, caused by the seafarers' disregard of the dangers of surgical spirit consumption.

Clause 5 of the employment agreement of the plaintiff's deceased son provided that, in the event a seafarer dies or suffers an injury while working in the company, including death occurring during the travel to join the vessel, or as a result of marine or other similar peril, but excluding death due to willful act of a seafarer or other previously absent conditions, the company shall pay a sum in the amount of USD 80,000.00 to his or her next of kin.

Regarding the abovementioned, the plaintiff, as the deceased seafarer's next of kin, applied to the court to recover from the defenders jointly and severally compensation due to the death of her son and moral damages, in addition to burial expenses.

The municipal district court partially satisfied the claim, ordering recovery from the shipowner in favor of the plaintiff the amount of the compensation due to the seafarer's death, moral damage, and expenses for legal aid; the other claims were rejected. According to the decree of the court of appeal, the decision of the municipal district court regarding the recovery of the compensation in addition to the indemnification of moral damages was revoked and the mentioned claims were rejected.

The Supreme Court's position

The Supreme Court ruled that the decree of the court of appeal was revoked, the decision of the municipal district court regarding the claims on recovery of compensation was altered, its reasoning was stated in the version of this decree, the decision regarding the satisfaction of the claim on the recovery of moral damages was revoked, and the case was returned to the court of the first instance for new consideration due to the following:

"In application of the law of a foreign state, a court or other body establishes the content of its norms in accordance with their official interpretation, practice of application and doctrine in the relevant foreign state. To establish the content of norms of the law of a foreign state, a court or other body may apply in accordance with the procedure established by law to the Ministry of Justice of Ukraine or other competent bodies and institutions in Ukraine or abroad or involve experts. Parties to a case have the right to submit documents confirming

the content of norms of the law of a foreign state, to which they refer in substantiating their claims or objections, or otherwise assist a court or other body in establishing the content of these norms. If the content of norms of the law of a foreign state is not established within a reasonable time, despite the measures taken under this Article, the law of Ukraine shall apply" (Article 8 of the Law of Ukraine "On Private International Law").

"Application of the law of a foreign state covers all its norms regulating the relevant legal relations. Application of a rule of law of a foreign state may not be limited only on the grounds that this rule belongs to public law" (Article 6 of the Law of Ukraine "On Private International Law").

The courts established that clause 2 of Article 13 of the agreement, concluded between the seafarer and the employer, stipulates that the agreement is concluded and shall be governed under the substantive law of the vessel's flag state, on which the seafarer worked under the agreement. Hence, the appeal court clearly established that the law of Liberia shall apply to the consideration of the present case.

According to Liberian Maritime Regulations (RLM 108) as of June 19, 2002, the shipowner shall bear the costs of direct compensation for loss of life upon the death of a seafarer from any cause, except: a) if death resulted from the willful act of the seafarer; or b) if death developed directly from a condition which was intentionally concealed from the employer at or prior to engagement under the Articles.

In the revised case, following the results of the investigation conducted by the surveyor company, the final report regarding the plaintiff's son and other crew member death was completed, according to which the engineers confirmed ethyl alcohol as the cause of death. A nearly empty bottle with an "Alcohol 70% Ethyl" label and two glasses, as well as an empty can of "Seven Up" and small quantities of liquid in separate bottles, were found in the cabin and collected as evidence. The report also stated that the accident occurred on board the vessel as a result of the lack of awareness of the danger of medical spirit consumption, which resulted in seafarers' death.

According to Liberian legislation, the grounds for the release of the defender from responsibility in the case of the plaintiff's son's death is the willful act of the seafarer. The employer did not submit any evidence confirming that the plaintiff's son acted willfully, aiming to cause death to himself, namely willing detrimental effects in kind of his own death. The breach of rules and discipline (alcohol consumption) by the seafarer cannot be grounds for releasing the defendant from the payment of compensation as the death was not willfully caused by the seafarer but occurred because of the accident. The appeal court mistakenly equated a willful act with the breach of rules and discipline by the seafarer. Thus, the court of the first instance reasonably satisfied claims in the part of recovery of the amount of the compensation due to the death of the seafarer from the shipowner but made a mistake regarding the justification of such satisfaction.

2. Supreme Court Decree dated May 19, 2021, Case No. 501/1350/17

Summary of claims and decisions made by the courts of the first and appeal instances

A seafarer submitted a claim against "EASTERN LOGISTICS CO LTD. S.A." for the recovery of arrears in salary payment and average salary for the time of the payment delay, arguing that on October 19, 2013, he concluded an individual employment agreement with the Company, according to which the term of his employment in the capacity of chief engineer was 2+2 months, with a monthly rate in the amount of USD 2,600. On October 19, 2013, he started work on board the "VASYL FRANKO" seagoing tug, the owner and commercial manager of which is the Company, which may be certified by the seafarer's identity document. However,

following the termination of the agreement and completion of his duties, the defender did not pay the salary in the full amount. In respect of the mentioned, the seafarer requested recovery from the Company of the arrears in salary payment in the amount of USD 11,985 and the average salary for the time of the payment delay in the amount of USD 98,800.

The Illichivsk City Court of Odesa Region partially satisfied the claim, recovering from the Company in favor of the seafarer the arrears in salary payment in the amount of USD 11,985. The issue of court fee distribution was settled.

According to the decree of the Odesa Appeal Court dated November 05, 2019, the appeal by the Company was rejected, and the decision of the city court dated October 28, 2018 remained unchanged.

The decision of the appeal court was justified by the fact that conclusions made by the city court in the case were correct and approved by evidence presented in the case, which was duly legally evaluated by the court. The "VASYL FRANKO" seagoing tug was the only property of the Company within the territory of Ukraine, and the presence of court proceedings regarding the recovery of arrears in salary payment in favor of the crew member was the effective means of protection of the violated rights and interests of the seafarers protected by law.

The defender's arguments that the case was not under the jurisdiction of the Ukrainian courts were inconsistent. According to Article 76 of the Law of Ukraine "On Private International Law," courts may take over and hear any cases with a foreign element, in particular if, a defendant in a case has movable or immovable property on the territory of Ukraine that can be recovered. To confirm the jurisdiction of the city court in the case, the plaintiff submitted the certificate issued by the deputy Harbour Master of Seaport "Chornomorsk," according to which the property of the Company, "VASYL FRANKO" tug, was located on the territory of the seaport. Therefore, the mentioned vessel was situated on the water area of the seaport due to the arrest to ensure the maritime claim by the crew members, which occurred due to the arrears in salary payment.

The Supreme Court's position

The choice of legislation for the regulation of labor relations on transport, for example on maritime transport, shall be justified by the common conflict-of-law rule – the flag law.

Article 91 of the United Nations Convention on the Law of the Sea dated 1982, ratified by the Union of the Comoros and Ukraine, provides that every state shall fix the conditions for the grant of its nationality to ships, for the registration of ships in its territory, and for the right to fly its flag. Ships have the nationality of the state whose flag they are entitled to fly. There must exist a genuine link between the state and the ship. Every state shall issue to ships to which it has granted the right to fly its flag documents to that effect.

As the court should apply foreign law norms, the establishment of the foreign law shall be made ex officio. Therefore, the court applies the following means of collection of the information on foreign law: 1) establishment of the content of foreign law by a judge, considering the case; 2) implementation of experts' opinions; 3) receipt of such information by diplomatic channels; 4) official request through the Ministry of Justice of Ukraine; 5) receipt of information through the legal aid system; 6) legal information exchange; 7) immediate contacts between courts of different countries and other competent authorities; 8) foreign law establishment by the parties, etc.

An analysis of the content of consular functions according to Article 5 of the Vienna Convention on Consular Relations dated 1963 indicates that consular posts may provide information on foreign law to courts of the state of location. Therefore, if a court requires clarification information regarding the law of a particular state, it may apply to a consular post

of a foreign state or consular district, which includes the territory of the court's jurisdiction. In the case when a consular post of a respective state is absent on the territory of the state, the court may apply to the diplomatic representatives. In addition, Ukrainian courts may apply to Ukrainian consular or diplomatic authorities abroad or to the Ministry of Foreign Affairs with the aim of clarifying the content of the foreign.

The content of the law may be established not only by a court but also by parties interested in the implementation of such law. Parties to a case have the right to submit documents confirming the content of norms of the law of a foreign state, to which they refer in substantiating their claims or objections, or otherwise assist a court or other body in establishing the content of these norms.

If the content of norms of the law of a foreign state is not established within a reasonable time, despite the taken measures, the court shall apply respective provisions of laws and other statutory instruments of Ukraine.

Conclusions of the cassation appeal

Having established that after the termination of labor relations between the parties the final settlement of salary due to the employee was not conducted by the employer, the courts of previous instances reasonably concluded that there was a legal basis for the recovery of arrears in salary in favor of the plaintiff.

3. Supreme Court Decree dated November 12, 2018, Case No. 510/606/18

Summary of claims and decisions made by the courts of the first and appeal instances

The plaintiffs' representative submitted the statement of claim on the recovery or arrears in salary payment in favor of the plaintiffs jointly and severally from the overseas company "BYO LTD" and overseas company "ALBUS DENIZCILIK LTD. STI." The plaintiffs' representative submitted a motion on the security of the maritime claim and, with the aim of securing such a claim, requested the arrest of the vessel m/v "MAMBA B", IMO 918970, the flag of Panama, port of registry Panama City, which was at Reni Commercial sea port, and also requested that the Capitan of Reni Commercial sea port, the head of the customs post "Ismail" of Odesa custom of the State Fiscal Service, and the head of the Ismail border detachment of the State Border Service of Ukraine prevent the vessel's departure from Reni Commercial sea port.

In justifying the motion to secure the maritime claim, it was argued that the vessel is seaworthy and may leave the water area of Reni Commercial sea port and the territory of Ukraine, which would make it impossible to execute the court's decision regarding satisfying the claim.

According to the ruling of the Reni district court of the Odesa Region dated May 18, 2018, which remained unchanged by the decree of the Appeal Court of the Odesa Region dated August 23, 2018, the above-mentioned motion was satisfied.

The Supreme Court's position

The Supreme Court ruled that the subject of claim in the present case was a pecuniary claim on the recovery of arrears in salary payment of the master, officers and other crew members due to the conduct of their duties on board the vessel.

Furthermore, the overseas company "BYO LTD" was not a resident and did not have representative office (branches) in the territory of Ukraine, or any other movable and/or immovable property or money, except the vessel.

The arguments laid down in the cassation appeal on the absence of a legal basis for the arrest of the vessel due to the fact it belonged to the overseas company "BYO LTD", and that

the overseas company "ALBUS DENIZCILIK LTD. STI", which held the arrears in salary payment, only managed it, were inconsistent as, according to clause four of Article 3 of the International Convention Relating to the Arrest of Sea-Going Ships, "when in the case of a charter by demise of a ship the charterer and not the registered owner is liable in respect of a maritime claim relating to that ship, the claimant may arrest such ship or any other ship in the ownership of the charterer by demise, subject to the provisions of this Convention. The provisions of this paragraph shall apply to any case in which a person other than the registered owner of a ship is liable in respect of a maritime claim relating to that ship."

The cassation appeal stated that the vessel flew the flag of Panama, which was not the party state to the Convention, thus the provisions of the Convention could not apply to the vessel. However, the above-mentioned arguments are inconsistent as according to clause two of Article 8 of the Convention, "a ship flying the flag of a non-Contracting State may be arrested in the jurisdiction of any Contracting State in respect of any of the maritime claims enumerated in article 1 or of any other claim for which the law of the Contracting State permits arrest."

The defense also mentioned that the dispute over the recovery of the arrears in salary payment did not fall under the jurisdiction of the Ukrainian courts. However, this is refuted by the provision of sub-clause 2 of clause one of Article 76 of the Law of Ukraine "On Private International Law", according to which Ukrainian courts may take over and hear any cases with a foreign element if, on the territory of Ukraine, a defendant in a case has movable property that can be recovered. Cases on the vessel's arrest to secure a maritime claim shall be considered by the court at the place of location of the seaport of Ukraine, where the vessel is located or to which the vessel is directed, or at the port of registry (clause five of Article 30 of the Civil Procedure Code of Ukraine).

Other arguments laid down in the cassation appeal were inconsistent as they only sought to object to the judgements.

4. Supreme Court Decree dated May 21, 2021, Case No. 520/960/19

Summary of claims and decisions made by the courts of the first and appeal instances

In January 2019, the plaintiff submitted a claim to the court against the shipowner, the company "Percula Shipping & Trading Inc." for the recovery of compensation due to the seafarer's death, recovery of arrears in salary payment, and reimbursement of moral damages.

The plaintiff argued that on February 05, 2018, her father concluded an employment contract with the shipowner, the company "Percula Shipping & Trading Inc." for the term of 6 months, according to which he was engaged on the vessel "Achilleas S" in the capacity of chief engineer.

During the employment, the plaintiff's father died. According to the death certificate issued by the hospital of the city of Hyderabad (India), where the seafarer was transferred from the vessel, the death was caused by septic shock with multi-organ failure as a result of infective endocarditis.

According to the decision of the Kyiv District Court of the city of Odesa dated June 05, 2019, the claim was partially satisfied as the moral damages were not proved by the plaintiff. The decree of the Odesa Appeal Court dated September 29, 2020, revoked the judgment of the District Court dated June 05, 2019, and a new decision was made, rejecting the claim.

The Supreme Court's position

Regarding the claims on the recovery of arrears in salary payment

The contract is a specific form of the employment agreement, in which its term, rights, obligations, and liability of parties (including financial); conditions of supply and labor

organization; and terms of the contract termination, including early termination, may be established on agreement between the parties.

In respect of the peculiarities of the form of the employment agreement, aimed at creating the conditions for the employees to use their initiative and independence, taking into account their individual abilities and professional skills, the law granted the parties the right to determine independently their rights and obligations while entering into the contract.

It was determined that during the lifetime of the seafarer, the salary was paid in accordance with the employment contract to his wife according to her bank details at the will of the seafarer, which was confirmed by the seafarer's signatures on payslips. As the plaintiff did not prove otherwise according to Article 81 of the Civil Procedure Code of Ukraine, the court of appeal concluded in a correct and justified manner that there were no grounds or evidence for the plaintiff's claims (those of the seafarer's daughter) on the recovery of the arrears of her deceased father's salary payment from the defendant.

Regarding the claims on the insurance indemnity recovery

According to clause 2 of Article 985 of the Civil Code of Ukraine, while concluding an insurance agreement, an insurant shall be entitled to assign a natural personal or a legal entity to receive the insurance payment (beneficiary) and replace such person before the occurrence of the insured accident, unless otherwise established by the insurance agreement.

Regarding Article 1229 of the Civil Code of Ukraine, an insurance payment (insurance indemnity) shall be inherited on general grounds. If the insured person designates in the personal insurance agreement a person who will receive the right to the insurance payment in case of the death of the insured person, this right shall not be included in the inheritance.

Thus, an insurance payment is included into the mass of the succession and shall be inherited on the general grounds in the event the seafarer did not nominate the beneficiary (a person entitled to receive insurance payment).

As is evident from para. 5 of Article 9 of the employment contract dated February 05, 2018, the parties agreed that in the case of death, the seafarer has a right to compensation in an amount up to USD 40,000. In the case of the seafarer's death on board the vessel or ashore, if at that time the seafarer had a right to medical attention or allowance, the shipowner shall pay burial expenses to his next of kin. Therefore, the contract determined the seafarer's wife to be the next of kin.

In submitting the claim on the recovery of damage due to the person, the deceased seafarer's wife stated that she was the beneficiary under the conditions of the aforementioned employment contract dated February 05, 2018 and had the right to compensation due to the seafarer's death.

Article 51 of the Civil Procedure Code of Ukraine states that the appropriate defendant is a person who must defend the action.

An improper defendant is a person, involved by the plaintiff as the defendant, due to which it is established that he/she must not defend the action in the presence of data that the claims of the plaintiff shall be met by another person – namely, the appropriate defendant.

While considering the case, the court of appeal instance took into account that the deceased seafarer's daughter's claims on the recovery of the mentioned compensation were justified by the fact of the inheritance following her father's death.

Therefore, the court concluded that the dispute regarding the compensation due to the seafarer's death occurred not only between the plaintiff and the deceased father's employer – "Percula Shipping & Trading Inc." – which refused to pay the compensation, but with the seafarer's wife as a person identifying herself as the beneficiary under the individual contract

of employment dated February 05, 2018, and for claims for compensation due to the seafarer's death.

Considering the above, the appeal court in revoking the claim took into account that the court of the first instance satisfied the claims of the plaintiff and decided the issues of the rights and obligations of the deceased seafarer's wife, who did not have the procedural status of the defendant in the case or the third party who declared independent claims, that led to the illegal decision.

The Board of Judges agreed with the above conclusion by the court of appeal, considering it to be in conformity with the records and circumstances of the case and made with an absence of any breach of procedural law provisions, and with the proper implementation of substantive law provisions on the basis of duly evaluated evidence.

5. Supreme Court Decree dated April 12, 2023, Case No. 522/139222/18

Summary of claims and decisions made by the courts of the first and appeal instances

The plaintiff submitted a claim for the recovery of damages caused by the breadwinner's death (her husband), who worked on the basis of the seafarer's employment agreement dated January 23, 2017, with the company "WEST EAST LATVIAN LINK LTD", acting on behalf of the employer and as the representative of the shipowner the company "Eastern Pacific Shipping Pte. Ltd" for the term of 7 months, according to which he was employed in the capacity of bosun on the vessel YELLOW RAY, which flew the flag of Liberia.

The plaintiff stated that her husband, staying on board the vessel, sustained severe injuries, following which he was signed off and repatriated to the city of Novorosiisk of the Russian Federation. On July 20, 2017, the husband was hospitalized in Novorosiisk at the urban hospital for treatment, and thirty minutes after discharge from the hospital he died.

The district court ruled that the claim was partially satisfied and compensation for the death of the husband was recovered from the defendant in favor of the plaintiff; in addition, unlawful deductions from salary were recovered and other claims were rejected.

The Supreme Court's position

According to the decree of the Supreme Court, the judgment of the district court, and the decree of the court of appeal regarding the satisfaction of the claims were revoked. The case in this respect was transferred to the court of the first instance for new consideration due to the following.

In the revised case, the grounds for the claim relate to the events regarding the injury of the plaintiff's husband during work on the marine vessel flying the flag of the state of Liberia and registered in the port of Monrovia, and his death in the territory of the Russian Federation following discharge from hospital No. 1 of the city of Novorosiisk. The court established that clause 26 of the seafarer's employment agreement stipulates that: "the agreement shall be governed by and be interpreted in accordance with the legislation of the vessel's flag state, on board of which the Seafarer works"; therefore, in accordance with the seafarer's employment agreement dated January 23, 2017, the company Ventnor Navigation Ink was the party to the agreement. The seafarer's employment agreement, according to the seal, was signed by the company West East Latvian Link LTD, acting on behalf of both Ventor Navigation Ink, having the status of the employer, and Eastern Pacific Shipping LTD, having the status of the shipowner.

The courts did not consider that Article 5 of the Law of Ukraine "On Private International Law" interprets the content of the autonomy of will (*lex voluntatis*) as the private international law principle, according to which in cases stipulated by law, participants (participant) in legal

relations may independently make a choice of the law applicable to the content of legal relationship; in legal relations with the foreign element, arisen on the basis of the agreement with the choice of the foreign state law by the parties which shall apply to such legal relations, both the content of the agreement and its interpretation shall be determined by the foreign law, chosen by the parties under the *lex voluntatis* principle.

The courts also did not determine the law of the foreign state applicable to the dispute according to the common conflict-of-law rules of the Law of Ukraine "On Private International Law", did not determine the content of the norms of the respective law, and did not consider that the court applies respective provisions of laws and other statutory instruments of Ukraine only if the content of norms of the law of a foreign state is not established within a reasonable time, despite the taken measures. The courts also mistakenly referred to the implementation of the Maritime Labour Convention (2006) as part of the national legislation of Ukraine; however, the signed seafarer's employment agreement dated January 23, 2017, and the collective agreement of the International Transport Workers Federation of EPC TCC, include references to their conclusion on the basis of the mentioned Convention, which is also ratified by the Republic of Liberia, and thus may be applicable to the dispute as the foreign state's law.

In such circumstances, the courts ruled prematurely regarding the application of the provisions of Ukrainian civil law to this dispute, respectively regarding the unlawful dismissal of the seafarer, in addition to the evaluation of the character of the relations between the seafarer and foreign companies "Ventnor Navigation ink", "West East Latvian Link LTD" and "Eastern Pacific Shipping LTD" according to the seafarer's employment agreement dated January 23, 2017.

6. Supreme Court Decree dated December 04, 2019, Case No. 501/3065/16-ts

Summary of claims and decisions made by the courts of the first and appeal instances

In December 2016, the plaintiff submitted a claim against "Norbulk Shipping UK LTD" for the recovery of damages caused by the natural person's death.

The plaintiff argued that her son and "Norbulk Shipping UK LTD" concluded an employment agreement, according to which her son performed duties of the third officer on board the vessel "Crown Topaz", and during the night of September 3, 2010, to September 4, 2010, he went missing from the vessel which was in the "Mona Passage" between Puerto Rico and the Dominican Republic. Despite a thorough search by the crew, port control, police and border service, he was not found.

According to the judgment of the Illichivsk City Court of the Odesa Region dated September 29, 2016, the plaintiff's son was declared dead.

The plaintiff argued that she has the right to compensation due to her son's death in accordance with the employment agreement and clauses 25.6, 26.1 of the collective agreement "IBC Framework TCC Agreement" in the amount of USD 89,100 as the next of kin of the disappeared seafarer, which is stipulated by Annex A to the collective agreement.

Therefore, the plaintiff noted that she received only a part of the compensation in the amount of USD 30,000, which was paid in March 2014 following the signature on March 05, 2014, the notarized statement on receipt of the compensation and release from the liability.

Considering the above, the plaintiff requested from the Norbulk Shipping UK LTD compensation due to the death of her son in the amount of USD 59,100 and that they reimburse moral damages in the amount of USD 25,000.

According to the decision of the Illichivsk City Court of the Odesa Region dated February 01, 2018, which remained unchanged by the decree of the Appeal Court of Odesa Region dated September 06, 2018, the claim of the plaintiff was revoked.

The judgments of the courts of the first and appeal instances were justified by the fact, that according to Annex 8 of the employment agreement, concluded between the plaintiff's son and the defender, the choice was made under English law, which shall also apply to the third parties under the present agreement, whereby the beneficiary, namely the plaintiff, was chosen. All negotiations and the pre-trial settlement between the parties were made under the law of England and completed by the settlement agreement concluded by the unilateral contract by the plaintiff certified by the notary.

Therefore, the parties successfully conducted a pre-trial settlement of the dispute by drafting the respective document by the plaintiff, namely the statement on receipt of the compensation and release from the liability, which is equal to the agreement and is binding for both parties, despite the fact that such a statement was a unilateral contract.

Considering that the plaintiff had already received the compensation due to the pre-trial settlement of the dispute, the courts revoked the claim.

The Supreme Court's position

The Supreme Court ruled that Annex 8 of the employment agreement, concluded by the plaintiff's son, contained the clause regarding the choice of the jurisdiction and the law applicable to the current agreement, and that English law was as such the chosen law.

The aforementioned statement includes two documents: the statement on the receipt of the funds, and the waiver of the right to apply to a court in exchange for the receipt of money or receipt by the person to meet her claims.

Therefore, the court of the first instance, the conclusions of which the court of appeal agreed with, properly decided that the concluded and notarized plaintiff's statement dated March 05, 2014 was a unilateral contract binding for both parties, even though it was signed by only one person, as it creates obligations not only for the plaintiff. In addition, in English law, one of the means of a pre-trial dispute settlement is the conclusion of a document; therefore, the statement on the receipt of the compensation and release from liability was equal to the agreement.

The European Court on Human Rights, in its decision in the case of *The Sunday Times v. the United Kingdom (No. 1)*, No. 653/74, para. 49 dated April 26, 1979, stipulated that a norm cannot be regarded as a "law" unless it is formulated with sufficient precision to enable the citizen to regulate his or her conduct.

The provisions of the statement on the receipt of the compensation and release from the liability dated March 05, 2014, concluded by the parties' consent, provide that, if the agreed amount of money is paid as a lump sum, which is acceptable and sufficient for the plaintiff, the defendant has grounds to consider that he will not be brought to liability repeatedly and will not be forced to pay other sums in judicial or extrajudicial order except for those which are already paid in favor of the plaintiff and recognized by her as final.

In respect of the aforementioned, the cassation appeal's arguments that the courts did not refer to norms of England law, which shall regulate the dispute, could not be acceptable as the parties had settled the dispute in a pre-trial order. This was confirmed by the provision of the plaintiff and her husband of a statement of the receipt of the compensation and release from the liability (Statement of Receipt and Release), certified by the notary.

The arguments of the cassation appeal that the statement concluded by the plaintiff on the receipt of the compensation and release from the liability was invalid were also not accepted.

Referring to the invalidity of the statements made by her, the plaintiff did not submit claims to declare it invalid, but only declared its invalidity as a void contract.

Therefore, the plaintiff mentioned in the statement of claim that the mentioned statement was concluded under the influence of difficult circumstances. This indicates that the mentioned contract is an objected contract, thus its invalidity shall be established by the court.

Thus, as the mentioned statement was not declared invalid by the plaintiff in the judicial order, the consequences of the invalidity of the contract in the form of a bilateral restitution did not apply, i.e., the plaintiff did not return the money, and the evidence that the statement was included under the influence of difficult circumstances were not provided. Thus, there are no grounds to consider such a statement as invalid.

The argument of the cassation appeal that the received amount of the compensation did not include the reimbursement of caused moral damage was unjustified as the compensation constituted the reimbursement of moral damages for mental suffering due to the plaintiff's son's disappearance.

Thus, to reimburse moral damages, the defender's guilt, his unlawful conduct, and the cause-effect relationship between the unlawful acts and damage caused is required. The records in the case contained no evidence that "Norbulk Shipping UK LTD" was declared guilty for the fact that the plaintiff's son had gone missing; therefore, there were no grounds for the reimbursement of moral damages in accordance with the current legislation.

Considering the above, the plaintiff's cassation appeal was revoked.

Conclusion

At first sight, disputes arising from the employment contracts of Ukrainian seafarers who are crew members of vessels flying overseas flags are easy to consider. However, the presence of provisions in the employment agreement regarding the applicable law and jurisdiction of the dispute may significantly complicate the resolution of such cases.

Unfortunately, the results of the research of Ukrainian current judicial practice in the present category of cases indicate the absence of a unified approach to the applicable law. However, in our opinion, the Supreme Court has developed legal positions which may further improve the foreseeability of judgments in maritime cases in civil proceedings.

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Сергєєв Ю. Практика Верховного Суду України у справах по спорах, що виникають між іноземними судновласниками, клубами взаємного страхування, моряками або їх найближчими родичами

У статті аналізується судова практика Верховного Суду у справах, що виникають зі спорів між іноземними судновласниками, клубами взаємного страхування, моряками або їх найближчими родичами. Україна належить до топ 5 країн-постачальниць робочої сили на судна під іноземними прапорами. За різними оцінками, кількість українських моряків, які працюють на суднах іноземних судновласників, може коливатися від 80,000 до 100,000 осіб. Це призводить до того, що українськими судами розглядається значна кількість справ, де позивачем є український моряк або його/її найближчий родич, а відповідачем є іноземний судновласник та/або клуб взаємного страхування. Вивчення особливостей таких спорів є метою даного дослідження. Особливу увагу приділено питанням застосування українськими судами різних інстанцій законодавства іноземних держав, а також порядку встановлення змісту його норм.

Ключові слова: Верховний Суд, судові спори, захист прав моряків, судновласник, морська вимога, морська діяльність, реальний зв'язок, право іноземної держави, зобов'язання держави прапору, Україна.

