



İstanbul :

Sayı

Our Reference : **1502**

16.04.2019

Konu

Subject : IMO Hukuk Komitesinin 106. Oturumundaki “Terk Edilen Gemiadamları”
Konusundaki Görüşmeleri Hk.**SİRKÜLER:266/2019****İlgi** : Uluslararası Deniz Ticaret Odası (ICS)’nın 09.04.2019 tarihli ve LA(19)18 sayılı yazısı.

Uluslararası Deniz Ticaret Odası (ICS) tarafından gönderilen İlgi yazıda; IMO Hukuk Komitesinin 106’ncı Oturumunda; gemiadamlarının terki durumunda finansal güvence sağlanması hükmü ile ilgili gemiadamlarının yaralanma veya ölümüne ilişkin Uluslararası Çalışma Örgütü (ILO) Denizcilik Çalışma Sözleşmesi (MLC) 2006 ve değişikliklerinden doğan hak taleplerine ilişkin gemi sahiplerinin sorumluluğu konularının görüşüldüğü bildirilmektedir.

Oturumdaki görüşmeler neticesinde öneri ve değerlendirmeler kapsamında;

1. Bazı olaylarla ilgili işleyişe bağlı olarak; gemiadamlarının terki statüsünde ele alınan durumların, olay çözüme ulaşmış ise, statüsünün değiştirilerek çözümlenmiş olarak dikkate alınması,
2. Gemiadamının terk edilmesi vakalarında Bayrak Devletleri ve Liman Devletlerinin uygun bir şekilde ve zamanında bilgilendirilmesi, yine aynı şekilde Bayrak ve Liman Devletlerinin de uygun ve zamanında bildirimde bulunması,
3. Terk edilme vakalarının çoğunun, ITF ve ICS gibi danışma statüsünde olan kuruluşlar tarafından rapor edildiği, ancak bu tür durumlar ile ilgili bildirimlerin Sivil Toplum Örgütleri tarafından da yapılabileceği,
4. Yurda Dönüşü gereken çekirdek kadro mürettebatı için fonların yetersiz olduğu,
5. Gemiadamlarının terki ile ilgili Bayrak ve Liman Devletlerinin arasındaki işbirliğini sağlamak adına oluşturulacak Kılavuzların, konuya yönelik süreci hızlandırmak adına ILO ve IMO yoluyla hazırlanması,
6. Terk edilmiş gemiadamı statüsünde balıkçıların, veri tabanında terk edilmiş denizcilerden ayrı olarak değerlendirilmesi gerektiği,
7. Uluslararası P & I Kulüpleri Grubu, MLC’de yapılan 2014 değişikliklerinin yürürlüğe girdikten sonra 18 Ocak 2017 tarihinde 41 terkedilme vakasının ele alındığı ve çoğu vakanın ITF ile işbirliği içinde makul bir süre içinde etkin bir şekilde çözümlendiği,
8. Terk edilme davalarının çoğu zaman Üye Devlet veya ilgili kuruluş tarafından sağlanan bilgiye göre değerlendirildiği, bilginin doğru olup olmadığına yönelik bir kesinlik olmadığı, bu sebeple de doğru bilgileri elde etmenin daha etkili bir yoluna ihtiyaç duyulduğu.
9. Geçerli MLC, 2006 maddeleri uyarınca, Liman Devleti, denizcilerin yurda dönüş haklarının kullanabilmelerine olanak sağlaması gerektiği,

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10. MLC, 2006'da gemi mürettebatının değişimi ile ilgili masraflarının sigortacı tarafından geri ödemesinin yapılmasının kabul görmediği, böylelikle de bu talebin P&I Kulüpleri kapsamına girmediği,

11. Bayrak devletinin gemiadamlarının yurda dönüşleri konusundaki birincil sorumluluğu, bazı konularda liman güvenliği ile çeliştiği, bu ve yurda dönüş maliyetlerinin düşük tutulması konularının bilahare görüşülmesi gereken hususlar arasında olduğu,

12. Bazı sigorta şirketlerinin, MLC 2006 Sözleşmesindeki 2014 yılı değişikliklerine ilişkin yükümlülüklerini bildirmesi, gelecekteki finansal güvence ile ilgili sorunlar ve hataların doğurabileceği etkilerin değerlendirilmesi, hususlarının gündeme geldiği bildirilmektedir.

Bilgilerinizi arz/rica ederim.

Saygılarımla,

İsmet SALİHOĞLU

Genel Sekreter

Ek: İlgili Yazı ve Ekleri (4 sayfa)

DAĞITIM:

Gereği:

- Tüm Üyelerimiz (Web Sayfasında)
- Türk Armatörler Birliği
- S.S. Gemi Armatörleri Mot. Taş. Koop.
- Vapur Donatanları ve Acenteleri Derneği
- Türk Armatörleri İşverenler Sendikası
- Türk Loydu Uygunluk Değerlendirme Hizmetleri A.Ş.
- İMEAK DTO Şubeleri ve Temsilcilikleri
- S.S. Deniz Tankerleri Akaryakıt Taş. Koop.
- Gemi Brokerleri Derneği
- KOSDER
- İ.T.Ü. Denizcilik Fakültesi Mezunları Derneği
- Türk Uzakyol Gemi Kaptanları Derneği
- Gemi Makineleri İşletme Mühendisleri Odası
- Gemi Mühendisleri Odası
- WISTA Türkiye Derneği
- Gemi Sahibi Firmalar

Bilgi:

- Ulaştırma ve Altyapı Bakanlığı
Deniz Ticareti Genel Müdürlüğü
Deniz ve İçsular Düzenleme Genel Müdürlüğü
- Meclis Başkanlık Divanı
- Yönetim Kurulu Başkan ve Üyeleri
- İMEAK DTO Meslek Komite Bşk.



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9 April 2019

LA(19)18

TO: LABOUR AFFAIRS COMMITTEE

REPORT FROM THE IMO LEGAL COMMITTEE 106TH SESSION DISCUSSION ON THE ABANDONMENT OF SEAFARERS

Action Required: *Members are invited to note the outcome of the recent discussions at the IMO legal committee on the provision of financial security in case of abandonment of seafarers, and shipowners' responsibilities for contractual claims for personal injury to, or death of seafarers, in light of the progress of amendments to the ILO Maritime Labour Convention, 2006.*

Meeting Information

The Committee recalled that:-

1. At its 103rd session, in light of the discussion on the issue of abandonment of seafarers, it had agreed that it should keep the issue under consideration.
2. At its 104th session, it had noted the entry into force, on 18 January 2017, of the amendments to the Maritime Labour Convention, 2006 (MLC, 2006) relating to the provision of financial security for abandonment, personal injury to and death of seafarers.
- 3 At its 104th session, it had expressed its strong commitment to preserving the rights of seafarers in cases of abandonment, and noted that providing accurate information to the IMO/ILO joint database was not only the responsibility of the flag State, but also that of the port State and other parties involved.
4. The update on the IMO/ILO joint database of abandonment of seafarers was of utmost importance in solving urgent cases of abandonment, and noted that IMO ensured that all information received from flag States and port States and from seafarer States, was shared for verification before being released for public access on the database website.
5. It had considered document LEG 106/4 and noted that the IMO Secretariat had consulted ILO to include information related to insurance, or lack thereof, in the database for each new case. This information was reflected in the database.

6. On 31 December 2018, there were 366 abandonment incidents listed in the database since it was established in 2004, affecting 4,866 seafarers. Of those incidents, 175 cases were resolved, 77 disputed and 52 inactive. There were still 52 unresolved cases. From 2011 to 2016, the number of cases per year ranged from 12 to 19.

7. In 2017 and 2018, cases reported increased drastically. In 2017, 55 cases were reported, 14 of which were resolved that year and 8 resolved in 2018. In 2018, the total number of reported cases was 44 and of those, 15 cases were resolved as of 31 December 2018. Of the cases reported in 2018, 8 involved flag States which had not ratified the MLC, 2006. No additional cases reported in 2018 had been resolved in 2019.

8. As of the end of March 2019, 13 new cases were reported in 2019, none of which had been resolved, and one case concerned the crew on board the **Sarem**, under the flag of Saint Vincent and the Grenadines, which on 21 February 2019 was reported abandoned in the UAE. This occurred just after ILO and IMO were informed on 8 January 2019 that the abandonment of the previous crew of the **Sarem** was retroactively resolved on 20 August 2018. The Committee was informed that more examples of such practices existed.

9. The adverse effect on seafarers of the lack of protection provided to was noted, despite the requirements contained in MLC, 2006. In this regard, on 12 December 2018, IMO notified the United Arab Emirates, as a flag and port State, that 31 seafarers were recently reported as abandoned by (ISWAN) through ICS on board the: **Azraqmoiah; Tamim Aldar; MV Al Nader; MT Tamim and Abdulrazaq**. Some of these abandonment cases lasted for 32 months.

10. Following the entry into force on 18 January 2017 of the 2014 amendments to MLC, 2006 concerning financial security in cases of abandonment, 97 abandonment cases were reported to the IMO/ILO joint database. During the period between 18 January 2017 and 31 December 2018, there were 11 reported cases of abandonment where the flag State was a Party to MLC, 2006 but had not yet sent to the ILO their declaration of acceptance of the 2014 amendments, and that those 11 cases, 7 of which remained disputed or unresolved, concerned ships registered in Belize, the Netherlands in respect of Curaçao, India and Mongolia.

11. There are stressful and inhumane consequences, not only for the abandoned crew on board but also for their families, as in the recent cases of a total of 14 Indonesian crew in Port Alang, India, on board the **Miss Gaunt** and **Northwind**. It was noted that both ships were registered in the Kingdom of the Netherlands in the registry of Curaçao.

12. In January and February 2019, IMO regularly received messages from the crew that they were not paid by the shipowner or the insurer, and that therefore, they could not provide the necessary means of living for their families and young children whom they had not seen for over seven months. Additionally, the crew could also not be repatriated because the port State, India, claimed that the ships could not be moved to a safe lay-up harbour and that a new replacement (skeleton) crew was required. These two abandonment cases were connected to the abandonment of another eight Indonesian seafarers on board the **AHT Carrier** in Maputo, Mozambique, and all three ships were insured with the same insurer and beneficially owned / managed by the same company.

13. Through the continuous and substantial involvement of the IMO and ILO Secretariats and the social partners, the insurer had subsequently paid four months' wages of all the crew members of the **Miss Gaunt**, and five members of the crew were finally repatriated by the end of February 2019, with a similar solution being progressed for the other three crew members and the crew of the **Northwind**. Similarly, the crew of the **AHT Carrier** were also repatriated. These cases will only be considered as resolved if all outstanding wages are paid in full.

14. Document LEG 106/4/1 (ICS) provided information on the current global abandonment situation and concerns, invited Member States and relevant organizations to advise ILO and IMO of any information regarding cases within the IMO/ILO joint database, and also invited the Committee to consider ways to address the current challenges faced by those affected by abandonment, including encouraging further ratification of MLC, 2006 and reminding States Parties and other stakeholders of their responsibilities towards abandoned seafarers.

15. Document LEG 106/4/2 (ITF) highlighted abandonment cases reported by ITF to the IMO/ILO database between 1 January to 31 December 2018.

16. Document LEG 106/4/3 (ITF) reported on the implementation of the requirement for financial security for seafarer repatriation costs and liabilities required under Regulation 2.5.2, Standard A 2.5.2 of MLC, 2006, for the period 1 January to 31 December 2018.

17. Document LEG 106/4/4 (ILO) advised on the reporting of abandonment cases to the IMO/ILO joint database, with a view to promoting and facilitating the reporting and prompt resolution of such cases. In particular, with reference to the request by the Committee at its previous session to create a list of competent authorities and organizations to assist in resolving cases, the Committee noted that stakeholders not entitled to report abandonment cases and wishing to liaise with flag, port or labour-supplying States that are Members of IMO or ILO, may extract the relevant information from the MLC database, which contains the contact details of the competent authorities of the majority of States that have ratified MLC, 2006.

18. The documents submitted by the ILO and IMO Secretariats, ICS and ITF were all appreciated.

Recommendations and Observations made at the meeting.

1. In light of the progress made in some cases, the status of an abandonment case should be changed and considered as resolved;
2. Flag States and port States should inform and be informed in a timely and proper manner of abandonment cases;
3. Most abandonment cases were reported by organizations with consultative status, such as ITF and ICS, but cases could also be reported by other NGOs through organizations already having a consultative status;
4. There was a lack of funding for skeleton crews for seafarers needing to be repatriated;
5. Guidelines for cooperation between flag and port States to resolve abandonment cases should be established through ILO and IMO to expedite resolution;
6. Abandoned fishermen should be separated from abandoned seafarers in the database;
7. The International Group of P & I Clubs handled 41 abandonment cases after entry into force of the 2014 amendments to MLC, 2006 on 18 January 2017, and most cases were effectively resolved within a reasonable timeframe in cooperation with ITF;
8. Abandonment cases are often at the mercy of the original information provided by a Member State or relevant organization, whether or not it is accurate, thus there is a need for a more effective way to obtain accurate information to resolve cases;
9. Under applicable MLC, 2006 clauses, the port State must ensure seafarers can exercise their right to repatriation;

10. MLC, 2006 did not recognize the reimbursement of the costs of the crew replacement by the insurer, and, therefore, those claims were not covered by P & I Clubs;
11. the primary responsibility of the flag State to repatriate seafarers conflicted with interests of harbour safety and keeping costs low and needed to be further discussed;
12. Some insurance companies should be advised of their obligations under the 2014 amendments to MLC, 2006 and further consideration was needed of the effects of the lapse and further problems relating to financial security
13. Some States indicated that they would submit proposals to the next session of the Committee and were therefore encouraged to do so.

The Committee encouraged those Member States that:

- had not already done so, to consider ratifying MLC, 2006, at their earliest convenience; and those that had ratified MLC, 2006 after the adoption but before the entry into force of the 2014 amendments, whose amendments were still outstanding to send ILO their declaration of acceptance at their earliest convenience.

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