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## **Compensation for Damages Caused by Death, Personal Injury or Health Impairment of Seamen in Croatian Law**

### **Summary**

The paper deals with the Croatian legal framework regulating civil liability for damages caused by personal injury, health impairment and loss of life of seafarers. Although the basic rules concerning the basis of liability, circle of liable persons and applicable law are provided by the Maritime Code of the Republic of Croatia, when it comes to regulations on various types and amount of compensation for damages suffered by crew members, the relevant provisions are contained in the Civil Obligations Act. The first part commences with the overview of the types of compensation, which are natural restitution, monetary compensation and satisfaction, it continues with analysis of legal solutions for cases of compensation for property damages caused by death, personal injury or health impairment of crew members, as well as rules relevant for compensation for non-property damages, which are manifested as physical pain, mental anguish or suffered fear. In the final part, paper focuses on the issues on amount of compensation and its limitations, elaborating concepts of contributory liability, deductions of advance payments and insurance indemnity, payment of interest and statute of limitations.

**Key words:** damages caused by personal injury, health impairment and death of seafarers, civil liability for damages of crew members, compensation for damages, contributory liability.

### **1. Introduction**

The shipping industry is characterised by two elements related to the ship's crew and the ship itself, namely the protection of seamen as employees and the safety of navigation, because the special regime of life in the shipping community must be consistent with the goals and purpose of maritime navigation and transport. These factors require the complexity of the legal framework concerning seafarers: when regulating the status and employment of a crew member there are international and domestic regulations of maritime labour law, whereas special regulations on maritime safety and security cover their protection on board. On the other hand, the issues of

civil liability for damages, which crew members may suffer as a cause of their death, personal injury or health impairment, are ruled mainly by national law and in Croatia are contained in provisions of the Maritime Code as *lex specialis*, while the compensation for these damages is regulated in detail by the Civil Obligations Act as *lex generalis*.

Within this industry, the shipowner, as a natural or legal person who is the owner of the ship, has the role of the organizer of the maritime transport or other shipping activity, and as such assumes civil liability for all contractual and extra-contractual obligations, as well as liability for damages due to personal injury or death of crew members. Conditions that may cause damages to seamen can often occur, and this raises questions about the basis of liability for damage, its extent and amount, and modes of compensation. Based on the individual shares of shipowners and crew members in terms of acting or failing to act in order to enable safe navigation, life and work on board, the share of responsibility of each of them in any damage that occurs will be estimated.

Looking back at the relevant provisions of the first Croatian Maritime Code of 1994,<sup>1</sup> there is a unanimous opinion in legal theory that the provisions of its Article 161 represented a positive departure from the derogated Maritime and Inland Navigation Act of 1977,<sup>2</sup> introducing liability based on presumed fault instead of proven fault of the shipowner, and strict liability, which was otherwise provided by the Civil Obligations Act of 1991 in cases of damage caused by a dangerous object or dangerous activity,<sup>3</sup> as well as same strict liability for damage suffered by a ship's crew member at work or in connection with work on a ship due to the lack of conditions for safe work, with the intention or gross negligence of the injured seafarer as the sole reasons for exoneration.<sup>4</sup> The Maritime Code of 2004 took over these provisions, but went even further introducing in Article 145, paragraph 1, besides damage for death and personal injury, also damage for health impairment of a crew member, while expanding the circle of potentially liable persons (shipowner, ship operator, manager, company and employer), who are all jointly and severally liable for the crew members' claims (paragraph 4 of the same article).<sup>5</sup> The third significant improvement in the 2004 MC was the provision of Article 743, paragraph 2 on the possibility of a direct action

<sup>1</sup> Maritime Code of the Republic of Croatia (1994), Official Gazette no. 17/94, 74/97 and 43/96.

<sup>2</sup> The Maritime and Inland Navigation Act was passed on 15 March 1977, and had been in force since 1 January 1978. (Official Gazette of the SFRY No. 13/1982, 30/1985, 80/1989 and 28/1990). It was adopted as a law of the Republic of Croatia by the Law on the Adoption of Federal Laws in the Fields of Maritime and Inland Navigation, which are applied in the Republic of Croatia as national laws, Official Gazette No. 53/1991. It ceased to be valid with the entry into force of the Maritime Code on 22 March 1994.

<sup>3</sup> Civil Obligations Act (1991), Official Gazette no. 53/91, 73/91 and 3/94.

<sup>4</sup> Bolanča, Dragan – Amižić Jelovčić, Petra, Legal Sources of the Croatian Law on Liability for Damages Caused by Physical Injury, Death or Health Impairment of a Crew Member (Seaman), "Modern Challenges of Marine Navigation", Amižić Jelovčić, P. (editor), University of Split Faculty of Law, Split, 2021, at p. 53

<sup>5</sup> Maritime Code (2004), Official Gazette, Nos. 181/04, 76/07, 146/08, 61/11, 56/13, 26/15, 17/19.

against the insurer for liability for death, personal injury and health impairment of a crew member, analogous to the decision provided for mandatory liability insurance.<sup>6</sup> Finally, the fourth positive step was the provision on applicable law in Article 971, which goes beyond the law of nationality of the ship and provides two more links for relations under the seafarers' employment contract: the law chosen by the parties in the employment contract and the law of closest connections, whereas the fifth novelty was introduced by provision of Article 988a creating international jurisdiction of Croatian commercial courts in proceedings where plaintiff is a seafarer with residence in Croatia.

As for the civil liability for damages, in legal theory it is defined as a legal relationship in which one party is obliged to repair the damage caused to the other party,<sup>7</sup> and the other party is authorized to request such repair.<sup>8</sup>

In order for the existence of an obligation of civil liability for damage, it is necessary that the following assumptions are met: the person or entity liable for the damage (tortfeasor), the person or entity claiming damage (the injured party), the harmful act of the tortfeasor as any act or omission of the tortfeasor causing damage to the injured party,<sup>9</sup> the damage caused to the injured party as a reduction of the property, the prevention of its increase, infliction of physical or psychological pain or fear, and violation of personality rights, causal link (*causal nexus*) which implies that an harmful act as a cause must produce damage as a consequence, and unlawfulness of an harmful act.<sup>10</sup>

Causing damage is one of the sources of obligation based on the Article 20 of the new Civil Obligations Act (hereinafter COA),<sup>11</sup> and within that particular source of obligations there is so-called extra-contractual liability or liability for torts regulated by Articles 1045-1110 of the COA as *lex generalis*.<sup>12</sup>

<sup>6</sup> Vio, Igor, Development of Croatian Legal Framework for Liability for Death and Personal Injury of Seafarers, "2nd International Conference of Maritime Science and Technology", Conference Proceedings "Naše More 2021", Mišković, Darijo (editor), Sveučilište u Dubrovniku, p. 358.

<sup>7</sup> "Legal obligation of an individual person to compensation pecuniary or non-pecuniary damages caused by this person or someone else, is often understood as a sanction, hence that obligation is indicated as liability. That construction connects notions of obligation, liability and sanctions..." See more details in: Kelsen, Hans, Pure Theory of Law, University of California Press, Berkeley and Los Angeles, 1967.

<sup>8</sup> Klarić, Petar - Vedriš, Martin, Građansko pravo, 9th edition, Narodne novine, Zagreb, 2006, at p. 583.

<sup>9</sup> "Social and legal sense of liability for damages is that the person who caused damages must compensate the person who suffered damages. This means that the damages are transformed and transmitted into the sphere of tortfeasor. This is the basic principle in the entire area of civil liability." In: Vuković, Mihajlo, Odgovornost za štete, 2nd edition, Prosvjeta, Zagreb, 1971, at p. 9.

<sup>10</sup> On civil liability in detail see: Klarić, Petar, Odštetno pravo, 4th edition, Narodne novine, Zagreb, 2003.

<sup>11</sup> Civil Obligations Act, Official Gazette, No. 35/2005 replaced the COA 1991.

<sup>12</sup> Perkušić, Ante, Osnove građanskog prava, Faculty of Maritime Studies, Split, 2009, at p. 130.

## 2. Types Of Compensation

There is distinction among three basic forms of damage repair in Croatian law, which are natural restitution, monetary compensation and satisfaction. Commentators of the COA 2005 believe that the term “damage repairing” is more adequate than the “compensation” from the old COA,<sup>13</sup> given that it represents the general term for all three forms of repair.<sup>14</sup>

Before elaborating explanations of certain forms of damage repair, it should be stated that the concept of repairing the damage comprehends to eliminate, compensate or mitigate the adverse consequences that have occurred due to a particular harmful action.

### 2.1. Natural Restitution

”Natural restitution represents the return of the injured party to the state before the damage occurred (establishing a previous condition).”<sup>15</sup> Natural restitution implies that for the injured party it should preferably re-establish complete previous conditions, i.e. situation as it was before the damage occurred. In other words, it must return to the injured party all that has been ruined, taken or lost by a harmful act. Therefore, natural restitution is the establishment of conditions that existed before the damage. Natural restitution occurs in three basic forms:

- a) Individual restitution meaning the return of the same thing that has been confiscated
- b) Generic restitution consisting in the granting of items same in type, quality and quantity instead of those confiscated or damaged
- c) Restitution in the form of costs in cases when the property is damaged, so the injured party himself brings it to repair, whereas the tortfeasor is obliged to reimburse him. Although this form consists of giving money, this is still not compensation but natural restitution because the injured party got his thing back in the condition it existed in before the damage.

Natural restitution is carried out only if possible, therefore, if there is any factual or legal impossibility of returning to its former state, there is no restitution. The factual impossibility exists if, for example, an individually specified thing (*species*) has been destroyed.<sup>16</sup> Legal impossibility exists in the cases where return to its former state

<sup>13</sup> Vedriš – Klarić, op. cit., p. 428.

<sup>14</sup> Kačer, Hrvoje - Radolović, Aldo - Slakoper, Zvonimir, Zakon o obveznim odnosima s komentarom (Civil Obligations Act with Commentary), Poslovni zbornik, Zagreb, 2006, p. 945.

<sup>15</sup> See more in: Šimac, Srđan, Odgovornost brodarica za smrt i tjelesne ozljede pomoraca, Informator, No. 4212-4213, 1994, at p. 7-8.

<sup>16</sup> Vedriš, Martin – Klarić, Petar, op. cit, p. 628.

would mean a violation of regulations in force (if for instance, an item for which there is a ban on imports was unlawfully exported from the country). In addition, the impossibility of restitution exists even if the return to its former state would be associated with disproportionately high costs or excessively high difficulties for the tortfeasor. Whenever natural restitution is impossible, damages will be compensated as the most appropriate form of damage repair. This means that if the restitution does not completely eliminate the total amount of damages, compensation in money is given for the rest of the damage. In Croatian Civil Law, there is also the so-called obligation of restitution, which means that it is obligatory to have the damage repaired primarily in the form of natural restitution.<sup>17</sup>

The COA 2005 in its Article 1085 reiterates the position of Article 185 of the earlier COA 1991 that natural restitution is the first form of repairing property damage and applies whenever possible.<sup>18</sup> This rule is mitigated by a provision of the Civil Obligations Act by which the court will award the injured party compensation in cash whenever it so requires, unless the circumstances of the particular case justify the restitution. Compensation in money is also given for a piece of property that was taken in an unauthorised manner if it was lost due to *force majeure*. The opposite approach is found in English law where obligatory natural restitution is not applied, but instead regarding repairing damages it stands on the commercial view that each claim for damages must eventually have its own monetary equivalent.<sup>19</sup>

## 2.2. Monetary Compensation

Monetary compensation implies giving the equivalent of money in terms of complying with the claim, so that the payment of the corresponding amount of money to the injured party compensates for what he has lost because of the harmful act. Monetary compensation can be viewed from the point of view of volume, height and form of compensation. The volume of damages is the cumulated amount of all damages suffered by the injured party because of an adverse event and is shown as ordinary damages and lost benefits, costs incurred to reduce or mitigate adverse consequences, and interest on the amount of compensation,<sup>20</sup> and the provisions on compensation for torts apply accordingly to contractual liability.<sup>21</sup>

The amount of compensation implies the value of damages expressed in money at certain price values.<sup>22</sup> The shipowner shall have unlimited liability to the crew

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<sup>17</sup> Ibid.

<sup>18</sup> Kačer – Radolović – Slakoper, op. cit., p. 945.

<sup>19</sup> Civil Obligations Act, Official Gazette, No. 35/05, Article 1085, paragraph 4.

<sup>20</sup> Vedriš - Klarić, op. cit., p. 629.

<sup>21</sup> Civil Obligations Act, Official Gazette, No. 35/2005, Article 349.

<sup>22</sup> Vedriš - Klarić, op. cit., p. 633.

members of the ship in accordance with the principle of full compensation,<sup>23</sup> and pursuant to the provisions of the Civil Obligations Act,<sup>24</sup> in such a way that the injured party's material position is transformed into the state in which it would have been if the harmful act had not occurred.<sup>25</sup> As a result, the amount of damages is determined at prices at the time of the court decision, taking into account price changes. The form of the amount of compensation may be determined in one single "lump sum" amount or in the form of a monetary annuity payable periodically in predetermined amounts. The Civil Obligations Act prescribes the payment of damages in the form of an annuity in the case when an adverse event results in death, for persons who have been supported by the dead person and are legally obliged to support, and for personal injuries or damage to the health of the injured party in the form of lost earnings and in the form of the need for other people's assistance and care. An annuity can be set as payments for life or for a certain period of time.<sup>26</sup> The monetary annuity is determined under *the rebus sic stantibus clause*,<sup>27</sup> as the validity of the legal act is conditioned by the circumstance that the state of the relationship that existed in the moment of its origin, is later substantially not changed.<sup>28</sup>

### 2.3. Satisfaction

Satisfaction presupposes subjective gratification as a form of repair of damage to the injured party regardless of the damage and its compensation. It represents the most convenient form of repairing non-property damage. According to the content, it can be divided into moral and monetary satisfaction.

<sup>23</sup> "Full compensation must be a guiding idea (philosophy) of the entire right to compensation. All rights and all rules (including procedural) must take into account this important consideration. It is unacceptable to consider that the injured party who suffered the damage and who acted with due diligence in the process of obtaining compensation does not ultimately receive full compensation within the meaning of the provision of this Article of the COA." See in: Kačer – Radolović – Slakoper, op .cit., p. 950.

<sup>24</sup> Civil Obligations Act, 2005, Article 1054

<sup>25</sup> "The provision on full compensation referred to in Art. 1090 of the Act expressly affirms the right of the injured party to have repaired all the damage he has suffered as a result of the tortfeasor's harmful act or omission, including the damage that occurred to him in the circumstances after initial damages have been caused up to the judgement." See in: Gorenc, Vilim, Komentar Zakona o obveznim odnosima, RRiF, Zagreb, 2005, p. 1692.

<sup>26</sup> Civil Obligations Act, Official Gazette, No. 35/05, Article 1088, Paragraph 1.

<sup>27</sup> Perkušić, Ante, op. cit., p. 144.

<sup>28</sup> More on the payment in the form of annuities in: Crnić, Ivica, Naknada izgubljene zarade u obliku novčane rente, Hrvatska gospodarska revija, Zagreb, 1997, pp. 34-39; Simeon, Dunja, Naknada štete u obliku rente i kapitalizacija rente, Zbornik radova "Odgovornost brodarica za smrt i tjelesnu ozljedu člana posade, osiguranje i naknada štete", Croatia osiguranje, Split, 1997, pp. 40-46; Simeon, Dunja, Naknada štete u obliku rente, Osiguranje, Zagreb, 1998, no. 4-5, pp. 57-67.

The concept of moral satisfaction implies a non-property form of satisfaction in the form of the publication of a judgment or the publication of a correction for the purpose of repairing damage. According to Article 1099 of the COA, this type of satisfaction may be determined by the court in case of violation of personality rights.

When it comes to monetary satisfaction, i.e. material satisfaction, it is conceived in a possibility to give a certain amount of money to the injured party as subjective satisfaction regardless of any compensation for property damages.<sup>29</sup> It is common to use it as compensation for three typical types of damage, which are physical pain, mental anguish and suffered fear. The court shall award a fair sum of money for satisfaction upon free assessment.<sup>30</sup>

The injured party may demand at the expense of the tortfeasor the publication of a judgment, i.e. a correction, the withdrawal of the declaration by which the infringement of personality rights was made or anything else that can achieve the purpose achieved by fair monetary compensation (monetary satisfaction). The right to rectification and its exercise is thoroughly regulated in the Media Act, and there are as well the right to request an apology from the publisher and the right to publication of reply as means of repairing non-property damage done by publishing information in the media. It is particularly interesting that the right to correction is recognised, not only to legal and natural persons, but also to bodies (e.g. committees, etc., and in the case of the state and its ministries). The publication of a correction may be required within a short period of time, i.e. 30 days from the date of publication of the information.<sup>31</sup>

Monetary satisfaction is applied when the injured party is given a sum of money as a subjective gratification. The COA regulates the right to fair monetary compensation for torts to a natural person as follows: in the event of a violation of personality rights, the court will, if it finds that the severity of the infringement and the circumstances of the case justify it, award fair monetary compensation, regardless of the compensation of property damages, and even when there is none. When deciding on the amount of fair monetary compensation, the court will take into account the strength and duration of the violations caused by physical pain, mental anguish and fear, the objective to which this compensation is served, but also that it does not favour aspirations that are not compatible with its nature and social purpose. Therefore, there are three presumptions for the award of fair monetary compensation to a natural person: violation of personality rights, severity of the injury, and circumstances of injury justifying the award.<sup>32</sup> To

<sup>29</sup> Vedriš, Martin - Klarić, Petar, *op. cit.*, at p. 636.

<sup>30</sup> *Ibid.*

<sup>31</sup> Media Act, Official Gazette 59/04 and 84/11: Article 7. The Media Act stipulates that every person has the right to protection of privacy, dignity, reputation and honor. Liability for damages is determined by the provisions of Art. 21 to 23. The provision of Art. 22. of the Media Act regulates that non-pecuniary damage is generally compensated by the publication of corrections of information and with an apology from the publisher, and with the payment of compensation in accordance with the general regulations of law of civil obligations.

<sup>32</sup> Vedriš - Klarić, *op. cit.*, p. 637.



prove a violation of personality rights is to prove that the injured party suffered the loss of a part of his body as a result of an adverse act or that the function of a part of his body was damaged or completely destroyed, that his reputation had been damaged, that he had been harmed by a violation of his mental health, that the privacy of his personal and family life had been violated, etc.<sup>33</sup> The injured party must prove such gravity of the infringement of personality rights and the circumstances under which it occurred, which justify the award of such compensation. In principle, it can be said that minor or relatively minor violations of personality rights do not justify the award of fair monetary compensation.

However, caution should be exercised, since in e.g. violations of honour and reputation, if it is perpetually repeated or not considered permissible in a given environment or in a circle of persons, they may have weight that justifies the award. Here, in addition to objective elements (types of infringement, method of application, consequences caused etc.) the amount of compensation will be influenced by the subjective circumstances of the injured party (age, occupation, etc.). When assessing the severity of the violation, e.g. the right to physical health, it is necessary to take into account not only the degree of damage to the organism, but also its consequences (loss or damage to certain functions of the organism, decrease in life activity, impaired aesthetic appearance, increased efforts, etc.).

According to the objective definition of non-property damage, physical and mental anguish, as well as the suffered fear, are affecting the amount of fair monetary compensation of an injured person.<sup>34</sup> Therefore, when establishing the amount of fair monetary compensation, the court will take into account the intensity and duration of pain (physical and mental) and fears caused by personality violations in addition to the severity of the infringement of personality rights and the circumstances under which the infringement occurred. The court will also take into account the purpose of fair monetary compensation. There are fears that accepting requests for slight threats to personality rights and awarding excessively high amounts encourages the emergence of lucriveness and commercialisation in this area. If non-property damage is caused by information in the media, fair monetary compensation may be claimed by a lawsuit provided that the injured party has previously requested the publisher to publish a correction, or if this correction is not possible, an apology from the publisher, with the condition that the action was filed within three months of gaining knowledge of the disclosure of the information (Art. 22 and 23 of the Media Act).<sup>35</sup>

Compared to the COA of 1978 and 1991, the circle of persons entitled to fair monetary compensation in the event of death or particularly severe disability of a person has been extended to grandparents and grandchildren, provided that there was a more

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<sup>33</sup> Ibid.

<sup>34</sup> Vedriš - Klarić, op. cit., p. 638.

<sup>35</sup> Media Act, Official Gazette No. 55/04 and 84/11.

permanent community of life with the deceased or injured. As before, immediate family members (spouse, children, and parents) enter this circle, and siblings and cohabiting partners, provided that there was a more permanent community of life between them and the deceased or the injured. However, a significant novelty is the recognition of the right to parents to fair monetary compensation in the event that they lost their conceived and unborn child (*nasciturus*) through an adverse event (e.g. in a traffic accident). These individuals will invoke the violation of the personality right to mental health.

### 3. Compensation for Property Damages

First of all, it is necessary to emphasize that the Civil Obligations Act of 2005 changed the term non-pecuniary (“non-material”) damage to non-property damage, and the term pecuniary (“material”) damage was replaced by the name of property damage.<sup>36</sup>

The liability of the shipowner for damages caused by personal injury or death of a crew member of the ship was governed by the Article 161, paragraphs 1, 2 and 3 of the Croatian Maritime Code of 1994. According to the provision of Article 161, paragraph 1, the shipowner was liable for damages in the event of personal injury or death of a crew member of the ship, but not for damage in the event of impairment to the health of the ship’s crew member, which was considered a legal gap, and was complemented by following provisions of the Civil Obligations Act: a) for lost earnings, medical and funeral expenses (Art. 1093), b) for compensation to the persons supported by the deceased (Art. 1094), and c) for compensation in the event of personal injury or impairment of health, which recognises the injured party’s right to compensation even in the event of a health impairment (Art. 1095). The injured party gained the right to claim compensation for lost maintenance even if the deceased did not effectively support him or her, but was legally obliged to provide support.<sup>37</sup>

Damages suffered in the event of death or personal injury may represent property and non-property damages. The concept of property damage implies that damage suffered by the injured party reflected to his property or property interests, which may be existing or one that has already occurred at the time of decision-making and which is always caused either by the future or the cause of which occurred at the time of decision-making, but has not yet occurred or has not ceased adverse consequences, and such damage is caused when required by law.

<sup>36</sup> See more in: Barbić, J. - Baretić, M. - Crnić, I. - Crnić, J. - Eraković, A. - Grbin, I. - Hrvatin, B. - Momčinović, H. - Sessa, Đ., *Novi Zakon o obveznim odnosima – Zbornik radova*, Organizator, Zagreb, 2005.; Baretić, M. - Crnić, I. - Ćurković, M. - Grbin, I. - Kačer, H. - Klarić, P. - Momčinović, H. - Petrović, S. - Radolović, A. - Sessa, Đ., *Novi Zakon o obveznim odnosima – najznačajnije izmjene – novi instituti*, Inženjerski biro, Zagreb, 2005.

<sup>37</sup> Crnić, Ivica, *Popravljanje imovinske štete*, *Novi Zakon o obveznim odnosima – najznačajnije izmjene*, Inženjerski biro, Zagreb, 2005, p. 59.

Thus, according to the provisions of the Civil Obligations Act (according to Article 1093), the person who causes someone's death is obliged to reimburse the normal costs of his funeral (paragraph 1), and the costs of his treatment for injuries sustained, including other necessary medical expenses, as well as the lost earnings due to incapacity for work (paragraph 2).<sup>38</sup> A person who was supported or regularly assisted by the deceased, assuming that that person was legally entitled to maintenance from the deceased person, is entitled to compensation for the damage he suffers from the loss of maintenance (Article 1094, paragraph 1). As regards the amount of the monetary annuity, it is measured in light of all the circumstances of the case, but it cannot be higher than the amount that the injured party would have received from the deceased if he had stayed alive (Article 1094, paragraph 2).<sup>39</sup>

The Civil Obligations Act, following the nature of the matter, regulates the compensation of property damage in the event of death, and especially in case of personal injury or damage to health.<sup>40</sup>

### **3.1. Compensation for Property Damages Caused by Death of a Crew Member**

In accordance with the provisions of Articles 1093 and 1094 of COA, the following damages may be compensated in the event of death:

- 1) the normal cost of the funeral of the deceased crew member of the ship,
- 2) the cost of his treatment for the injury sustained,
- 3) other necessary costs in relation to this treatment,
- 4) lost earnings during treatment from the day of the injury sustained to the day of death,
- 5) lost maintenance to the persons who were supported by the deceased crew member and persons who were legally entitled to claim maintenance,
- 6) lost aid.<sup>41</sup>

### **3.2. Compensation for Property Damages Caused by Personal Injury or Health Impairment of a Crew Member**

The following damages may be compensated in the event of personal injury or impairment of health of a crew member:

<sup>38</sup> Civil Obligations Act, 2005, Article 1093.

<sup>39</sup> Civil Obligations Act, 2005, Article 1094.

<sup>40</sup> See more: Crnić, Ivica, *Naknada materijalne štete*, Sudska praksa no. 21, Informator, Zagreb, 1995, p. 4299; and Grbin, Ivo, *Neka pitanja naknade materijalne štete*, Naša zakonitost, no. 10, Zagreb, 1986., pp. 1305-1316.

<sup>41</sup> See more in: Brežanski, Jasna, *Naknada materijane štete u slučaju smrti, ozljede tijela i oštećenja zdravlja*, *Pravo i porezi*, Zagreb, no. 12, 2001, p. 14., Crnić, Ivica, *Naknada štete zbog izgubljene zarade*, *Godišnjak 3, Opatija*, 1996, p. 88.

- 1) medical expenses,
- 2) other necessary costs in relation to this treatment,
- 3) lost earnings due to inability to work during treatment,
- 4) lost earnings due to partial or total incapacity for work,
- 5) permanently increased needs of the injured party,
- 6) impaired or reduced possibility of the injured party's further development and progress.<sup>42</sup>

Material damage is caused by any reduction of the property or any prevention of its increase. In case of personal injury to the crew member of the ship that was disembarked from the ship, the material damage will also be caused by the increased costs of food or accommodation resulting from the fact of disembarking from the ship and staying on land.

On the other hand, the peculiarities related to the fact that the deceased was a member of the crew of the ship, may result in certain, otherwise legally recognized, property damage not occurring, and therefore its compensation will not be possible. Thus, in the event of a shipwreck, when no seamen bodies were found, funeral costs will not be reimbursed. Not all costs resulting from torts are reimbursed but only those that are necessary (justified), and this is judged by the court in each particular case.<sup>43</sup>

### 3.3. The Volume and Amount of the Compensation for Property Damages

According to the provision of Art. 1089, Para.1 of COA, the injured party is granted the right to compensation for ordinary damages (*damnum emergens*) and to lost income (*lucrum cessans*).<sup>44</sup> In the event of death, personal injury or impairment of the health of the ship's crew member, lost earnings, lost maintenance or aid, by their nature, constitute a lost income.<sup>45</sup>

<sup>42</sup> Article 1095., COA 2005.

<sup>43</sup> See: Klarić, Petar, Odnos naknade za tjelesno oštećenje i novčane satisfakcije za duševne boli zbog smanjenja životne aktivnosti, Zakonitost, No. 4, 1985, p. 388.

<sup>44</sup> Under the provisions of civil law that were in force prior to the adoption of the COA, the injured party could claim both types of compensation only if the tortfeasor caused damage by gross negligence, intentional or criminal act.

<sup>45</sup> Instead of term "extent" of compensation for damages, Civil Obligations Act 2005 introduces term "volume" of compensation. "Ordinary (direct, positive) damage is the initial direct consequence caused by act or omission of tortfeasor, which is manifested in the loss or deterioration of property or benefit which injured party had before suffering damages. Lost profit (*lucrum cessans*) – is indirect (negative) damage is subsequently caused damage manifested in disabled acquiring of certain benefit, which was expected by the injured party according to regular developments or to special circumstances of the case without act or omission of tortfeasor that caused damages."

See more in: Gorenc, Vilim i grupa autora, Komentar Zakona o obveznim odnosima, RRiF-ova Pravna biblioteka, Zagreb, 2005, p. 1687.

In accordance with the principle of full compensation, the court, taking into account the circumstances that occurred after the damage was caused, will award compensation in the amount necessary to bring the injured party's material situation to the state in which it would have been if it had not been for a harmful act or omission.

The amount of ordinary damage is determined at the values at the time of the court decision (as the time of the court decision, the day of the first instance judgment is relevant, i.e. the conclusion of the main hearing, Art. 1089 of the COA).<sup>46</sup>

In cases of lost income, only the amount of income that could have been reasonably expected according to the ordinary course of things or special circumstances is compensated, and the realization of which is prevented by the tortfeasor's action or omission (Art. 1089 COA).

Starting from these provisions, certain material damages such as funeral expenses, medical expenses, cost of repatriation, permanent increase in needs (other people's assistance), lost maintenance or assistance, lost earnings due to incapacity to work during treatment and due to partial or complete (permanent) inability to work, lost or reduced possibility of further development and advancement are compensated.

The principle that the injured party is entitled to compensation for damages equivalent to the damage suffered means that he or she is entitled to full compensation. The exception consists of cases where the injured party is entitled only to reduced compensation, namely for reasons of shared liability and in the case of inclusion in compensation of amounts received on the basis of advance payment, insurance, assistance and employment contracts.<sup>47</sup>

#### 4. Compensation for Non-Property Damages

Non-property damage may occur by tort, breach of contractual obligation or breach of pre-contractual obligation to negotiate in accordance with the principle of good faith.<sup>48</sup> Therefore, non-property (non-pecuniary) damages may be available either under the rules of liability for torts, either under contractual liability for damages.<sup>49</sup>

<sup>46</sup> "There are several ways of establishing compensation. Among the most important are the establishment by a regulation containing a value list or tariff, then arbitrary determination by the court according to its free belief or according to the assessment of authorized court expert witnesses, establishment by a special commission, and establishment by an agreement between tortfeasor and injured party." Vedriš- Klarić, op. cit., p. 635.

<sup>47</sup> Civil Obligations Act, 2005, Article 1090.

<sup>48</sup> Special provisions relevant for compensation of non-property damages are included in: The Criminal Procedure Act (Official Gazette Nos. 110/97, 27/98, 58/99, 112/99, 58/02, 143/02, 62/03), The Offences Act (Official Gazette Nos. 88/02, 112/02), The Constitutional Act on the Constitutional Court of the Republic of Croatia (Official Gazette No. 49/02). See more in: Gorenc, Vilim and group of authors, *Komentar Zakona o obveznim odnosima*, RRiF-ova Pravna biblioteka, Zagreb, 2005, p. 1720.

<sup>49</sup> See in detail: Baretić, Marko, *Pojam i funkcije neimovinske štete prema novom Zakonu o obveznim odnosima*, Zbornik PFZ, No. 56, 2006, pp. 461-500.

The legal basis of extra-contractual liability for non-pecuniary damage is provision of Article 1045 of COA 2005, as a general provision of torts liability.<sup>50</sup>

As stated *supra*, the new Civil Obligations Act of 2005 changed the name of non-pecuniary (or “non-material”) damage to the name of non-property damage. Here the change in the essence of understanding of non-property damage was more significant.<sup>51</sup> This is no longer a mere affliction of physical or psychological pain and fear to an injured person, but rather a violation of personality rights (Article 1046), and in this way the theoretical consideration of contemporary concept of personality rights or the rights of personality as a set of personal psychophysical components is expressed. The object of violation is the so-called moral property or moral asset. Article 19 of COA defines personality rights.<sup>52</sup>

Non-property damages represents the consequences that occur due to loss of life or injuries to the body, and occurs as suffering fear, future physical and mental anguish and fear.<sup>53</sup> Legally recognized forms of non-property damage are only those forms determined by the law, which are:

- a) physical pain,
- b) mental anguish due to a decrease in life activity,
- c) mental anguish due to impaired aesthetic appearance,
- d) the mental pain due to the death of a close person,
- e) mental anguish due to a particularly severe disability of a close person and
- f) fear.

The right to compensation for non-property damages belongs only to the person to whom the harmful act was performed or to the person suffering mental anguish due to the death or severe disability of a close relative. However, the law does not determine what is considered a particularly severe disability, but remains rather *questio facti*.<sup>54</sup> Non-property damage is remunerated by giving a fair monetary compensation to the injured party (Article 1100 of the COA),<sup>55</sup> which is the amount of money by which

<sup>50</sup> See more: Crnić, I. - Grbin, I. - Ćurković, M. - Jelčić, O. - Momčinović, H. - Anđelinović, S. - Lui, A., *Naknada nematerijalne štete po Zakonu o obveznim odnosima – pravni i medicinski aspekti*, Organizator, Zagreb, 2003.

<sup>51</sup> Klarić, Petar, *Naknada neimovinske štete*, Zbornik radova “Novi Zakon o obveznim odnosima – najznačajnije izmjene – novi instituti”, Inženjerski biro, Zagreb, 2005, pp. 27-49., and at p. 61.

<sup>52</sup> In addition to the notion of “personality rights” there are also terms “personal rights” and “individual rights”.

<sup>53</sup> Gasparini, Gordana, *Naknada materijalne i nematerijalne štete u slučaju smrti, tjelesne ozljede i oštećenja zdravlja člana posade broda*, Zbornik radova ‘Odgovornost brodaru za smrt i tjelesnu ozljedu člana posade, osiguranje i naknada štete’, Croatia osiguranje, Split, 1997, at p. 36.

<sup>54</sup> Gasparini, G., *ibid.*

<sup>55</sup> “Equity is a legal concept and involves giving satisfaction both to the person of the injured party and the to the common understanding of the fairness of the entire social environment.” See more: Kačer, Hrvoje; Radolović Aldo; Slakoper, Zvonimir, *Zakon o obveznim odnosima s komentarom*, Poslovni zbornik, Zagreb, 2006, p. 957.

the injured party can afford certain life pleasures and joys, which will have a positive effect on establishing his mental balance.<sup>56</sup>

The amount of fair monetary compensation for non-property damages shall be awarded according to the relevant circumstances that exist at the time of the first-time judgment.<sup>57</sup>

Non-property damage can also be future non-property damage, so the court will, under Article 1104, award a fair monetary compensation to the injured party at the request of the injured party and for future non-property damages, if it is certain they will persist in the future.<sup>58</sup>

For individual manifestations of non-property damage, there are criteria for determining the amount of compensation. Thus, for the fear suffered, it will be required that the fear has a certain intensity and lasts for a certain period of time. The criteria for determining physical pain start from the intensity and duration of pain, the character of injuries, the accompanying inconveniences of treatment, the type of injuries and more or less the sensitivity of a particular injured part of the body. When determining the compensation for mental anguish suffered, the degree of disability, the intensity and duration of the consequences, as well as the age and occupation of the injured party, will be taken into account.

The concept of impaired aesthetic appearance can be determined as impairment of the previous external appearance or impairment of the bodily functions of the injured party. It is sufficient that these are such deformities that make most people feel uncomfortable, that is defined as a subjective aspect of the negative impact of deformity on the injured party's feeling of self-confidence, lack of satisfaction with their own appearance are taken into account, which results in the mental suffering of the injured party. The amount of compensation is awarded depending on the degree of impairment: from total disfigurement to cosmetic defect of a small degree.

Members of the immediate family are also entitled to compensation for non-property damages for mental anguish due to death or severe disability, and these are: spouse, children and parents, irrespective of the existence of an emotional connection between them and the injured party, as well as siblings, grandparents, grandchildren and cohabiting partners if there was a more permanent community of life between them and the injured parties (Article 1101 of the COA).<sup>59</sup>

<sup>56</sup> See in detail: Čurković, M., *Oblici nematerijalne štete i kriteriji za određivanje naknade*, Zbornik radova 'Naknada nematerijalne štete', Organizator, Zagreb, 2003.

<sup>57</sup> Crnić, Ivica, *Oblici nematerijalne štete i kriteriji za odmjeravanje pravične novčane naknade*, Naša zakonitost, Zagreb, 1986, no. 9-10, pp. 1317-1334.

<sup>58</sup> Crnić, I., Grbin, I., Čurković, M., Jelčić, Momčinović, H. Anđelinović, S., Lui, op. cit., at p. 16.

<sup>59</sup> "More permanent life community was assessed by the court according to the provisions Art. 201 of the former COA according to the circumstances of each case. In the sense of family law, in compliance with art. 3 of the Family Act (Official Gazette Nos. 116/03, 17/04, and 136/04), the effects of extramarital community apply on life community of unmarried man and woman who do not live in any other life community, and that lasts at least three years or for a shorter period if

The area of succession and assignment of claims for non-property damages referred to in Article 1105 of the COA has brought significant changes.<sup>60</sup> The new solution allows for the inheritance and transfer of the right to monetary compensation of non-property damages.<sup>61</sup> Not only the action but also any written application is a sufficient presumption for the transfer of rights as opposed to the previous rule, which allowed the right to transfer and inherit the right to compensation for non-property damages only based on a final court decision or written agreement.<sup>62</sup>

#### 4.1. Compensation for Physical Pain

The criteria for determining compensation for non-property damage in physical pain are:

1. strength and duration of pain
2. other circumstances such as:
  - the character of the injuries, in particular, given the development and intensity of the clinical picture;
  - inconveniences to which treatment is accompanied by;
  - subjective properties of the injured party (child, mentally impaired person, etc.);
  - type of injury and part of the body (more or less sensitive parts of the body).

Thus, of course, other circumstances to keep in mind when determining fair monetary compensation for this type of non-property damage are not excluded, depending on each specific case.

#### 4.2. Compensation for Mental Anguish

Physical injury does not entitle in itself the injured party to compensation, but rather the consequences that he or she feels in the mental sphere and which manifest themselves as mental anguish. Such pain may be felt by the injured party due to a

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a common child was born in this community.” In: Gorenc, Vilim and group of authors, *Komentar Zakona o obveznim odnosima*, RRiF-ova Pravna biblioteka, Zagreb, 2005., at p. 1722.

<sup>60</sup> “New solutions to be emphasized in comparison with the Art. 201 of the former Act is certainly this: siblings and grandparents and grandchildren are entitled to compensation. The right to fair monetary compensation shall also be recognised to parents in the event of loss of a conceived but unborn child.” In: Kačer, Hrvoje; Radolović Aldo; Slakoper, Zvonimir, *Zakon o obveznim odnosima s komentarom*, Poslovni zbornik, Zagreb, 2006, p. 958.

<sup>61</sup> Klarić, Petar, *Naknada neimovinske štete*, Zbornik radova “Novi Zakon o obveznim odnosima – najznačajnije izmjene – novi instituti”, Inženjerski biro, Zagreb, 2005, pp. 27-49.

<sup>62</sup> About non-property damage see in detail: Klarić, Grbin, Crnić, Boić, Čurković, Salahović, Kralj, *Zbornik radova ‘Naknada neimovinske štete – pravno medicinski okvir’*, Inženjerski biro, Zagreb, 2006.



decrease or loss of professional ability, general work capacity and loss or a decrease in the ability to perform the life activities he performed before the injury.<sup>63</sup>

The criteria for determining the compensation of this non-property damage are disability, strength and duration of consequences, and interest of the injured party. Besides the percentage determined by the expert, for the assessment of the degree of disability it should be precisely described what the reduction of life activities consists of.<sup>64</sup>

It is clear that the amount of compensation depends on the strength and duration of the consequences of personal injury. Age affects the duration and intensity of mental pain differently. Younger people suffer mental anguish longer and their pain can be more intense, because as young people they are deprived of life joys, while on the other hand, older people find it more difficult to adapt to harmful consequences, and therefore suffer more intense mental anguish. Occupation is also important when determining compensation, since the nature of the injury can be such that the injured party suffers mental anguish especially within his profession.<sup>65</sup>

### 4.3. Compensation for Fear Suffered

In order to recognise compensation for fear as a result of an injury, fear must be of some intensity and must last for a certain period of time, with an assessment of all the circumstances of the specific case. The merits and amount of compensation for this form of non-property damage particularly depend on the duration and intensity of fear. For example, a crew member injured in a fire that originated on a ship will receive substantially higher compensation, from a crew member who was injured falling down the ship's stairs or in other, less frightening circumstances.<sup>66</sup>

## 5. Amount of Compensation and Limitations

The concept of precise time when liability for damages becomes due is the moment of occurrence and existence of a civil legal relationship under which, on the one hand, there is the subjective right of the injured party to claim damages, while on the other hand it creates the obligation of the person responsible for the damage to provide compensation to the injured party. According to the Civil Obligations Act, the obligation to compensate for damages is due at the time of the damage, which is defined in case law as the moment of occurrence of adverse consequences of an adverse

<sup>63</sup> Klarić, Petar, Odnos naknade za tjelesno oštećenje i novčane satisfakcije za duševne boli zbog smanjenja životne aktivnosti, *Zakonitost*, no. 4, 1985, p. 388.

<sup>64</sup> Gasparini, Gordana, *op. cit.*, p. 37.

<sup>65</sup> Klarić, Petar, *loc. cit.*

<sup>66</sup> Gasparini, Gordana, *loc. cit.*

event. The obligation to compensate for damages does not arise simultaneously for all forms of damage, because for all of them the adverse consequences caused by the adverse event do not occur simultaneously and at once. The exception is compensation for future non-property damage (Article 1104 of the COA), i.e. damage that the injured party has not yet suffered, but it is certain that it will occur and continue in the future.<sup>67</sup> Furthermore, an exception is an annuity for those persons who had been regularly assisted or supported by the deceased person, lost earnings, permanently increased needs, impaired or reduced opportunities for advancement and development. In these cases, the responsible person is obliged to pay to the injured party a certain monetary annuity periodically for any future damages determined based on clearly established adverse consequences at the time of the court decision.<sup>68</sup>

### 5.1. Reduction of Compensation Caused by Contributory Liability

In relation to the provision of Art. 192 of the COA 91, the provision of the Art. 1092 was amended primarily in the title of the article.<sup>69</sup> Instead of the title “Shared Liability” a new concept was introduced in the COA 2005, which was named “the contribution of the injured party to its own damages”.<sup>70</sup>

The Civil Obligations Act provides in the Article 1092 for the injured party’s relatively reduced compensation in cases when he himself either contributed, to the occurrence of the damage itself, or made the damage greater than it otherwise would have been.<sup>71</sup> The injured party may contribute to the damage by act or omission. There is also the possibility for the court to award compensation taking into account the circumstances of a case where it cannot determine exactly what part of the damage comes from the injured party’s action. These provisions relate to property damage, and their analogue application to non-property damage is provided for by the Article 1106 of the COA. Cases of shared liability are relatively common on ships, a typical example is a crew member, who suffered a head injury due to the fall of cargo from a crane while

<sup>67</sup> “Just compensation for the future non-pecuniary damage is therefore quite doubtful. This is a theoretical concept of damage that has not occurred and it is not known whether it will occur, but it may arise. Legal theory and practice have yet to give the right answers to questions on compensation of this form of damages.” In: Kačer, Hrvoje; Radolović Aldo; Slakoper, Zvonimir, *Zakon o obveznim odnosima s komentarom*, Poslovni zbornik, Zagreb, 2006, at p. 960.

<sup>68</sup> On the mode of repairing non-property damage according to the provisions of the COA see more in: *Proceedings “Novi zakon o obveznim odnosima”*, Organizator, Zagreb, 2005., pp. 247-252.

<sup>69</sup> See support for this new approach in Gorenc, V. and group of authors, *Komentar Zakona o obveznim odnosima, RRiF-ova Pravna biblioteka*, Zagreb, 2005., p. 1695: “Injured party is not liable for its own damages but bears consequences to its extent caused by his contribution.”

<sup>70</sup> “This is a much better name than before. However, there is no substantive change here.” In: Kačer, Hrvoje; Radolović Aldo; Slakoper, Zvonimir, *Zakon o obveznim odnosima s komentarom*, Poslovni zbornik, Zagreb, 2006., at p. 951.

<sup>71</sup> On criticism of the term “shared liability” see more in Crnić, J., *Odgovornost više osoba za istu štetu i podijeljena odgovornost*, *Zakonitost*, No. 9-10, 1987, at p. 1050.

being loaded on the ship, and the injury was more severe because he was performing these tasks without wearing a helmet. In such a case, it would be difficult to determine the extent of the shared liability, so the court would, upon free assessment, reduce the remuneration of the crew member "taking into account" the circumstances of the case as foreseen by the COA. The injured party's contribution to his own harm is not based on the fault of the injured party, but on the fact that the injured party contributed to the damage occurring or to be greater than it would otherwise be, as an objective rather than subjective fact of his harmful behaviour.<sup>72</sup>

The rule on shared liability for damages applies both in the area of torts and in the field of contractual compensation liability.<sup>73</sup>

## 5.2. Advance Payments and Insurance Indemnity Deductions

Payment of damages in advance (advance payment) - the amount of the previously paid compensation shall be included in the determined compensation in nominal terms in accordance with the principle of monetary nominalism and shall not be valorised at prices at the time of the court decision. In practice, it is often controversial whether the prepaid amount represents only partial or complete fulfilment. That is why it is useful for the one who makes advance payments of damages, to indicate exactly for what forms of compensation this payment is intended, since the obligation to repair each of the forms of damage is materially and procedurally independent, and therefore can cease by fulfilment separately from other forms of damages.<sup>74</sup>

As for the social security benefits, in principle the responsible person is obliged to compensate the injured party only for the damages that are not covered by the social security system. When determining the amount of fair compensation for non-property damages, the court will take into account social security benefits, like compensation for physical impairment if it relates to non-property damage, and based on all the circumstances of the case, it will determine at a free assessment the extent to which the compensation for physical impairment affects the amount of monetary compensation for this form of non-property damage. However, if social security benefits relate to property damage, then they are counted towards the property damage awarded.

In Croatian maritime labour law practice, the collective agreement is an integral part of the employment contract, and its provisions oblige the employer to pay compensation to the crew member of the ship in case of partial or complete permanent

<sup>72</sup> Perkušić, Ante, *Osnove građanskog prava*, Maritime Faculty – University of Split, Split, 2009, p. 142.

<sup>73</sup> Kaladić, Ivan, *Podijeljena odgovornost za štetu*, Inženjerski biro, Zagreb, 2004, p.109.

<sup>74</sup> See in detail: Šeparović, Veseljko, *Uračunavanje u odštetu iznosa primljenih s naslova osiguranja i pomoći*, *Naša zakonitost*, Zagreb, 1986, No. 10, pp. 1363-1375.

inability to work on board.<sup>75</sup> By collective agreement, the employer also assumes the obligation to conclude an insurance contract (collective insurance policy against the consequences of an accident) in order to cover its obligation to pay that compensation to the injured crew member of the ship. Provisions of the COA allow cumulating in the insurance of persons, so cumulating is also allowed in the collective insurance of employees – crew members of the ship from the consequences of an accident, even if the employer as an insurance contractor is responsible for the damage. However, the COA provides for an exception from the rule that the insurance of persons is allowed to cumulate in case when insurance against the consequences of an accident is contracted as liability insurance. Namely, it is assumed that the contracted personal insurance of the seafarer is due to an accident when the insurance premium is paid by the seafarers themselves or the employer does so by extracting the appropriate amount from their salary. In this case, the cumulating is allowed, that is, the amount of compensation that the injured seafarer receives from the insurer is not included in the amount of compensation for damages established as the tortfeasor's obligation.

Since nowadays seafarers usually pay their own pension contributions, there has been a doubt whether the shipowner is obliged to pay the entire amount of lost earnings in the event of a complete loss of professional capacity of the crew member or only the difference between the earnings he would have made if he had not lost the capacity and the amount of disability pension he would have achieved if he had paid contributions. In civil law, there is a possibility of reducing compensation for damages due to the poor property status of tortfeasors, but commentators in the legal theory are of the view that this could not be applied to the shipowners, and in this regard they should be treated equally as other legal persons who cannot invoke this provision.<sup>76</sup>

A seafarer, who has become fully and permanently unfit to work due to personal injury and has acquired the disability pension on that basis, should expect that this pension would be counted in when determining lost earnings that are proportionally reduced. On the other hand, the cumulating of compensation and insurance is allowed when the seafarer has realized benefits based on the so-called premium insurance, with the exception of the situation when the shipowner himself paid these premiums from his funds, which will result in the inadmissibility of the said cumulating. Cumulating is also not allowed with property insurance such as liability insurance. Finally, the admissibility of the cumulating may also depend on the contents of the employment contract or collective agreement, the clauses of which may provide for the obligation of the shipowner or employer to compensate the crew member in the event of partial or complete and permanent incapacity to work on board. The clauses of these contracts in some cases explicitly allow this cumulating, in other cases exclude it, and there are examples of contracts that do not provide for anything precise. Commentators in

<sup>75</sup> Nacionalni kolektivni ugovor za hrvatske pomorce na brodovima u međunarodnoj plovidbi (2021.-2022.), Official Gazette no. 6/2021.

<sup>76</sup> Gasparini, Gordana, op. cit., p. 39.

theory argue the legal position that in the latter case, cumulating would be allowed. Namely, in all situations where the clauses of the contract are incomprehensible or insufficiently clear, the rules on the interpretation of the contract determine that they should be interpreted for the benefit of seafarers, and to the detriment of the shipowner or employer.<sup>77</sup>

### 5.3. Payment of Interest

Interest is a fee for using someone else's monetary or other financial assets, whether their usage has been based on a contract or without a specific agreement. Within the provisions of the COA, there are numerous cases where interest has to be paid under the law. Default interest is one form of statutory interest. The legal theory describes default interest primarily as means of reinforcing the discipline of the debtor, although it is also defined as compensation for the use of other person's money. The obligation to pay interest arises *ex lege*, and the assumptions of its occurrence are the existence of a monetary obligation of the debtor and a late payment of the debt. The legislator regulates by provisions of law the method of calculation and the amount of default interest.<sup>78</sup>

Default interest lasts from the moment of damage, except for natural restitution, in which the injured party is not entitled to default interest, but possibly to compensation for some other damage, which he must prove that he has suffered. The COA makes no mention of default interest as an accessory of compensation, and refers only to the actually suffered "ordinary" damage and to the lost income.<sup>79</sup>

On the other hand, the situation becomes different when a court decision determines the amount of damages in a certain amount of money. Then the obligation to compensate for damages takes on all the characteristics of an ordinary monetary obligation, to which the principle of nominalism applies, and consequently is accompanied by default interest. The court will determine the amount of damage according to the condition of the damaged property at the time of its damage, but at the value levels at the time of the judgment.

The injured party cannot waive the right to default interest in advance. However, it is free to dispose of the principal amount of the claim from the moment it is due. With regard to this, there are three types of default interest. The first is the interest on the compensation for non-monetary property damage, awarded in the certain amount of money at the time of the judgment, being calculated from the date of the first instance

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<sup>77</sup> Ibid.

<sup>78</sup> The basis for determining the default interest rate is the discount rate of the Croatian National Bank. The CNB is obliged to publish the discount rate in the Official Gazette every 1 January and 1 July. See more in: Kačer, Hrvoje; Radolović Aldo; Slakoper, Zvonimir, *Zakon o obveznim odnosima s komentarom*, Poslovni zbornik, Zagreb, 2006, p. 49.

<sup>79</sup> Ibid.

judgment by which the amount of compensation was determined. The second is the interest on fair monetary compensation of non-property damages, which runs from the date of the first instance judgment by which the compensation was determined. When deciding on the amount of fair monetary compensation, the court will also take into account the time elapsed between the occurrence of the damage and the decision, if the length of the waiting for satisfaction and other circumstances of the case justify this. Finally, the third type is interest on the compensation of monetary property damage. According to the COA, the obligation to compensate for damages is considered due from the moment of the damage, from which the default interest also starts to be calculated.

Interest payment is due under the provisions of Article 29(1) of the Civil Obligations Act: “A debtor who is late in fulfilling a pecuniary obligation owes, in addition to principal, also a default interest.” According to Article 30(1) of the COA, the creditor is entitled to default interest regardless of whether he has suffered any damage as a result of the debtor’s delay, while under paragraph 2 of the same Article he or she is entitled to claim the difference to full compensation for the damage, if the damage was suffered as a result of the debtor’s delay is greater than the amount he or she would have received in the name of default interest.

Interest calculated on interest is in principle prohibited, so according to the Article 31(1) of the COA on overdue contractual or default interest, and on other overdue periodic monetary benefits, default interest is not calculated, except when required by law. Same article in paragraph 2. provides: “The amount of unpaid interest may only be subject to default interest from the date on which the application for its payment has been submitted to the court.”<sup>80</sup>

Thus, the late interest on the compensation of property damages awarded in money is to be calculated from the date of the first instance judgment. However, there is the new important provision of the Civil Obligations Act in Article 1103, referring to the obligation of due monetary compensation that is due on the day of the submission of the written claim or law suit, unless the damage has occurred thereafter. This provides for introduction of the so-called “moratorium interest”. This constitutes a significant novelty in protecting the legitimate interests of the injured party as a claimant in the litigation, which is expected to discourage tortfeasors or the person responsible for them from the sometimes unnecessary stalling of the procedure. The claim of fair compensation for non-property damages is essentially of the same importance as any property claim so that default interest should follow as a penalty for non-compliance in cases of any delay in its fulfilment.<sup>81</sup>

<sup>80</sup> Civil Obligations Act, Official Gazette, No. 35/2005.

<sup>81</sup> For more details on payment of interest, see: Buzadić, Miroslav, *Zatezne kamate po izravnom postupku, Računovodstvo revizija i financije*, Zagreb, 1997, no. 1. p. 283.; Eraković, Andrija, *Zatezna i ugovorna kamata*, Informator, Zagreb, 1996., no. 4371, pp. 8-11.; Eraković, Andrija, *Zatezna i ugovorna kamata, Pravo i porezi*, Zagreb, no. 1/1997, pp. 16-23.; Ružđak, Marijan, *Kamate, Sudska praksa*, no. 17, Informator, Zagreb, 1994.

## 5.4. Statute of Limitations for Compensation Claims

The moment when the compensation becomes due is also the moment from which to calculate the limitation period for the exercise of the right to compensation. At the same time, it represents the beginning of the calculation of default interest on unpaid compensation of monetary property damages because of the delay of the debtor with payment of the due obligations. The concept of statute of limitations consists in the loss of the right to request the fulfilment of the obligation due to the expiry of the legally specified time in which the creditor was entitled to claim damages. The statute of limitations does not extinguish the obligation, but terminates the right to request forced fulfilment of the obligation at the court of law. It does not act by itself, but the debtor must invoke it by highlighting the statute of limitations objections. The statute of limitations applicable to the main claim is also related to outdated secondary claims such as interest, costs, etc.<sup>82</sup>

The statute of limitations constitutes a form of limitation in the exercise of rights consisting in the loss of an application for the exercise of rights or obligations due to the non-enforcement of the content of rights during a certain period of time. With the expiry of the statute of limitations, the creditor loses the right to request the fulfilment of the obligation due to his passive holding, so the statute of limitations constitutes a kind of sanction against a negligent creditor who has failed to demand the fulfilment of the debtor's obligation within a certain period of time. The obligation that has become obsolete turns into a "natural obligation", which still exists but is not judicially enforceable. Therefore, if the debtor fulfils an outdated obligation, he has no right to demand the return of what he gave, even if he did not know that the obligation was outdated.<sup>83</sup>

The statute of limitations is of a substantial legal nature, so the by adopting the relevant claim, the court acknowledges its validity and passes a judgment rejecting the lawsuit. The statutory limitation provisions are mandatory in nature, and therefore the parties cannot waive the statute of limitations by mutual agreement, nor can they agree to extend the limitation period set by law in advance or agree that the statute of limitations does not run for a time. Law determines the limitation period for a period of time after which the right can no longer be exercised by coercion. According to the COA, the general statute of limitations is five years.<sup>84</sup> In addition, there are special time limits of three, two and one year, while claims established by the final judgment or settlement concluded before the court are outdated by ten years, including those for which the law otherwise provides for a shorter limitation period.

<sup>82</sup> Šantić, Željko, Dospjelost zahtjeva za naknadu štete i zastara, Proceedings "Odgovornost brodarara za smrt i tjelesnu ozljedu člana posade, osiguranje i naknada štete», Split, 1997, at p. 50.

<sup>83</sup> Ibid.

<sup>84</sup> Civil Obligations Act, Official Gazette, No. 35/2005, Article 230, Paragraph 2.



The stagnation in the statute of limitations is the result of the onset of such circumstances, due to which the statute of limitations cannot begin or due to which the statute of limitations that already started ceases to run, and remains paused as long as these circumstances are present. In their eventual absence statutes of limitations again continues, and the elapsed time is counted. On the other hand, the discontinuation of the statute of limitations is caused by such circumstances which interrupt the statute of limitations and the elapsed time does not count. In such cases, the statute of limitations can only begin counted anew once these circumstances have disappeared. Such circumstances are for example, the recognition of the debt by debtor, lawsuit as well as any other creditor's action taken against the debtor before the court or other competent authority, for the purpose of determining, securing or exercising the claim.<sup>85</sup> However, the payment of principal amount does not interrupt the obsolescence of interest, and the payment of one part of the debt does not represent the recognition of its second part.<sup>86</sup> The initial limitation period of claims for damages is an exception to the general rule under which the beginning of the limitation period is calculated from the date it has become due. The obligation to compensate for damages shall be held due from the moment when the damage originated.

The COA determines the "subjective" and "objective" limitation period for claims for damages. The subjective limitation period is three years from the date on which the injured party learned of the damage, which implies knowledge of the damage and its extent, and information on the person liable for the damage, which implies knowledge of the name and address of the tortfeasor with the necessary information to take certain legal actions for the purpose of compensation. Both assumptions must be met cumulatively.

An objective limitation period implies the expiration of a period of five years from the date on which the adverse consequences occurred, i.e. from the date when the compensation for damages was due. The objective limitation period of the claim for damages applies when the three-year subjective period expires outside the five-year period, i.e. the claim justified on damages becomes obsolete in any case with the expiry of the objective period. The right of the injured party after the expiration of the periods defined by the statute of limitations is regulated by the Article 1110 of the COA, which provides that the injured party may claim from the liable person to concede him any value that he obtained by the fact that he had not payed and compensation for the damage caused by his action.<sup>87</sup>

<sup>85</sup> Civil Obligations Act, Official Gazette, No. 35/2005, Article 240.

<sup>86</sup> Šantić, Željko, op. cit. p. 50

<sup>87</sup> "Injured party may claim this request on the basis of these provision under the following conditions: that there is a statute of limitations, that the tortfeasor gained benefit by his action which caused damages, and that return of this tortfeasor's benefit may be claimed under the general rules of acquisition without basis." In: Gorenc, V. and group of authors, *Komentar Zakona o obveznim odnosima*, RRiF-ova Pravna biblioteka, Zagreb, 2005, p. 1738.



As the most frequently disputed issue in practice, there is a question concerning the initial moment of the subjective limitation period due to the fact that the injured party learns of the various forms of damages at different times. Thus, for example, Croatian case law contains standpoints that in cases of mental anguish the limitation period starts at the moment of completion of treatment and stabilization of the condition, in cases of physical pain it begins with the cessation of pain, in cases of anguish for the fear suffered it commences when fear has disappeared, in situation of mental anguish due to impaired aesthetic appearance it begins only when it becomes certain that the impairment cannot be reduced or eliminated, in cases of lost earnings due to the inability to progress further it starts when the treatment is completed, in the course of reimbursement of medical expenses, important is the moment of receipt of the invoice, in cases of the inability to work, it starts at the time when the injured party learned that he could not be employed, and finally in the situation of the lost earnings during the temporary inability for work, it initiates only when that condition ceases.<sup>88</sup>

The statute of limitations raises the question of whether the limitation period has to be calculated under applicable law or under *lex fori*, while in Croatian law the question boils down to whether the statute of limitations is an institute of substantial or procedural law. Due to the fact that only the claim is obsolete and not the subjective law, in legal theory the conclusion is drawn that this is a procedural issue.<sup>89</sup> However, case law supports the opposite view that the statute of limitations is an objection of a substantive and not of a procedural nature and can only be decided by a judgment of the court accepting the statute of limitations' objection, so it will reject the claim and will not dismiss the action by its order.<sup>90</sup>

## 6. Conclusions

Since gaining its independence three decades ago, Croatia has been continuously adopting legislation with the task of regulating its shipping industry in a way that it may withstand the competition of the global market and enabling the improved legal position of its seafarers as a significant factor in the national maritime sector.

<sup>88</sup> Šantić, Željko, op. cit. p. 50.

<sup>89</sup> More on concept of its procedural nature in: Vedriš, *Osnove imovinskog prava*, Zagreb, 1976, p. 99.

<sup>90</sup> See more on statute of limitations in: Šantić, Željko, *Dospjelost zahtjeva za naknadu štete i zastara*, Proceedings "Odgovornost broдача za smrt i tjelesnu ozljedu člana posade, osiguranje i naknada štete", Croatia osiguranje, Split, 1997, pp. 49-51; Momčinović, Hrvoje, *Zastara zahtjeva za naknadu štete i zatezne kamate na novčano potraživanje naknade štete*, *Naša zakonitost*, Zagreb, 1986, no. 10, pp. 1376-1392; Marin, Jasenko, *Zastara tražbina za naknadu štete zbog smrti ili tjelesne ozljede putnika na brodu*, *Uporedno pomorsko pravo*, vol. 38, no. 1-4 (149-152), 1996, pp. 61-72; Eraković, Andrija, *Zastara potraživanja*, *Informator*, Zageb, 1995, no. 4330-4331, pp. 8-10.

Through the adoption of the advanced legal solutions mentioned above, the Maritime Code of 2004 as *lex specialis* undoubtedly improved the legal position of seafarers regarding the realization of their claims for compensation for personal injury or health impairment, as well as the position of their family members in case of their death. Croatian Maritime Code in this respect accepted contemporary solutions adopted in the national regulations of prominent maritime countries, and has been increasingly supported by our case law, whose decisions are providing almost the same level as the decisions of courts of states with much stronger maritime and legal tradition.

When dealing with issues of form of and modality of compensation for damages suffered by seafarers, the Civil Obligations Act of 2005 as *lex generalis* contains the complete set of relevant provisions concerning the types of compensation, which are natural restitution, monetary compensation and satisfaction. Whenever possible, natural restitution remains the first choice for repairing damages and is mandatory solution in Croatian civil law. When natural restitution is not viable, monetary compensation is an alternative solution with the aim of providing total cumulative amount for damages, lost income, expenses and interest, which may be available in the form of lump sum payment of long-term rent with annuity payments that is most suitable for compensation for property damages caused by death, personal injury or health impairment of crew members.

On the other hand, satisfaction represents the form of repair most appropriate for non-property damages, which can be manifested as physical pain, mental anguish or suffered fear. The two types of satisfaction are monetary and moral satisfaction, the latter especially suitable for repairing the infringements of the personality rights. The Civil Obligations Act also adopted the concept otherwise known in comparative law as contributory negligence that was at first called “shared liability” in the COA 1991, while it was later renamed contributory liability or precisely “contribution of the injured party to its own damages” in the COA 2005. The other important feature of COA provisions is extended circle of family members and persons entitled to compensation of damages.

With this combination of elaborate system of maritime and civil legislation, Croatia has provided normative solutions that systematically regulated the legal position of seamen in cases when they or their families suffer damages caused by their death, personal injury or health impairment. Besides the jurisdiction of commercial courts for procedures based on seafarers’ claims, there is an important provision generating international jurisdiction of Croatian courts if the plaintiff is a seaman with residence in Croatia. Together with the possibility of direct action against the liability insurer, this complex legal framework represents a significant factor in raising the general level of legal protection available to Croatian seafarers.

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