

European Commission legal action against the Republic of Greece Case C-460/08

As you are aware, a high priority issue of major concern for PEPEN is the action taken by the European Commission against the Republic of Greece on 21-10-2008, currently being discussed at the European Court of Justice (ECJ), on the issue of the nationality of Master on board Greek flag vessels.

Pursuant to national legislation currently in force (Article 2, paragraph 1 of Presidential Decree 12/93) seafarers, nationals from other European Union Member States enjoy same access in job opportunities on Greek flag vessels, excluding the position of the Master and his legitimate replacement.

The above exclusion was not introduced in an attempt to limit the access of Masters from other Member States in the Greek job market, but because of the special duties assigned to the Greek Master and in accordance with the EU Treaty.

In particular, the Master on vessels, of all categories, flying the Greek flag, in accordance with national legislation, carries out duties of public administration, such as registering births and deaths, issuing appropriate certificates, being in charge of duties of registrar and carrying out preliminary penal and disciplinary inquiries.

It should be underlined that the above-mentioned is in line with the provisions of Article 39, paragraph 4 of the EU Treaty which expressly provides that the provisions on freedom of movement of workers within the Community do not apply to employment positions in public administration.

The performance of duties of public administration by the Master or his replacement, as public official is not only related with the applicable national legislation, but in addition, is in keeping with the obligation deriving from international law of the sea ie, the existence and maintenance of a "genuine link" between the vessel and the country the flag of which the vessel flies.

In addition, for reasons appertaining to public health, order and the protection of important public interests, Greek flag vessels of all types and categories could be called to participate to the national defense and national security. Consequently, the Master and his legitimate replacement, the Chief Mate, in his capacity as the head of the ship, perform the respective and relevant duties to the above-mentioned extremely important and crucial public interest objectives.

Furthermore, in the context of the above debate, we recall two ECJ judgments namely, C-405/2001 and C-47/2002.

The former, has interpreted Article 39, paragraph 4 of the Treaty, as meaning that it does not provide to Member States the possibility to introduce provisions at

national level to the effect that the positions of Master and Chief Mate could be occupied exclusively by nationals, except on condition that the privileges of public authority conferred to Masters and Chief Mates of their vessels are exercised regularly and do not represent a small fraction of their activities.

In the later judgment, Article 39, paragraph 4 of the Treaty is interpreted as meaning that it allows Member States to assign exclusively for its nationals the positions of Masters of vessels flying their flag involved in activities in the context of “short sea shipping”, on condition that the responsibilities of public order conferred to Masters of these vessels are performed in a regular manner and do not represent a small fraction of their activities.

Pointing out that the performance of responsibilities of public order on board vessels flying the Greek flag is an “every day” situation and with all due respect to the ECJ judgment, we have no doubt whatsoever that you personally and your Services, responsible for the handling of this issue, will do their utmost in defending accordingly the case before the ECJ. In the same framework we trust that the ECJ, in its wisdom, when judging the case will realize the special needs of the Greek national merchant fleet, that derive, among others, from the geographical characteristics of our country and its long lasting maritime tradition. As far as PEPEN is concerned, it goes without saying that we fully respect our European colleagues but we need to stress that any possible negative outcome from the ECJ, will have far-reaching negative consequences for the well running of vessels flying the Greek flag, not to mention its national dimension that should be considered as an EU dimension. To that extend ECJ judgments C-405/2001 and C-47/2002 should be reflected in our national legislation in a manner that takes into account all the previously mentioned factors.