PEOPIL - Joint Maritime and Tourism & Sports Conference

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Interpretation & Application

of

the ILO Maritime Labour Convention, 2006

Victor GUERARD
Partner at TARIN LEMARIE
France

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MARITIME TRANSPORT TRADE

MLC 2006 – *What is it?*

2006

adopted in Geneva on 23 February

2013

entered into force on 20 August

113

States have ratified it

96.6%

of world gross tonnage covered

"Fourth pillars" of maritime international law (with **STCW, SOLAS and MARPOL**)

Fundamental labour principles and rights to protect nearly 2 million seafarers:

1) *Minimum requirements to work on a ship*
2) *Condition of employment*
3) *Accommodation, recreational facilities, food and catering*
4) *Health protection, medical care, welfare and social protection*
5) *Compliance and enforcement*

Comprehensive framework : ***Articles, Regulations and the Code (part A and B)***

« *It's alive!* » : amendments of 2014, 2016, 2018, 2022 and 2025

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Current challenges and crucial issues - *Effectiveness*

Prevention of risk and exhaustion	**Protection in times of crisis (eg: Ormuz straight)**
Violence, harassment and mental health	**Identification of the employer**
Abandonment (unpaid wages, medical care or repatriation)	**Social dumping**
Compensation in case of death or injury	**Mobility (shore leave)**

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Incorporation of MLC 2006 in France

1 Ratification in 2013

France ratified the MLC 2006 in 2013

2 Transposition

Law n°2013-619 of 16 July 2013, following EU Directive 2009/13/CE of 16 February 2009

Decree n°2013-619 of 16 July 2014 (publication of MLC 2006)

Book V of the **French Transport Code** – codified / amended between 2013 and 2016

3 Extension

- More favourable on multiple aspects (daily hours, paid leave, overtime, etc.)
- References to the Labour Code
- Host State Rules (« *Dispositif de l'Etat d'accueil* ») (2013)
- Registre International Français (RIF): full MLC compliance and certification

How French courts interpret and apply the MLC 2006

1	**Primacy**	A ratified international convention has higher authority than statute (Art.55 of the French Constitution).
2	**Direct effect, case by case**	**Conseil d'Etat, 5/10/2018, n°410454, *"Vauban 21"*** Only clear and precise rules creating rights for seafarers have direct effect
3	**Consistent interpretation**	**Domestic law is applied and interpreted in light of the MLC**, its general principles and the comments of the ILO supervisory bodies.
4	**Mandatory core**	**Another route to apply the MLC in France: Host State rules, and Port State Control**

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France's search for effectiveness of MLC 2006 and protection of seafarers

1. Mandatory core

Strong and extended core of "public order"/"lois de police" labour law rules, including:

- Working time,
- Rest hours,
- **Health and safety at work**,
- Concealed work,

may apply where an employment contract is governed by foreign law, if French law deemed as the law applicable in the absence of choice of law in application of Art. 8 of EU "Rome 1" Regulation.

2. Host State rules (« *régime de l'Etat d'accueil* »)

Ensure the application of uniform rules on labour law, minimum safe manning, minimum wage and social protection.

Applies to:

- *ships < 650 UMS with access to national maritime cabotage and providing a continental cabotage and cruise service*
- *ships with access to national maritime cabotage and providing an island cabotage service*
- *ships used to provide a service principally in French territorial or inland waters*
- *ships used for renewable energy offshore service provision activity carried out on the continental shelf or in the exclusive economic zone (EEZ)*

3. Enforcement through Port State control

Paris Memorandum of Understanding (1982): shared and effective system of inspection of ships.

Compliance with MLC 2006 checked by the maritime labour inspectorate and through **Port State Control**, which can lead to **detention** of non-compliant ships.

Principle of "No More Favourable treatment"

Sources: French Transport Code, L.5561-1 et seq.; EU "Rome 1" Regulation; Paris MoU

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French case law

Court of appeal, Aix-en-Provence, 9 September 2022, n°19/02518

Facts. Captain hired to work on a commercial yacht under Luxembourg flag, by an employer based in Luxembourg, SEA providing for Luxembourg law. The captain filed a claim for wrongful termination, invoking the laws of France as more favourable than Luxembourg laws.

Ruling. (i) French law would have been the place where the work was habitually carried out (based on logbook, departures from French ports and periods of navigation in France) as per Art. 8 of EU "Rome 1" Regulation; **(ii)** French law is set aside because Luxembourg is the country with the closest links (the captain had his wages and taxed paid in Luxembourg), based on the same article of "Rome 1".

Key point: French judges look closely at all clues to establish a connection with France.

MLC 2006 vs France - *Definition of Seafarers*

MLC 2006

« Seafarer » means ***any person*** *who is employed or engaged or works in any capacity on board a ship to which this Convention applies"*

"Except as expressly provided otherwise, this Convention applies to all seafarers"

French Law

Gens de mer (*"Seafarers"*) :

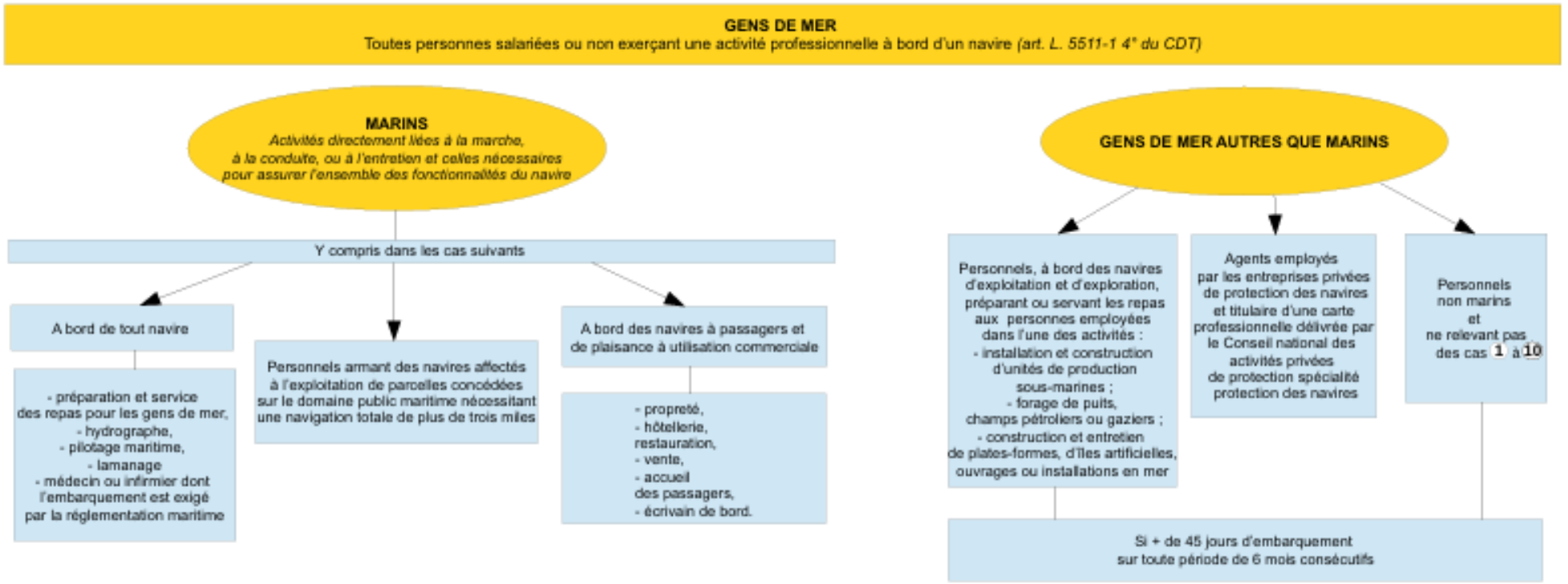
- Marin (*"Seamen"*): work in direct link to the exploitation and maintenance of the ship
- Gens de mer non-marin (*"Seafarers non seamen"*): work onboard, but no technical work related to navigation

Personnel non-gens de mer *("Non-seafers")*: work occasionally onboard, or specific work.

Sources: ILO; French Transport Code (Part 5), Article L5511-1; Cass. soc., 14/10/2026, n° 25-12.343

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QUALIFICATION DE GENS DE MER



Sources:

https://www.rif.mer.gouv.fr/gens-de-mer-marin-gens-de-mer-non-marin-a535.html

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French case law

Cass. soc., 14 October 2026, n° 25-12.343

Facts. An employee held the post of operations manager ("*directeur d'armement*") on shore for a cruise company, but regularly took part in rotations on board as captain. The employee's contract was terminated because he did not came back to work after a sick leave.

Ruling. The Court upholds the employee's status as a **seafarer** as per French Transport Code: the employee did not work exclusively onshore and continued to carry out duties directly linked to the operation of the vessel.

Key point: The status of seafarer, and therefore the benefit of MLC 2006 and French maritime labour law, depends on the activities actually carried out, rather than solely on the job title.

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MLC 2006 vs France - *Definition of Shipowner and Employer*

MLC 2006

"*Shipowner*" = the **owner** of the ship or **another organization or person**, such as the manager, agent or bareboat charterer, **who has assumed the responsibility for the operation of the ship from the owner** and who, on assuming such responsibility, **has agreed to take over the duties and responsibilities imposed on shipowners in accordance with this Convention**, regardless of whether any other organization or persons fulfil certain of the duties or responsibilities on behalf of the shipowner.

French Law

"*Shipowner*" = **any person on whose behalf a ship is operated** ; also includes the owner of the ship or any other operator to whom the owner has entrusted responsibility for the operation of the ship, **regardless of whether other employers or entities carry out certain tasks on its behalf**.

"*Employer*" = the **person who has authority over the worker** (power to give orders, check their performance and sanction breaches), regardless of the terms of the employment contract.

Sources: ILO; French Transport Code (Part 5), Article L5511-1 ; Cass. soc., 13/11/1996, n°94-13.187 ; Cass. Soc., 4/41/2013, n°12-26,553

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French case law

Court of Appeal, Aix-en-Provence, 4 April 2019, n°16/12423

Facts. A captain (French resident) is hired by a manning company based in the BVI to work onboard a yacht under UK flag, owned by a shipowner established in the Isle of Man. The captain started a claim in France against the shipowner and the manning company for wrongful termination, claiming the application of French law.

Ruling.

(i) Jurisdiction of French court and application of French law confirmed (the vessel was berthed in a French port)

(ii) The shipowner, and not the manning company, is the employer of the seafarer, because the work was carried out under its control, direction and authority. The manning company was only dealing with the "social" aspects;

(iii) Shipowner condemned to pay indemnities and damages for wrongful termination to the captain.

Key point: French judge will seek for the "real" employer regardless of the terms of the contracts or the existence of a manning company.

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French case law

Court of Appeal, Montpellier, 3 June 2026, n°23/03021

Facts. A captain is hired by a manning company based at Guernesey to work on a yacht under UK flag. The captain starts court proceedings for wrongful termination and payment of overtime against the manning company *and* the shipowner. The captain raised that both of them fall under the definition of "*shipowner*" under the MLC 2006 and should therefore be considered as "*co-employer*".

Ruling.

(i) The Court applies the 3-month time bar of the laws of Guernesey (law of the contract), regardless of the fact that French law would have been applicable without any choice of law, and rules that the claim against the manning company is time-barred.

(ii) The Court further rejects the claim against the shipowner, on the grounds that the claimant did not prove that the shipowner can be qualified as "*co-employer*" under the laws of Guernesey.

Key point: French judges will not automatically refer to the definition of "*shipowner*" of MLC 2006 to admit a claim against a manning company and the shipowner.

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France's search for effectiveness – *Protection of the seafarer in compliance with MLC 2006*

Obligation of safety and prevention of risk

MLC 2006, Article IV ; Regulation 4.3.: ensure that seafarers' work environment on board ships promotes occupational safety and health

Article L.4121-1 of Labour Code: obligation to ensure physical and mental safety and security of employees. Applicable to seafarers.

Article L.4121-2 of Labour Code: employer must evaluate the risks and implement prevention measures.

Ensure compliance with maximum working hours, minimum rest and minimum safe manning is part of this safety obligation

Rapatriation

MLC 2006, Article IV ; Regulation 2.5.: Seafarers have a right to be repatriated at no cost to themselves in the circumstances and under the conditions specified in the Code.

Art. L5542-29 Transport Code: Employer organizes repatriation, notably in case of termination, sickness or accident, or where the ship is in route to an armed conflict zone and the seafarer refuses to go)

Art. L5542-32 Transport Code: The shipowner bears the cost of repatriation even if the termination was grounded on a "*faute grave*" of the employee.

Abandonment

Art. L5533-15 et seq. Transport Code

The employer and/or shipowner abandons a seafarer in case of:

- Failure to pay repatriation costs;
- Failure to provide the seafarer with necessary care and support (food, accommodation, drinkable water, medical care onboard and on shore)
- Failure to pay wages for at least two months.

Where the ship holds a maritime labour certificate, the seafarer can be guaranteed, to an extent (eg: 4 months of outstanding wages)

Abandonment of seafarers constitutes a criminal offence (5 years empr., 75K€ fine)

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France's search for effectiveness – *Protection of the seafarer in compliance with MLC 2006*

Care and wages

Art. L5542-21 of Transport Code: The shipowner bears the cost of medical care and continues to pay wages to a sick or injured seafarer, for a period set by national law.

The shipowner must provide a financial security (through a P&I insurer or other financial security provider), covering compensation for death or long-term disability.

Specific social security scheme for seafarer : ENIM

Violence and harassment

Art. L.1152-4 of Labour Code: The employer shall take all necessary measures to prevent physical and psychological harassment.

Art. L.5534-1 et seq and R.5534-1 et seq. of Transport Code: specific protection and claim procedure for seafarers notably to report harassment *(complaint lodged either with the officers on board, or the labour inspectorate or the maritime safety centre)*

Liability of the employer and the shipowner

Art. L. 5533-1 of the Transport Code: the shipowner is responsible for ensuring compliance with the provisions of Book V in respect of all seafarers on board, irrespective of their employers' liability.

In case of failure of the employer, the shipowner must ensure the financial consequences of illness, accident or death arising out of or in connection with boarding, outstanding wages, social security contributions and repatriation.

Sources: MLC 2006, Regulation 4.2 / Standard A4.2 ; French Transport Code; Court of Cassation.

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« *Faute inexcusable* » - *Employer's liability towards the seafarer for death or injury*

1. Definition

The employer owes a **safety obligation of result**.

A *faute inexcusable* exists when **the employer was or should have been aware of the danger and failed to take the necessary measures**.

The link of causality between the negligence and the damage must be proven.

2. Specificities

- Separate from the ordinary compensation scheme
- the Social Security fund pays first, then recovers from the employer.
- Presumed for temporary workers and where a risk was previously reported.
- **Time bar - 2 years as from the event**

3. Consequences

- **Increased pension or annuity (maximum rate)**
- **Compensation for additional damages (pain, aesthetic and loss of amenity harm, loss of career prospects, etc.).**

4. ENIM scheme

Seafarers are covered by ENIM, a special social security scheme, not the general regime. ENIM pays care, daily allowances and annuities.

The employer's *faute inexcusable* apply to seafarers and, if proven, additional compensation can therefore be sought against ENIM.

Sources: French Social Security Code, Art. L.452-1 et seq.; French Labour Code, Art. L.4131-1 et seq; Cass. 2e civ., 9/02/2017, n°15-24.037

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French case law

Cass. soc., 8 September 2015, n°13-87.410

Facts. Fishing vessel broke its mooring line whilst at anchor due to heavy seas and strong winds, and ran aground. Two sailors lost their lives in the shipwreck.

Shipowner and captain prosecuted for manslaughter (failure to ensure that a watch was maintained; failure to check that the audible alarms were in working order).

Ruling. The general delegation of responsibility for health and safety to a ship's master does not relieve the shipowner of the criminal liability to which he is personally subject for wrongful acts or omissions attributable to him and having a clear causal link with the damage. Shipowner held liable.

Key point: A gross negligence which exposed others to a particularly serious risk of which the shipowner could not have been unaware is likely to raise his criminal liability and a *faute inexcusable*. ***Prevention of risk is a key issue.***

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French case law

CA Aix-en-Provence, 6 February 2025, n°24/00345

Facts. Captain victim of a work accident: hurt while taking his shower onboard due to strong waves. Claim for damages against shipowner (based in Isle of Man) and P&I Club on the grounds of *faute inexcusable*.

Ruling.

(i) French law applies as the law with the closest links (French resident and national, ship insured by a French company, care provided in France);

(ii) Because French law applies, direct action against the P&I Club is admissible;

(iii) French jurisdiction is confirmed (place of residence of the seafarer);

(iv) The Court rejects the claim; although the shipowner was negligent because of the absence of measures of prevention of risks, there was no link of causality between the employer's negligence and the accident.

Key point: *Faute inexcusable* requires the proof of a link of causality between the employer's breach of his obligation of safety and the damage to the seafarer.

French case law

Court of Appeal, Rennes, 30 September 2026, No. 23/00651

Facts. A crew member on the research vessel "Atalante" was injured whilst evacuating a crane that had spun out of control. This crew member filed a claim against the shipowner/employer raising a "*faute inexcusable*".

Ruling. Confirmation of "*faute inexcusable*" committed by the employer. The Court found that there had been a deliberate exposure to danger: the employer was aware of weather conditions exceeding the crane's operating limits, and allowed a complex manoeuvre to be carried out in conditions of reduced visibility, showing an insufficient consideration of the risk.

Key point: The Court explicitly mentioned that "***The judge is not required to consider the seriousness of the employer's negligence*** *and* ***must only assess****, from a health and safety perspective,* ***the appropriateness and effectiveness of the measure that the employer should have taken***."

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Possible claims in case of death and injury

1. ENIM / social security scheme

In case of dispute regarding the **qualification as a work accident/professional disease**, to seek payment of care, daily allowances, annuity for permanent disability.

2. Employer / Shipowner

- If failure to cover wages, repatriation and medical expenses as per MLC 2006 and French law

- In case of a *faute inexcusable*, to seek increased annuities and damages

3. P&I Club and insurers

Possible direct action against the insurer depending on:

- The applicable law (admissibility of a direct action);

- the terms of the insurance contract and extent of cover.

4. Third party claim

- Claim against a third party at fault

- Claim of a third party victim against the shipowner (if the victim is a passenger, and not a seafarer)

Cass. ass. plén., 6 Oct. 2006, no. 05-13.255 : a third party to a contract may rely, in tort, on a contractual breach where it caused them damage

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French law - *Jurisdiction and time limits*

1. Jurisdiction

Tribunal judiciaire (civil court) or Conseil des prud'hommes (labour court) ?

Depends :

- if "seamen" or not: *tribunal judiciaire;* or *conseil des prud'hommes.*
- if embarked on a ship under foreign flag: *Conseil de prud'hommes.*
- Compulsory prior conciliation before maritime authority for seamen (Cass. soc., 2 Oct. 2024, No. 22-10.649).
- Social security claim / *faute inexcusable : social chamber of the Tribunal judiciaire*

2. Deadlines and procedure

- Claim for wages: **3 years** as from the date the seafarer knows or ought to know the facts at the origin of the claim.
- Claim for qualification as work accident/ professional disease: **2 years** as from the date of the event or decision from ENIM to stop payment of compensation scheme.
- Faute inexcusable : **2 years** as from the date of the event
- Wrongful termination: **1 year** as from the termination date.



Rules on time bar are not part of French law mandatory core (CA Montpellier, 3/06/2026, n°23/03020). ***Check the time bar under the laws of the contract!***

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<u>Conclusion</u> – *Open question: which next steps for MLC 2006 and the protection of seafarers' rights?*

Effectiveness of rest ; tackle violence and sexual harassment; reinforce management responsibilities and inspection by maritime authorities; improve well-being; maritime and cyber-security…

To be continued!

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TARIN LEMARIÉ
MARITIME TRANSPORT TRADE

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Victor GUERARD
Partner at TARIN LEMARIE

Address : 16 rue Neuve Ste Catherine
F-13007 Marseille
Phone : +33.4.86.68.64.22
Mobile : +33.6.26.34.85.24
vguerard@tarinlemarie.com

www.tarinlemarie.com