

LEGAL STATUS OF CREW MEMBERS ON PLEASURE CRAFT AND VESSELS USED IN NAUTICAL TOURISM

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The paper aims at examining the issues related to the legal status of crew members of pleasure craft and vessels used in nautical tourism from an Italian perspective. Firstly, the definition of crew and its composition on pleasure craft and vessels is examined. Additionally, the legal regime of crew members together with the crew on-board documentation, is discussed. Furthermore, the main similarities and dissimilarities of the crew regime according to the type of pleasure craft and vessel and their use, as well as, the on-board services, is dealt with. Finally, the issue related to the legal classification of "guests", undertaking complementary on-board services of pleasure craft and vessels is considered.

Keywords: *Italian Yachting Code; pleasure craft; pleasure vessel; crew member; legal status; passenger; guest; crew; legal classification; remuneration.*

1. PLEASURE NAVIGATION REGULATION AND ITS SPECIFICS

Before examining the issue related to the legal status of crew members on pleasure craft and vessels used in nautical tourism under Italian Law, it is necessary to briefly highlight some specific aspects of the Italian legal system in relation to pleasure navigation.

Pleasure navigation is defined as navigation taking place out at sea and inland waters for non-profit sporting or recreational purposes by pleasure craft and vessels. Pleasure navigation can be also undertaken for commercial purposes, as long as it is recreational or sporting activity. In Italy, the main legal

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sources on pleasure navigation include: Italian Yachting Code approved by the Legislative Decree, 18 July 2005, No. 171 (*Codice della Nautica da Diporto – “I.Y.C.”*) according to the delegated Law, 8 July 2003, No. 172, Provisions of the revision and revival of the yachting and nautical tourism and Regulation approved under Art. 65 I.Y.C. by the Ministerial Decree, 29 July 2008, No. 146. The same Code replaced the Law, 11 February 1971 No. 50, Regulation on Yachting¹, which was partially obsolete and contrary to European Law ².

The regulation of pleasure navigation has a particular aspect, when compared to that of navigation in general. This aspect is sanctioned and accentuated by Art. 1.3 of the same Italian Yachting Code, which places a derogation on the source hierarchy. The legal sources, such as regulations and references, if they relate to pleasure navigation prevail over the Italian Navigation Code (*Codice della Navigazione – “I.N.C.”*) and its relative provisions. The Italian regulation on yachting is consistent with the distinctive criteria between pleasure and commercial navigation³.

The legal regime for the crew of a pleasure craft and vessel is coherent with the will of the national legislator to adopt pleasure navigation regulations aimed at encouraging the development of the sector, while at the same time safeguarding navigation safety and security; and the typically amateur nature of this type of navigation. The consideration of this intent permits overcoming the interpretative uncertainties, which, as will be discussed later, have characterised the special crew members regulations⁴.

The employer-employee relationships related to navigation are set in the contract of subordinate employment, as regulated by the Italian Civil Code (*Codice civile – “I.C.C.”*). These relationships, referring to on-board organisation have a specific structure. The on-board employment contracts of a ship are regulated by the Italian Navigation Code, the general discipline of the contract of subordinate employment⁵ and the national collective bargaining agreements, as well as, by the clauses of individual contracts.

¹ Art. 66, lett. e, I.Y.C.

² See: Directive of the European Parliament and of the Council of 16 June 1994 on the approximation of the laws, regulations and administrative provisions of the Member States relating to recreational craft.

³ A. Lefebvre d’Ovidio – G. Pescatore – L. Tullio, *Manuale diritto della navigazione*, Milano, 2016, 240; M. Grigoli, *La disciplina della nautica da diporto e del turismo nautico*, Bologna, 1997, 216.

⁴ M. Grigoli, *La disciplina della nautica da diporto e del turismo nautico*, cit., 216.

⁵ Art. 1 of the I.N.C.

2. THE DEFINITION OF CREW OF PLEASURE CRAFT AND VESSELS

The definition of crew of pleasure craft and vessels⁶ does not differ from the definition of crew of a ship, as established by the Italian Navigation Code: crew, is all persons embarked on board to provide services for the ship⁷. The crew is composed of the master, the officers and all other persons embarked and charged with on-board services, including those charged with complementary services (waiters, chefs, and so on)⁸. However, the provisions contained in the Italian Yachting Code for some aspects reveal the odd nature of the crew of pleasure craft and vessels when compared to that of a ship⁹.

3. THE LEGAL REGIME OF CREW MEMBERS OF PLEASURE CRAFT AND VESSELS

The Italian legal regime of crew members differs depending on whether they are embarked on a pleasure craft, or pleasure vessel. In addition, this regime differs according to the use of the craft and vessel and according to the on-board services performed by the crew¹⁰.

The Italian Authority, appointed to provide the navigation licence for yachting craft and vessels, stipulates the highest number of the persons according to the technical documentation provided¹¹. As far as crew composition is concerned, the Italian Yachting Code assigns to the master of a pleasure craft or vessel, the task of establishing the minimum number of crew members to undertake the navigation¹².

⁶ According to Art. 3, lett. b and c, I.Y.C., the pleasure craft is more than 10 metres up to 24 metres in length, while the pleasure vessel is more than 24 metres according to the harmonized provisions EN/ISO/DIS/ 8666.

⁷ P. Rossi, *Navigazione da diporto*, in *Enciclopedia del diritto* XXVII/1977, 743, 755; U. La Torre, "Ospite" e membro di equipaggio: una singolare commistione, in *Rivista di Diritto dell'Economia, dei Trasporti e dell'Ambiente* (www.giureta.unipa.it), § 4.

⁸ Art. 316 and 115 I.N.C.

⁹ P. Rossi, *Navigazione da diporto*, cit., 756; U. La Torre, "Ospite" e membro dell'equipaggio: una singolare commistione, in *Rivista di diritto dell'economia, dei trasporti e dell'ambiente*, 2008 (<http://www.giureta.unipa.it>); A. Lefebvre d'Ovidio – G. Pescatore – L. Tullio, *Manuale di diritto della navigazione*, cit., 242.

¹⁰ Regarding the crew of the yachting craft and vessels in the Italian doctrine see: M. Grigoli, *La nautica da diporto, analisi e risposte normative*, Bologna, 1997, 187 ss.; *Il regime giuridico dell'equipaggio dell'unità da diporto*, in *Studi in memoria di M. L. Corbino*, Milano, 1999, 293 ss.; *La disciplina del diporto e turismo nautico*, Bari, 2005, 171 ss.

¹¹ Art. 34 I.Y.C.

¹² Art. 35 I.Y.C.

According to the previous regulation, the number of the crew members was established by the same Authority which provides the navigation licence¹³. This Authority established and noted in the navigation license the minimum personnel level according to technical regulations. The Italian Yachting Code now stipulates that only the licence should indicate the maximum number of the persons that can be carried on board¹⁴.

Under the current regulation, the master of the pleasure craft or vessel shall ensure, prior to departure, the presence on board of sufficient and qualified personnel to handle the necessary navigation tasks, also taking into consideration any marine weather forecasting and distance from safe harbours¹⁵. In the absence of an adequate number of qualified on-board crew members, navigation is not permitted for pleasure craft or vessels. This provision does not depart from the provisions of the Italian Navigation Code, which establish that the master, prior to departure, shall personally ensure that the ship is seaworthy for the navigation and well-equipped¹⁶. Nevertheless, the same Navigation Code provides that the Harbour Master shall verify the compliance of the regulation related to the composition of the crew of a ship, as established by a decree of the Minister of Infrastructures and Transportation¹⁷.

It should be noted that the qualifications of crew members of a pleasure craft or vessel comprise of specific public duties/obligations related to the organisation and discipline on board. However, the employment of a crew member is a private matter involving private interests, whereas the safety and security of the navigation are a matter of public interest¹⁸.

4. THE CREW OF A PLEASURE CRAFT AND VESSEL

If one intends to embark on a pleasure craft or vessel as a crew member, the seafarer must be registered in the register named "*Matricole*". The owner of the pleasure craft or vessel shall request, under Art. 38 of the Italian Yachting Code, of the competent authority for a specific document, named a Crew Roll "*Ruolino di equipaggio*", for the purpose of recording the person's name and other particu-

¹³ Art. 33 of the Law of 11 February 1971 No 50 on Yachting.

¹⁴ Art. 23.2 I.Y.C.

¹⁵ M. Grigoli, *Ombre e luci della nautica da diporto*, in *Diritto dei trasporti* 2007, 89, 103.

¹⁶ Art. 297 I.N.C.

¹⁷ Art. 317 I.N.C.

¹⁸ A. Querci, *Diritto della navigazione*, Padova, 1989, 322, 337.

lars indicated in the same document¹⁹. This Crew Roll has a 3-year validity from the date of its release. The endorsements contained in the mentioned document are annotated in the navigation licence. On its expiry, the Maritime Authority, or the Consular Authority withdraws the document and communicates this to the National Social Security Institute (*Istituto Nazionale della Previdenza Sociale* (INPS)) for the final removal of contributions due, and these are subsequently returned to the competent office²⁰. Lastly, the same Crew Roll attests the professional importance of navigation activities carried out on-board pleasure craft, which as such, must be controlled and protected.

In respect of pleasure craft and vessels, only seafarers (*Gente di Mare*) are considered. They are divided into three categories: 1. officers and low-level support personnel, mechanical and general on-board technical services; 2. on-board complementary services personnel; 3. local traffic and coastal fishing personnel²¹.

Seafarers belonging to these categories are enlisted in the mentioned special roll named "*Matricole*" held by local administration offices²².

To be enrolled, one has to be European Union citizen with a minimum age of 16 years and have other specific requirements, such as being physically fit, being able to swim and row a boat, be an EU resident and have no criminal record²³.

The seafarers are supplied with a navigation booklet, appropriate for the maritime profession²⁴. It is issued by the head of the enrollment office and is equivalent to an employment document, as well as being a personal identity and legal document to exercise maritime duties.

The nautical licence used by seafarers for the period of navigation on-board pleasure craft and vessels is not recognized for the professional purposes under the Italian Navigation Code and relevant enforcement regulations²⁵.

¹⁹ Art. 35 I.Y.C. and Art. 23 of the Yachting Regulation (Ministerial Decree 28 July 2008 No 146).

²⁰ Art. 23 of the Yachting Regulation (Ministerial Decree 28 July 2008 No 146).

²¹ Art. 115 I.N.C. and Art. 219 of the Regulation for the implementation of the Italian Navigation Code (Maritime Navigation) (*Regolamento per l'esecuzione del Codice della navigazione (Navigazione Marittima)*) approved by the Decree of the President of the Republic of 15 February 1952, No. 328.

²² Art. 118 I.N.C.

²³ Art. 119 I.N.C.

²⁴ Art. 122 I.N.C.

²⁵ Art. 36 I.Y.C.

Regarding crew member social security contributions for pleasure craft and vessels, crew only need to be registered in specific national Registers (*Registro delle Imbarcazioni da Diporto* (RID) and *Registro delle Navi da Diporto* (RDN)), managed by the Maritime Authority (*Capitaneria di porto*).

According to the Italian Maritime Labour Law, only members of the crew of pleasure craft or vessels need to be registered for social security, with the exception of those who are not embarked through an employment contract. This exclusion regards only the persons undertaking pleasure navigation as a hobby, even if they operate on board with a nautical licence²⁶.

5. THE CREW OF CHARTERED PLEASURE CRAFT AND VESSELS

The Italian Yachting Code has entrusted a decree of the Ministry of Infrastructures and Transportation the task of establishing a regulation on professional qualifications in performing on-board services of chartered pleasure craft and vessels, as well as, chartered vessels solely for touristic purposes, and for crew members employed on pleasure vessels²⁷.

²⁶ See: Art. 4, paragraphs 1 and 2, lett. g, and Art. 5, lett. c and d, Law 26 July 1984 n. 413 on the reorganization of the seafarer retirement (*Riordinamento pensionistico dei lavoratori marittimi*) and the circular of 13 December 1999 No 215, Clarifications on the contribution for the crew of ship subject to the Law 26 July 1984 n. 413: Yachting, Privileges, Contributing Protection, Insolvency Proceedings, Deflagging, Knowledge and Collaboration Elements (*Chiarimenti sulla contribuzione dovuta per gli equipaggi delle navi soggette alla legge 26.7.1984 n. 413: diporto, privilegi, tutele contributive, procedure concorsuali, dismissione di bandiera, elementi di conoscenza e collaborazione*). With regard to the insurance and social security regime related to crew members of pleasure craft and vessels, the Italian regulation provides that only the crew members of pleasure craft and vessel are included in the Mandatory General Insurances (*Assicurazioni Generali Obbligatorie*) and in the Single Family Assistance Fund (*Cassa Unica Assegni Familiari* ("CUAF")), which are managed by the National Social Security Institute (*Istituto Nazionale della Previdenza Sociale* ("INPS")). Therefore, there is not compulsory contribution for persons boarded without a contract of employment exercising hobby sailing for pleasure, even if they operate on-board using the so-called nautical license (*patente nautica*), as the owner usually does, or some owners of the vessels in question. The persons registered as seafarers have a social security obligation established according to the Law No 413/1984. See: Circular 22 March 1988 n. 56, Law 26 July 1984 on revision of the seafarer social security contribution regime (*Legge 26 luglio 1984: riordino del Sistema previdenziale dei lavoratori marittimi. Disposizioni in materia contributiva*).

²⁷ See: Art. 2.2., Law No 172/2003 and Art. 37 I.Y.C. In addition, see: Art. 1 of the Ministerial Decree 10 May 2005 No 121, establishing and regulating the professional qualifications of pleasure craft (*Regolamento recante l'istituzione e la disciplina dei titoli professionali del diporto*), approved in agreement with the Minister of Labour and Social Policy. In this regard, in Italian doctrine see: P. Pellegrino, *L'utilizzazione a fini commerciali delle unità da diporto*, in *Trattato breve di diritto marittimo* (a cura di A. Antonini), IV, Milano, 2013, 108, 115.

Regarding the composition of chartered pleasure craft that carries more than six passengers, or is more than eighteen metres in length, the Italian Yachting Code provides that the crew must be composed of at least two persons, whereas the chartered pleasure vessel must have a crew of at least three persons²⁸.

6. NATIONAL COLLECTIVE BARGAINING AGREEMENT FOR SEAFARERS ON PLEASURE CRAFT FOR COMMERCIAL PURPOSES

The financial, regulatory, social security and insurance conditions of Italian seafarers, or those of EU Member States embarked on pleasure craft and vessels used for chartering, are governed by the Italian Navigation Code, as well as by the rules on employment contracts and collective national employment contracts²⁹.

On 17 July 2007, *Confitarma*, the Italian Shipowners Association and trade union organizations signed the national collective bargaining agreement for seafarers embarked on pleasure craft for commercial purposes, even non-exclusively. The agreement governs the employment contract, location and type of boarding, work times, pay, navigation allowance, maritime insurance and accident insurance, as well as, social security, conduct and discipline, employment relationship and termination benefits. This collective national contract has a four-year term for the regulatory part, and biennial for the financial part. It is tacitly renewed each year, unless it is cancelled and remains in force for as long as it is not replaced by a subsequent one.

7. ON-BOARD SERVICES

According to the Italian Navigation Code the persons charged to undertake on-board services are only those registered as seafarers in the previously mentioned roll, named “*Matricole*” and engaged through an employment contract, approved by the master³⁰.

²⁸ Art. 89, Yachting Regulation (Ministerial Decree 28 July 2008 No 146) and Art. 2.2, Law 8 July 2003 n. 172, Provisions of the revision and the revival of the yachting and nautical tourism (*Disposizioni per il riordino e il rilancio della nautica da diporto e del turismo nautico*).

²⁹ See: Art. 35.3 of the Law 20 May 1970 n. 300, named the Worker’s Statute of Rights. In this regard, see: A. Lefebvre d’Ovidio – G. Pescatore – L. Tullio, *Manuale di diritto della navigazione*, cit., 379.

³⁰ Art. 115, 118, 130, 316 and 1178 I.N.C. See: C. Cardillo, *Il rapporto di lavoro nautico*, Padova, 1998, 79; W. D’Alessio, *Arruolamento*, in *Diritto della navigazione* (a cura di M. Deiana), Milano 2010, 18, 20 and 22.

The Italian Yachting Code departs from the Navigation Code with respect to persons embarked on a pleasure craft and vessel that perform on-board services³¹.

As far as pleasure craft is concerned, the on-board services, in the opinion of the master, may be carried out by persons embarked, even those who are guests, or even if they are not Italian citizens³²; provided they are 16 years old and provide deck, bedroom and kitchen services; and 18 years old for machine services³³.

Regarding pleasure vessels, the provisions of the Italian Yachting Code are stricter: the on-board services shall be performed by seafarers duly employed through an employment contract³⁴ and registered in the first category of the roll "Matricole"³⁵.

The details of the seafarers embarked on pleasure craft and vessels are recorded in a special on-board document previously mentioned, named *Ruolino d'equipaggio*, drafted according to a model provided by the Administration through a decree³⁶. The deck and machinery services require a specific qualification in respect to on-board conditions. These services are related to the maintenance of engine, radio equipment other on-board equipment of pleasure craft and vessels.

On-board complementary room and kitchen services on pleasure vessels can be undertaken by persons embarked as guests, if they are 16 years old according to Art. 36.3 I.Y.C.³⁷. These services are not nautical, and they are occasionally

³¹ Regarding the on-board services see: Art. 115 I.N.C. establishes a distinction between the technical services (Art. 115, No 1, I.N.C.) and the complementary services (Art.115, No 2, I.N.C.). According to the report of the Italian Navigation Code the technical services are related to the technical organization (and not the administration activity) of the ship. This organization is directed to operate normally the machinery and other equipment necessary to undertake the navigation and the on-board activities connected to them. At this regard, see: P. Rossi, *Navigazione da diporto*, in *Enciclopedia del diritto* XXVII/1977, 743, 756; D. Gaeta, *Equipaggio della nave e dell'aeromobile*, in *Scritti di diritto della navigazione*, Milano, 1991, 728; M. Grigoli, *Valutazioni sistematiche su alcuni profili dell'attuale assetto del diporto e del turismo nautico*, in *Giustizia civile* 2005, 261.

³² M. Grigoli, *Ombre e luci del codice della nautica da diporto*, cit., 103.

³³ Art. 36.1 I.Y.C.

³⁴ Art. 36.2 I.Y.C.

³⁵ Art. 115 I.N.C. At this regard, see: P. Rossi, *Navigazione da diporto*, cit., 756.

³⁶ See: Mercantile Marine Ministerial Decree 20 March 1973; E. Romagnoli, *Il regime giuridico del diporto nautico alla luce dei recenti mutamenti normativi operati dalla L. 172/03*, in *Diritto marittimo* 2003, 1522, 1573.

³⁷ Art. 36 I.Y.C.

performed on-board (chefs, waiters, musicians, physicians, nurses, and hairdressers). In addition, they do not require a specific qualification as they are not essential for on-board conditions³⁸. Moreover, they have a nautical nature only because they are undertaken on-board³⁹. Furthermore, the Italian Navigation Code stipulates that to perform on-board complementary services, the inscription in the second category of the roll “*Matricole*” is necessary⁴⁰.

Regarding the Art. 36 I.Y.C., it has been noted that the performance of such services by a guest cannot be undertaken by order of the master, but exclusively with the consent of the guest obtained before departure, after having checked the on-board presence of an adequate crew number. These persons are embarked on-board as guests based on a courtesy relationship. Therefore, they are not subject to the on-board hierarchy in the same way as paying passengers. The master may only issue orders to passengers, as established by Art. 1095 I.N.C., in a situation where there is a necessity to comply with an order related to navigation safety or security⁴¹.

The possibility to perform on-board services for the persons embarked as guests, is consistent with the typical amateur nature of the pleasure activity and with the aim to promote the nautical tourism, as long as that the navigation safety is not placed at risk⁴².

8. THE “GUESTS” ON-BOARD A PLEASURE CRAFT AND VESSEL

The possibility for persons not employed to carry out on-board complementary services on pleasure craft and vessels, as well as, deck and machinery on-board services, is established by Art. 36 I.Y.C.⁴³.

³⁸ M. Grigoli, *Il regime giuridico dell'equipaggio dell'unità da diporto*, cit., 305.

³⁹ C. Cardillo, *Il rapporto di lavoro nautico*, cit., 35.

⁴⁰ Art. 115, No 2, I.N.C. At this regard see. D. Gaeta, *Equipaggio della nave e dell'aeromobile*, cit., 55.

⁴¹ U. La Torre, “*Ospite*” e membro di equipaggio: una singolare commistione, cit.

⁴² M. Grigoli, *Contributo alla disciplina della navigazione da diporto*, Padova, 1974, 91; P. Rossi, *Navigazione da diporto*, cit. 756,

⁴³ At this regard, see: U. La Torre, “*Ospite*” e membro dell'equipaggio: una singolare commistione, cit. With regard to the liability aspects, see: L. De Marco, *Naufragio dell'imbarcazione per un oblò lasciato aperto: chi è responsabile?*, case note of Trib. Livorno 31 July 2001, In *Diritto marittimo* 2002, 650; A. Antonini, *Navigazione da diporto e responsabilità*, in *Trattato breve di diritto marittimo* (a cura di A. Antonini), IV, Milano, 2013, 87; *Il trasporto amichevole nella navigazione da diporto: la dottrina navigazionista ispira l'orientamento della Corte di Cassazione*, case note of Cass. It. 19 November 2013 n. 25902, in *Diritto dei trasporti* 2014, 904.

That possibility was already contemplated for passengers by Art. 35 of the previously mentioned Law of 11 February 1971 No. 50, laying down rules on yachting, later repealed⁴⁴. Moreover, Art. 216 I.N.C., also repealed, provided that on sailing pleasure vessels of a gross tonnage not exceeding 50 tonnes, and 25 tonnes for motorized pleasure vessel, personnel not enrolled as seafarers could be embarked provided they were employees of the owner of the vessel, as room service or family personnel⁴⁵.

The current Art. 36 I.Y.C. provides the same possibility for non-enrolled persons to carry out on-board services, but references these as, “persons embarked as guests”. In Art. 36 I.Y.C. the word “passenger”, used in Art. 35 of the Law No 1971/50, and derived from the wording related to the commercial carriage, has been replaced by the word “guest”, considered more appropriate for yachting⁴⁶, but uncommon in the Italian legal language⁴⁷. An author has criticized the use of this word, instead of the phrase, “person transported based on a courtesy conveyance”. The word “guest” implies an extended stay on-board a pleasure vessel, a regular fruition of board and lodging and with a possible collaboration in undertaking the navigation⁴⁸. Therefore, the more appropriate word is “persons transported based on courtesy relationships”, as the pleasure craft and vessel is implied as a temporary stay on board⁴⁹.

According to some, the use of “guests”, or on-board unskilled personnel of pleasure craft and vessels is adherent in the typically amateur nature of pleasure navigation. In addition, the involvement of the guests to provide on-board services is included in the intention of the Italian legislator to promote the pleasure navigation without prejudice to navigation safety and security⁵⁰. In this respect, it should be noted that the Art. 1176 I.N.C. fines the shipowner that embarks a person on-board a ship, as member of its crew without an employment agreement and that is not duly registered in the roll crew “*Matricole*” or has no employment contract. The employment contract breaching this provision is void. Nevertheless, the same contract produces

⁴⁴ G. Righetti, *Trattato di diritto marittimo*, I-2, Milano, 1987, 1177, 1182.

⁴⁵ G. Righetti, *Trattato di diritto marittimo*, cit., 1182.

⁴⁶ E. Romagnoli, *Il regime giuridico del diporto nautico alla luce dei recenti mutamenti normativi operati dalla L. 172/03*, cit., 1572.

⁴⁷ U. La Torre, cit., § 2.

⁴⁸ G. Camarda, *Brevi note sui danni del trasportato di cortesia nell'unità da diporto*, in *Diritto dei trasporti* 2004, 751, 754.

⁴⁹ U. La Torre, cit., § 2.

⁵⁰ M. Grigoli, *Contributo alla disciplina della navigazione da diporto*, cit., 91.

its effects throughout the employer-employee relationship⁵¹. Therefore, the person embarked is considered a member of the crew in the broad sense of its meaning⁵².

Concern has been expressed about the provision contained in the Art. 36 I.Y.C., which reveals an undetermined legislative compromise solution between nautical dilettantism and professionalism. In this respect, reference was made to the provision contained in the last paragraph of the same Art. 36 I.Y.C., which does not apply to the professional regime provided by the Italian Navigation Code for seafarers embarked on pleasure craft and vessels in providing boarding services through the nautical licence. This provision would apply to a working relationship, qualified by the identification of individuals in possession of certain abilities and technical requirements, the reasons for a dilettantism that is irrelevant to that relationship⁵³. In answer to this criticism, it has been argued that the provision, which is exceptional, is intended to prevent non-professional qualifications from being used to gain professional qualifications. On the other hand, the mentioned provision implies a mere friendly relationship consistent with the intention of the legislator to increase participation and interest in nautical leisure activities, and to create the conditions for improving the nautical and practical capabilities of interested parties in the pleasure nautical sector⁵⁴.

Three possible qualification solutions for “guest” are presented in the doctrine. The first solution foresees that the “guest” remains as such, even when carrying out on-board services. The second solution is that when “guest” is performing on-board services, maintains both qualifications. The “guest” acquires the qualification of a crew member only when the person undertakes the on-board services. The third solution is that when the “guest” providing on-board services loses the qualification of a “guest” and becomes a crew member⁵⁵.

The first possible solution does not seem to have been accepted in the doctrine⁵⁶. When the guest undertakes the on-board services, the person is considered a crew member subject to the instructions of the master.

⁵¹ G. Pellicani, *Il lavoro nautico*, in *Contratti di lavoro* (a cura di A. Vallebona), II, Torino, 2009, 1372 and 1373; A. Lefebvre d’Ovidio – G. Pescatore – L. Tullio, *Manuale di diritto della navigazione*, cit., 387.

⁵² Art. 1178 I.N.C.

⁵³ C. Gessa, *Profili pubblicistici della disciplina giuridica della navigazione da diporto*, in *Studi in onore di G. Chiarelli*, II, Milano, 1974, 1177, 1186.

⁵⁴ M. Grigoli, *Il regime giuridico dell’equipaggio dell’unità da diporto*, in *Studi in memoria di M.L. Corbino*, Milano, 1999, 293, 303.

⁵⁵ U. La Torre, cit., § 6.

⁵⁶ U. La Torre, cit., § 6.

Regarding the second solution, there are those who argued that people embarked on yachting craft and vessels as passengers are not part of the crew. However, they perform services for the pleasure craft and vessel, and therefore are essentially crew members⁵⁷. A hybrid component of the crew has evolved risking the creation of delicate disciplinary problems to the detriment of a proper provision of on-board services⁵⁸.

Two authors consider these objections unfounded according to Art. 35 of the previously mentioned Law No. 50/1971, later repealed, which provided the possibility for passengers to undertake the on-board services⁵⁹.

The first author considers that performance of the complementary on-board services by the passenger is important from a public point of view. The passenger becomes part of the crew and the person is subject to the authority on board as a crew member. Although there is not a *tertium genus*, the status of passenger and crew member can be combined. Therefore, the distinction between passenger and crew member is not relevant in yachting⁶⁰.

The second author considers that Art. 35 assumes a courtesy relationship fitted into the main objectives of the same Law, which aimed at promoting yachting activity through an improvement of the technical and psychophysical ability, as well as, the practice of those interested in performing this activity. Nevertheless, the passengers undertake the on-board services based on an employer-employee relationship subject to the respective regulation. The same author also specifies that the law level of qualification required to perform the complementary on-board services has not produced any serious problem with regard to their accomplishment⁶¹. Another author shares the same position pursuant to Art. 36 I.Y.C., which provides the possibility for guests to perform complementary on-board services. In this case, the relationship between the guests and the master is considered legally binding, as it is necessary prior to the de-

⁵⁷ G. Camarda, *La responsabilità per danni a terzi nel corso dell'attività nautica ricreativa e sportiva*, in *La navigazione da diporto*, Atti del Convegno, Trieste 27 marzo 1998, (a cura di A. Antonini e Francesco Morandi), Milano, 1999, 87, 108 and 109.

⁵⁸ D. Gaeta, *L'ordinamento della navigazione da diporto*, in *Rivista di diritto della navigazione* 1972, I, 21, 37.

⁵⁹ M. Grigoli, *Contributo alla disciplina della navigazione da diporto*, cit., 95; G. Righetti, *Trattato di diritto marittimo*, cit., 1783; M. Grigoli, *Contributo alla disciplina della navigazione da diporto*, cit., 95.

⁶⁰ G. Righetti, *Trattato di diritto marittimo*, cit., 1783. This author considers that the crew of pleasure craft and vessel could be classified as unincorporated association. With regard to the crew in general, the majority of the Italian authors rejects this classification. See: L. Menghini, *I contratti di lavoro nel diritto della navigazione*, Milano, 1996, 212.

⁶¹ G. Grigoli, *Ombre e luci del codice della nautica da diporto*, cit., 103.

parture of the pleasure craft or vessel that the complementary on-board services are duly undertaken for safety and security reasons. The initial relationship between the guests and other persons on board a pleasure craft or vessel dismisses its courtesy nature. The guests accepting to perform these services become employees. Therefore, they enjoy the navigation not on the basis of a courtesy relationship, but for the on-board services performed as crew members for the pleasure craft and vessel. Their wages are equal to the guests' advantage resulting from the yachting⁶².

This position is not shared by those who consider that passengers, notwithstanding their undertaking complementary on-board services, are not entirely subject to the private and public regulation related to crew members. This could create problems regarding the relationships with the other crew members as well as with the master from a disciplinary and hierarchical point of view⁶³.

Another author, referring to the same Art. 35 of Law No. 50/1971, found that persons engaged in the provision of complementary on-board services, albeit not categorised as crew, have "the dual role of passengers and crew members", without giving rise to a *tertium genus*⁶⁴.

Such a solution is not accepted by those who consider that this issue is not easy to determine in a nutshell, as the respective profiles are irreconcilable. People embarked on pleasure craft and vessels belong only to one of the two categories: passengers or crew members. The passengers are excluded from the on-board hierarchy⁶⁵.

There is no need for coincidence between the status of a crew member and an employee⁶⁶. However, this relationship in its implementation phase is structu-

⁶² U. La Torre, cit., § 6.

⁶³ P. Rossi, *Navigazione da diporto*, cit., 756.

⁶⁴ R. Longobardi, *nota a Cass. it. 14 luglio 1964 n. 1900 in Massimario di giurisprudenza del lavoro 1964*, 339, 341; D. Gaeta, *Equipaggio della nave e dell'aeromobile*, cit., 49, footnote No 1; P. Rossi, *Navigazione da diporto*, cit., 756.

⁶⁵ D. Gaeta, *Equipaggio della nave e dell'aeromobile*, cit., 58. Another author considers that the passengers are placed at the last level of the on-board hierarchy. At this regard, see: A.- R. Werner, *Traité de droit maritime général*, Genève, 1964, 125; C. Cardillo, *Il rapporto di lavoro nautico*, cit., 86. This author estimated that the passengers cannot be considered as part of the crew in the light of the definition of a passenger provided by Art. 3 of the Law 5 June 1962 n. 616 on Safety of Navigation and Life at Sea. Nevertheless, they are subject to the on-board hierarchy according to the Art. 1256 and 1257 I.N.C.

⁶⁶ G. Camarda, *La responsabilità per danni a terzi nel corso dell'attività nautica ricreativa e sportiva*, cit., 108 e 109.

rally relevant as the work factor of the crew member and is therefore governed by the relevant private and public disciplines. On the other hand, owing to the modest level of qualifications required for the provision of on-board services, the mentioned provision has not been considered to have determined, or have caused a degradation of on-board services⁶⁷.

Concerning the third possible solution, it has been argued that the “guest”, having accepted to perform the on-board services, has relationship with the master that is no longer an act of courtesy, but should be considered as actual work. Apart from emergency situations, if the passenger performs on-board services, the person becomes a part of the crew. The legality of the employment relationship derives, according to the same author, from the same Art. 35 and 36 of the N.P.C., which requires the master to ensure, prior to departure, the regular completion of the vessel on-board services, and to verify the correct composition of the crew for performing safe navigation duties. The person on-board ceases to be a “guest” and partakes in the navigation, not for courtesy, but for work purposes, which is equivalent to the person’s remuneration. Ultimately, the guest who provides on-board services on pleasure craft and vessels becomes a part of the workforce. The provision of such services cannot be based on an exchange of courtesy, between hospitality and on-board work for pleasure craft and vessels.

Since Art. 35 of the Law No. 51/1970, has no specifications, one author considers that the persons boarded on a pleasure craft or vessel as passengers can undertake the on-board services without remuneration. Nevertheless, in the report annexed to the bill, it has been specified that the employment of persons is not registered in the roll “*Matricole*” as being unpaid crew members. Therefore, these persons cannot undertake on-board services with the intent to profit⁶⁸.

9. SOME FINAL CONSIDERATIONS

The legal classification of the “guest” in terms of complementary on-board services as a crew member of a pleasure craft or vessel, requires some considerations.

Although the position could be a dual one, for the authors who consider that the guest is a crew member, the remuneration as an advantage deriving from yachting due to the “guest” as an employee does not seem to be considered

⁶⁷ G. Grigoli, *Dipporto e turismo nautico*, Padova, 2004, 155 and 156.

⁶⁸ D. Gaeta, *L'ordinamento della navigazione da diporto*, cit., 37.

an aspect of dualism. This advantage does not seem to be included among the special forms of remuneration provided by the Italian Labour Law to substitute money⁶⁹.

If the guest carries out on-board services, he joins the crew⁷⁰. Therefore, he is entitled to receive a remuneration established by the Italian law, or the national collective bargaining agreements, for seafarers.

If the guest undertakes the same service duties without remuneration and being part of the crew, his work activity could be considered as an unpaid work⁷¹. This kind of work is only permitted with regard to particular circumstances and relationships between the employer and the employee, for example, when a service is undertaken on a courtesy basis, or for altruism⁷².

Unpaid work necessitates the analysis of the willingness of the parties, and the assessment of their relationships.

If the position of the authors who do not acknowledge the work as unpaid is shared, the on-board activities carried out by the guests without remuneration should be considered to be on the basis of a courtesy relationship⁷³. This relationship is not legally binding and therefore it excludes the right of the employee to receive remuneration⁷⁴.

Furthermore, it could be considered that the guests as employees could undertake the on-board services waiving their right of remuneration in order to obtain a material advantage in turn. In this case, the Italian Supreme Court (*Corte di Cassazione*) admits the gratuitousness only in particular circumstances (work activity, social and economic conditions of the parties, their relationships,

⁶⁹ Art. 2099 I.C.C.

⁷⁰ B. Balletti, *Il rapporto di lavoro nautico*, Napoli, 1966, 192 and 193; D. Gaeta, *Equipaggio della nave e dell'aeromobile*, cit., 49.

⁷¹ B. Balletti, *Il rapporto di lavoro nautico*, cit., 192 and 193; D. Gaeta, *Equipaggio della nave e dell'aeromobile*, cit., 49.

⁷² With regard to the unpaid work, see: T. Treu, *Onerosità e corresponsività nel rapporto di lavoro*, Milano 1968, quoted by G. Perone – A. D'Andrea, *La retribuzione*, in *I contratti di lavoro* (a cura di A. Vallebona), I, Torino, 2009, 709, 710; R. De Luca Tamajo – F. Carinci – P. Tosi – T. Treu, *Diritto del lavoro*, II, *Il rapporto di lavoro subordinato*, Torino, V ed., 2003, 44.

⁷³ R. Scognamiglio, *Considerazioni sulla onerosità del lavoro subordinato*, in *Rivista giuridica de lavoro* 1960, II, 600, 601 and 604.

⁷⁴ A. De Felice, *La retribuzione e il trattamento di fine rapporto*, Torino, 2007, 391.

and so on), which can establish as a fact that the renunciation of the right of remuneration is lawful⁷⁵.

Finally, it seems that in the light of the yachting aspects and aims, the limited on-board period, the non-commercial use of the pleasure craft and vessels, the on-board services performed and the inexistence of a social security obligation, guests do not perceive a remuneration as their work is unpaid, or they waive their remuneration rights.

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⁷⁵ R. De Luca Tamajo – F. Carinci – P. Tosi – T. Treu, *Diritto del lavoro*, II, *Il rapporto di lavoro subordinato*, cit., 2003, 44. With regard to this position, see *ex multis*: Cass. It. 6 April 1999 n. 3304, in *Diritto & Pratica del Lavoro* 2007, 48; Cass. It. 28 March 1998 n. 3290, *Rivista Italiana di Diritto del Lavoro* 1999, II, 27.

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Sažetak:

**PRAVNI STATUS ČLANOVA POSADE NA PLOVILIMA ZA RAZONODU I
OSTALIM PLOVNIM OBJEKTIMA KOJI SE KORISTE
U NAUTIČKOM TURIZMU**

U radu se iz talijanske perspektive razmatraju pitanja vezana uz pravni status članova posade na plovilima za razonodu i ostalim plovnim objektima koji se koriste u nautičkom turizmu. Prvo se razmatra definicija posade i njezin sastav. Pored toga, raspravlja se o pravnom režimu članova posade kao i o dokumentaciji posade na brodu. Nadalje, obrađuju se glavne sličnosti i različitosti režima posade prema vrsti plovnih objekata, kao i usluge na brodu. Konačno, razmatra se pitanje pravne klasifikacije "gostiju" koji pružaju komplementarne usluge na plovilima za razonodu i ostalim plovnim objektima koji se koriste u nautičkom turizmu.

Ključne riječi: talijanski Zakon o rekreacijskoj plovidbi; plovilo za razonodu; član posade; pravni status; putnik; gost; pravna klasifikacija; plaća posade; nautički turizam.