

IMLI **e**-News

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PROFESSOR OF LABOUR AND SOCIAL SECURITY LAW LECTURES AT IMLI

Professor Olga Fotinopoulou Basurko (Professor T.U. of Labour and Social security Law, University of the Basque Country (UPV/EHU)) visited IMLI on 6 February 2017 and gave a lecture on ‘the Law of the Flag as Connecting Factor to Resolving Maritime Employment Contracts Conflict of Laws (ECJ's Judgments)’ to the IMLI Class of 2016 – 2017.



Professor Olga Fotinopoulou Basurko (Professor T.U. of Labour and Social security Law, University of the Basque Country (UPV/EHU)) with the IMLI Class of 2016 - 2017

Professor Fotinopoulou Basurko began her lecture by asking, ‘Is the law of the flag still the main connecting factor to resolving international maritime labour law cross-border disputes?’

This question set the scene for a fruitful and an interactive discussion concerning the law applicable to employment and social security matters relating to seafarers. The attention of the class was drawn to the fact that the law of the flag State, which is an offshoot of the territorial principle in international law, is considered the most effective legal order regulation on-board juridical relation. Thus, maritime employment relations have been linked to the system of ship registration and flagging. To support this assertion, Professor Fotinopoulou Basurko made reference to the famous decision in *Lauritzen vs Larsen*, where it was held that “Perhaps the most venerable and universal rule of maritime law is that which gives cardinal importance to the law of the flag”.

She explained further that the law of the flag meant that in practice, aside from navigation which is deemed to be international, all other factors of the ship’s operation, such as the workforce are determined by the law of the flag State. She invited that class to consider the reverse of the above position of the law by asking the following questions:

Might it be necessary to consider reversing the logical order of this thinking for the future? Would it be possible to change this perspective in order to consider linking maritime employment contracts first with the vessel’s real place of business rather than the state providing the vessel’s nationality/flag? Is it possible to balance economic interests with the protection of mobile employees?



A Cross-section of the IMLI Class of 2016 – 2017

She engaged the class in analysing the decisions of the Court of Justice of the European Union in two interconnected cases (*Koezsch* and *Voogsgeerd*), dealing with the employment contract of workers employed in the international transport sector, including ships. The class further discussed

the impact of the cases on maritime intermediaries specializing in contracting seafarers and the criterion of the place of engagement. The role of private international law instruments was also discussed, particularly conflict of laws in resolving cross-border employment disputes and the relevance of the *lex loci laboris* (law of the place of work) to the resolution of such disputes.

Professor Fotinopoulou Basurko informed the students that the criterion of *lex loci laboris* has traditionally been applied in analogy to the law of the flag in cases of the international maritime employment contracts and informed them further of the reasons for this analogy.

Other pertinent areas discussed included the social security law applicable to seafarers and the protection of seafarers in cases of Ship-owners' insolvency.

Professor Fotinopoulou Basurko obtained her Law Degree from the University of the Basque Country (UPV/EHU) in 1998 and Advanced Studies Diploma in European Law (UPV/EHU) in 2001. In 2004, she obtained her Doctorate Degree in Law, with distinction, from UPV/EHU. Her thesis, "*The Law applicable to the international maritime employment contract*" was supervised by Professor Landa Zapirai. In 2010 she obtained a Degree in Philosophy from the same University. She is a Member of the Observatory of seafarers' rights (France) in collaboration with Seafarers' rights centre (London) since 2006, and Director of "Transnational Labour law and Transport" Research Group at the University of the Basque Country since 2015. In 2010, she was Legal Advisor to the Italian Transports Ministry and Italian Stella Maris Foundation in relation to the "Seafarers Abandonment in ports" (L'abandono della gente del mare nei porti stranieri).

Professor Fotinopoulou Basurko is currently a Senior Lecturer in Labour Law and Social Security Law at the University of the Basque Country (UPV-EHU). In 2013, she won the "Juan Rivero Lamas" Prize for the best paper presented to the XXIII Spanish National Labour and Social Security Law Congress.

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