

**2006 GUIDELINES IN FAIR TREATMENT OF SEAFARERS IN THE EVENT
OF A MARITIME ACCIDENT (the Guidelines)**

1. Have the Guidelines been passed into the law/s of your country?

ANSWER: NO. At the same time it has to be noted that some provisions of the Guidelines is provided by national law of Ukraine, but not in relation to seafarers exclusively (for instance, in case of a maritime accident), but to human beings in general.

2. In the Guidelines have been passed into the law/s of your country, have all or some of the paragraphs of the Guidelines been passed into the law/s of your country?

ANSWER: SOME. As it is mentioned above, some provisions of the Guidelines, related, as a rule, to the human rights, are stipulated by national law and described below.

3. If some of the paragraphs of the Guidelines have been passed into the law/s of your country, please tick the paragraphs of the Guidelines that have been passed into the law/s of your country.

PARAGRAPH 1	NO.
PARAGRAPH 2	NO.
PARAGRAPH 3	NO.
PARAGRAPH 4	NO.
PARAGRAPH 5	YES.
PARAGRAPH 6	NO.
PARAGRAPH 7	NO.
PARAGRAPH 8	NO. However, some Ukrainian legal acts stipulate almost the same definitions.
PARAGRAPH 9 (9.1-9.22)	YES: 9.1-9.9, 9.11-9.16, 9.18-9.22. NO: 9.10, 9.17
PARAGRAPH 10 (10.1-10.12)	YES: 10.1-10.8, 10.10-10.12. NO: 10.9
PARAGRAPH 11 (11.1-11.8)	YES: 11.1-11.3, 11.5-11.8. NO: 11.4.
PARAGRAPH 12 (12.1-12.7)	YES: 12.1-12.3, 12.6-.12.7. NO: 12.4, 12.5.
PARAGRAPH 13 (13.1-13.4)	YES.

4. If some or all of the paragraphs of the Guidelines have been passed into the law/s of your country, does the law/s give rights to seafarers which are enforceable in your courts?

ANSWER: YES.

5. If some or all of the paragraphs of the Guidelines have been passed into the law/s of your country, please identify the specific law/s, i.e. title of the law/s, and date of the law/s, and relevant provisions in the law/s.

ANSWER:

- 1) **Constitution of Ukraine**, 28.06.1996. Relevant provisions are as follows:
 - a. **Article 21.** All people shall be free and equal in their dignity and rights. Human rights and freedoms shall be inalienable and inviolable.
 - b. **Article 24 (extract).** Citizens shall have equal constitutional rights and freedoms and shall be equal before the law.

There shall be no privileges or restrictions based on race, skin colour, political, religious, and other beliefs, gender, ethnic and social origin, property status, place of residence, linguistic or other characteristics.

- c. **Article 26 (extract).** Foreigners and stateless persons staying in Ukraine on legal grounds shall enjoy the same rights and freedoms and bear the same duties as citizens of Ukraine, except as restricted by the Constitution, laws, or international treaties of Ukraine.
- d. **Article 29.** Every person shall have the right to freedom and personal inviolability.

No one shall be arrested or held in custody except under a substantiated court decision and on the grounds and in accordance with the procedure established by law.

In the event of an urgent necessity to prevent or stop a crime, bodies authorised by law may hold a person in custody as a temporary preventive measure, the reasonable grounds for which shall be verified by court within seventy two hours. The detained person shall be immediately released if a substantiated court decision regarding his detention is not served to them within seventy-two hours.

Every person, arrested or detained, shall be informed without delay of the reasons for his arrest or detention, apprised of his rights, and from the moment of detention, shall be given an opportunity to personally defend himself/herself or to receive legal assistance from a defender.

Every person detained shall have the right to challenge his detention in court at any time.

Relatives of an arrested or detained person shall be informed immediately of such an arrest or detention.

- e. **Article 55.** Human and citizen rights and freedoms shall be protected by court.

Everyone shall be guaranteed the right to challenge in court the decisions, actions, or inactivity of State power, local self-government bodies, officials and officers.

Everyone shall have the right to appeal for the protection of his rights to the Verkhovna Rada of Ukraine Commissioner for Human Rights (Ombudsman).

After exhausting all domestic legal instruments, everyone shall have the right to appeal for the protection of his rights and freedoms to the relevant international judicial institutions or to the relevant bodies of international organisations of which Ukraine is a member or participant.

Everyone shall have the right to protect his rights and freedoms from violations and illegal encroachments by any means other than prohibited by law.

- f. **Article 56.** Everyone shall have the right to compensation, at the expense of the State authorities or local self-government bodies, for material and moral damages caused by unlawful decisions, actions, or inactivity of State power, local self-government bodies, officials, or officers while exercising their powers.
- g. **Article 57.** Everyone shall be guaranteed the right to know his rights and duties.

Laws and other regulatory legal acts defining the rights and duties of citizens shall be brought to the notice of the population in compliance with the procedure established by law.

Laws and other regulatory legal acts defining the rights and duties of citizens, which have not been brought to the notice of the population in compliance with the procedure established by law, shall be invalid.

- h. **Article 59.** Everyone shall have the right to legal assistance. Such assistance shall be rendered free of charge in cases stipulated by law. Everyone shall be free to choose the defender of his rights.

In Ukraine, the advocate shall act to ensure the right to defence against accusations and to provide legal assistance during the hearing of cases in courts and other state bodies.

- i. **Article 62.** A person shall be presumed innocent of committing a crime and shall not be subjected to criminal punishment until his guilt is proved through a legal procedure and established by a court verdict of guilty.

No one shall be obliged to prove his innocence of committing a crime.

An accusation shall not be based on illegally obtained evidence or on assumptions. All doubts in regard to the proof of guilt of a person shall be interpreted in his favour.

In the event of revocation of a court verdict as unjust, the State shall compensate the material and moral damages caused by the groundless conviction.

- j. **Article 63.** A person shall not bear responsibility for refusing to testify or to provide explanations about himself/herself, members of his/her family, or close relatives, the circle of whom is determined by law.

A suspect, an accused, or a defendant shall have the right to a defence.

A convicted person shall enjoy all human and civil rights, with the exception of restrictions determined by law and established by a court verdict.

- 2) **European Convention for the Protection of Human Rights and Fundamental Freedoms**, 1950.
- 3) **Vienna Convention on Consular Relations**, 1963. Articles 36-37 of the Convention.
- 4) **The Law of Ukraine "On Gratuitous Legal Aid"**, No. 3460-VI dd. 02.06.2011. The relevant provisions are as follows:
- a. **Article 3. Right to Gratuitous Legal Aid**

The right to gratuitous legal aid means guaranteed by the Constitution of Ukraine the possibility of a citizen of Ukraine, foreigners and stateless persons, including refugee or person who needs additional protection, get the full gratuitous primary legal aid and the possibility of certain categories of persons to receive gratuitous secondary legal aid in cases stipulated by this Law.

- b. **Стаття 4. Non-discriminatory Guarantees in Access to Gratuitous Legal Aid**

Exercising the right to free legal aid, privileges or restrictions applying to individuals based on race, skin color, political, religious or other beliefs, gender, ethnic or social origin, place of residence, linguistic or other characteristics shall not be allowed.

The law provides for two types of legal aid: primary and secondary.

Article 7 of the Law defines the primary legal aid as follows:

- "1. Gratuitous primary legal aid - the kind of state guarantee aimed to inform people about their rights and freedoms, the order of their enforcement, their restoration in case of violations and procedure for appealing against decisions, actions or omissions of state authorities, local authorities and officials.*
- 2. Gratuitous primary legal aid includes the following legal services:*
- 1) delivery of legal information;*
 - 2) providing of consulting services and explanations on legal issues;*
 - 3) drafting of applications, complaints and other legal documents (except for procedural documents);*
 - 4) assistance in access to secondary legal aid and mediation".*

Article 13 of the Law defines the secondary legal aid as follows:

- “1. *Gratuitous secondary legal aid - the kind of state guarantees aimed to create equal opportunities for access to justice.*
2. *Gratuitous secondary legal aid includes the following legal services:*
 - 1) *defence against prosecution;*
 - 2) *representation of interests of persons entitled to gratuitous secondary legal aid, in courts, other state authorities, local governments, in relations with other persons;*
 - 3) *drafting of service documents”.*

5) **Merchant Shipping Code of Ukraine**, No. 176/95-BP dd. 23.05.1995. Relevant provisions are as follows:

a. **Article 55.** Repatriation of crew members

Repatriation at the expense of the shipowner shall be carried out in the following cases:

- In case of displacement at the initiative of the owner or authorized agency;
- In case of illness and injury;
- In case of loss of the vessel;
- If the shipowner is unable to perform his duties arising from the current legislation of Ukraine, an agreement (contract).

Shipowner repatriates a seafarer at the port specified in the contract, collective agreement, and if unavailable – in the port of employment. The shipowner is responsible for the organization and cost of repatriation in the amount of expenses for travel (usually by plane), pay for accommodation and food, labor and assistance, transportation of luggage pursuant to an agreement (contract), treatment (as long as the seafarer is not transportable).

If the shipowner is not able to arrange repatriation and pay for costs, these duties shall be carried out by authorized by the Cabinet of Ministers of Ukraine authorities with the following recovery of these costs from the shipowner without further authorization.

b.

c. **Article 57.** Responsibilities of the shipowner

In accordance with the rules approved by the central executive authority on formation of state policy in the field of transport, and by the central executive authority on formation of state policy in the field of navigation safety of fishing fleet (for fishing vessels), the shipowner shall provide:

- 1) safe working conditions and terms of employment on the vessel;
- 2) protection of health of crew members and equipping the vessel by all necessary means and accessories;
- 3) the supply of food and water in sufficient quantity and of appropriate quality;
- 4) adequate shipboard space.

Minimum standards that shall be ensured the owners of merchant ships shall not be below the level set by international treaties to which Ukraine is a party.

6) **Code of Ukraine on Administrative Offences**, No. 8073-X dd. 07.12.1984. Relevant provisions are as follows:

a. **Article 268 (extract).** *The rights of the person who brought to administrative responsibility*

A person brought to administrative responsibility has the right: to become familiar with materials of the case, give explanations and evidence, file motions; in hearing of a case to use legal aid of attorney-at-law, another specialist in the area of law who is

legally entitled to provide legal assistance in person or by proxy entity, performing native language and use an interpreter, if not has the language of the proceedings, the decision on appeal case. Cases of administrative offenses considered in presence of the person brought to administrative responsibility. In the absence of that person's case can be considered only in cases where there is evidence of timely notice of time and place of the proceedings and, if not from her received a request to postpone the hearing.

7) **Labour Code of Ukraine**, No. 322-VIII dd. 10.12.1971. Relevant provisions are as follows:

- a. **Article 130 (extract)**. General grounds and conditions for financial liability of employees

Employees are financially liable for damage to an enterprise, institution, organization caused by violation of their labour duties.

- b. **Article 131**. Obligations of an owner or an authority empowered by him and employees to preserve property

An owner or an authority empowered by him is obliged to create for employees conditions, necessary for normal work and providing full preservation of property in their possession.

Employees are obliged be careful with the property of an enterprise, institution, organization and take appropriate measures to prevent any damage.

8) **The Law of Ukraine "On the Prevention and Combating Discrimination in Ukraine"**, No. 5207-VI dd. 06.09.2012. Relevant provisions are as follows:

- a. **Article 6 (extract)**. Prohibition of discrimination

1. According to the Constitution of Ukraine, recognized principles and rules of international law and international treaties of Ukraine all individuals regardless of their particular features have equal rights and freedoms and opportunities for their realization.

2. All forms of discrimination of individuals and/or group of individuals because of their particular features by state bodies, authorities of the Autonomous Republic of Crimea, local authorities or their officials as well as legal entities or other individuals are forbidden.

9) **On Consular Statute of Ukraine**, approved by Decree of the President № 127/94 dd. 02.04.1994.

- a. **Article 39**.

The consul is obliged to ensure that citizen of Ukraine taken into custody (arrested) or detained on suspicion of having committed an offense or subjected to other measures that restrict the freedom of the citizen of Ukraine, or sentenced to imprisonment or subjected to other judicial or administrative action measures is treated according to the legislation of the state of residence, treaties concluded by Ukraine with this state, and international treaties to which Ukraine and state of residence are parties to.

The consul is obliged at the request of the persons concerned and by its own initiative to visit the citizens of Ukraine who are arrested, detained or imprisoned in any other form or serving sentences. The consul is obliged to ensure that such individuals are kept in conditions that meet the requirements of hygiene and sanitation, and that they are not subjected to cruel and degrading treatment.

In all cases, the consul is obliged to seek a personal meeting with a citizen of Ukraine to ensure that the rights and interests of a citizen not infringed.

The consul is obliged to apply to the competent authorities of the host country for assistance in tracing the citizens of Ukraine permanently or temporarily residing in this state and are disappeared.

- 10) **Regulation on Qualification, Procedure of Investigation and Recording of Maritime Accidents with Ships**, approved by the Order of Ministry of Transport and Communication of Ukraine No. 516 dated 29.05.2006, registered in the Ministry of Justice of Ukraine of 09.08.2006 under No. 959/12833. Relevant provisions are as follows:
- a. **Paragraph 5.8.1.2.** The examination shall be conducted in the native language of the interviewee or in another language, which he speaks fluently, or by means of interpreter.
 - b. **Paragraph 5.8.1.3.** At the beginning of examination purpose of investigation and possible further use of obtained from the interviewee information shall be explained.
 - c. **Paragraph 5.8.1.5 (extract).** It is by no means impossible to intimidate or coerce interviewee to give evidence

6. If some or all of the paragraphs of the Guidelines have not been passed into the law/s of your country, please explain the reason/s for not passing those paragraphs of the Guidelines into the law/s of your country.

ANSWER: Please state any other reason.

An official reasons are unknown. However, we believe that the most provisions did not pass into the law of Ukraine because of absence of due attention of state authorities to problem of a fair treatment of seafarers in the event of a maritime accident.

7. If some or all of the paragraphs of the Guidelines have not been passed into the law/s of your country, please explain what action, if any, your country may require in order for those paragraphs of the Guidelines to be passed into the law/s of your country.

ANSWER:

1. The provision of model legislation by the IMO regarding the passing of the Guidelines into national law.
2. The provision of information by the IMO regarding the meaning of the Guidelines.
3. Other action: We believe that the Guidelines shall be binding either as a part of any international treaty or as a separate treaty.

8. Do the laws of your country require that a seafarer must be informed of the basis on which an investigation into a maritime accident is being conducted?

ANSWER: YES. Please see the paragraph 5.8.1.3 of the Regulation of Qualification, Procedure of Investigation and Recording of Maritime Accidents with Ships above.

9. Can a seafarer be detained as part of an investigation into a maritime accident, or as part of a trial?

ANSWER: YES. In case of criminal investigation/trial.

10. What safeguards exist if a seafarer is detained as part of an investigation into a maritime accident, or as part of a trial?

10.1 Is there any provision in your country's law/s whereby a seafarer must be informed of his/her legal rights?

ANSWER: YES. Please see articles 29 and 57 of the Constitution of Ukraine above. In case of criminal investigation, it is stipulated by article 42 of Criminal Procedure Code of Ukraine.

10.2 Does a seafarer have the right to be provided interpretation services?

ANSWER: YES. Please see the paragraph 5.8.1.2 of the Regulation of Qualification, Procedure of Investigation and Recording of Maritime Accidents with Ships above.

10.3 Does a seafarer have the right to be provided free independent legal services?

ANSWER: YES. Please see article 59 of the Constitution of Ukraine and the Law of Ukraine "On Gratuitous Legal Aid" above.

10.4 Does a seafarer have the right not to answer questions that may be considered self-incriminating, if so advised?

ANSWER: YES. Please see article 63 of the Constitution of Ukraine above.

10.5 Are there any other due process safeguards provided to seafarers facing an investigation into a maritime accident, or as part of a trial?

ANSWER: NO.

11. If the Guidelines have been implemented into your law, have they been relied upon/referenced in any cases? If so please comment further.

ANSWER: N/A.

12. Does your Association have any comments, suggestions or recommendations on this subject?

First of all, taking into account the fact that some questions contain our affirmative answers, we want to make a reservation that in some cases in Ukraine violation of seafarers' rights in certain cases is not excluded. For example, violations of such paragraphs of the Guidelines as 9.3, 9.5, 9.7, 9.11, 9.18, 9.22, 10.5, 10.6, 10.12, 11.8, 12.1, 12.7.

Moreover, in our opinion, there are two main reasons for the lack of implementation of the Guidance in Ukraine, namely: the first one concerns the recommendatory character of the Guidance and absence of due attention to this document on the part of different organizations (including governmental and intergovernmental), involved in providing of assistance to seafarers.

The second reason is the lack of due attention to this issue in the government bodies responsible for implementation of this Guidance during the last years.