

POLISH MARITIME LAW ASSOCIATION

Plac Rodła 8/XII Floor, 70-419 Szczecin, Poland
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Szczecin (Poland), 18th February, 2014

Ms Olivia Murray
Chairperson
Comite Maritime International

by e-mail (olivia.murray@incelaw.com) only

Dear Ms Murray,

re.: questionnaire – International Working Group “Fair Treatment of Seafarers”.

Reference is made, with thanks, to the CMI’s President’s, Mr Stuart Hetherington’s, e-mail of 12th November, 2013, attaching the questionnaire.

Please find below responses of the Polish MLA to the questionnaire.

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

YES
 NO

2. If 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? Please tick:

ALL PARAGRAPHS
 SOME PARAGRAPHS

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. Please tick:

PARAGRAPH 1
 PARAGRAPH 2
 PARAGRAPH 3
 PARAGRAPH 4
 PARAGRAPH 5
 PARAGRAPH 6
 PARAGRAPH 7
 PARAGRAPH 8
 PARAGRAPH 9 (9.1-9.22)
 PARAGRAPH 10 (10.1-10.12)
 PARAGRAPH 11 (11.1-11.8)
 PARAGRAPH 12 (12.1-12.7)
 PARAGRAPH 13 (13.1-13.4)

Not applicable.

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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? Please tick:**

YES
 NO

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.**

The State Commission for Investigating Sea Accidents Act of 31 August 2012 (The Journal of Law position 1068 of 2012), hereinafter referred to as the "Act". According to article 1.2 of the Act, the investigation is conducted inter alia according to standards, guidelines provided by IMO.

Regulation No. 20 of the Minister of Transport, Construction and Maritime Economy of 30 July 2013 - The Statute of Conduct of the State Commission for Investigating Sea Accidents (The Official Journal position 42 of 2013). According to paragraph 4.1.7 of the Statute, the investigation is conducted according to the 2006 IMO Guidelines (Resolution IMO LEG.3(91)).

Please note that the above applies only to investigation conducted by the State Commission for Investigating Sea Accidents, established on the basis of the IMO provisions (primarily Resolution A.849(20) of 1997). The 2006 Guidelines do not apply to investigation carried out by state prosecutors on the basis of the Code of Penal Procedure, hereinafter referred to as the "CPP". However, the Code provides similar level of protection.

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. Please tick one of more of the following answers:**

The existing law/s adequately protects the rights of seafarers. Please identify the law/s
 The Guidelines inadequately protect the rights of seafarers
 The Guidelines unduly protect the rights of seafarers and are unfair to other parties
 The Guidelines are unclear and/or ambiguous
 The Guidelines are still under consideration
 Please state any other reason

Not applicable

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**

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country. Please tick one or more of the following answers:

- The provision of model legislation by the IMO regarding the passing of the Guidelines into national law
- The provision of information by the IMO regarding the meaning of the Guidelines
- The amendment of the Guidelines by the IMO
- Please explain any other action

Not applicable

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?

- YES. If YES, please explain
- NO

According to the Statute in connection to the paragraph 9.8 of the Guidelines seafarer should be informed of the basis on which the investigation is being conducted.

According to the CPP every participant in legal proceedings shall be provided with information about duties and entitlements he is entitled to during penal proceeding.

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

- YES. If YES, please explain the potential legal basis for such detention in particular with regard to pre-trial detention.
- NO

Detention of suspicious person according to the CPP: the police has the right to detain a suspicious person (maximum for the period of 48 hours), if there is a reasonable guess that (s)he has committed a crime and it is that this person would escape, hide, hide evidence of committed crime or the person's identity cannot be established.

Detention of accused person according to the CPP: accused person may be detained if: (i) there is a well-founded fear of escaping or hiding of the accused; (ii) there is a well-founded fear that the accused would be induced to submit false testimony or clarifications or in some other illegal way, interfere with the criminal proceedings; (iii) where there is a well-founded fear that the accused, would commit an offence against the life, health or public safety.

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

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

- YES. If YES, please explain

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NO

According to the CPP every participant in legal proceedings shall be provided with information about his/her duties and entitlements during penal proceeding.

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

YES. If YES, please explain

NO

According to the Statute in connection to the paragraph 9.7 of the Guidelines, where necessary, seafarer should be provided with interpretation services.

According to the CPP interpreter is called especially if participant in legal proceedings do not speak Polish.

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

YES. If YES, please explain

NO

According to the CPP accused person has the right to free independent legal advice if: (i) this person can prove that (s)he is not able to bear the costs of defence without prejudice to the necessary maintenance of himself/herself and his/her family; (ii) this person is underage; (iii) this person is deaf, dumb or blind; (iv) there is reasonable doubt as to his/her sanity; (v) the Court deems it necessary due to circumstances which hinder the defense.

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

YES. If YES, please explain

NO

According to the Statute in connection to the paragraph 9.7 of the Guidelines, seafarer has the right not to incriminate oneself and right to remain silent.

According to the CPP accused person has the right to refuse to submit explanations or to refuse to answer questions.

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?

YES. If YES, please explain

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.

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A few cases have been tried by the State Commission for Investigating Sea Accidents. We do not have detailed information regarding those proceedings.

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

Guidelines have been passed into the law short time ago, so it is hard to estimate how it works.

The responses were contributed by: Mr Artur Pomorski, Mr Bartosz Biechowski and Mr Paweł Krężel – Members of the Polish MLA.

In case of any doubts or questions, please feel free to ask anytime.

With Best Regards,



MAREK CZERNIS
Vice-President



PAWEŁ MICKIEWICZ
Secretary