

LEGAL COMMITTEE
103rd session
Agenda item 5

LEG 103/5
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FAIR TREATMENT OF SEAFARERS IN THE EVENT OF A MARITIME ACCIDENT

Submitted by the International Transport Workers' Federation (ITF)

SUMMARY

Executive summary: This document encourages Member States to request workshops to facilitate the wide implementation of the 2006 *Guidelines on fair treatment of seafarers in the event of a maritime accident* adopted jointly by IMO and ILO

Strategic direction: 1

High-level action: 1.1.1

Planned output: 1.1.1.2

Action to be taken: Paragraph 9

Related documents: LEG 95/5; LEG 97/6, LEG 97/6/1, LEG 97/INF.3; LEG 99/14; LEG 100/5/1, LEG 100/14; LEG 101/4/1, LEG 101/12; LEG 102/4; resolution A.1056(27)/Rev.1; resolution LEG.3(91) and Circular Letters Nos.2711 and 2825

Introduction

1 At the 102nd session of the Legal Committee, the representative of the International Transport Workers' Federation (ITF), on behalf of the co-sponsors (the International Federation of Shipmasters' Associations (IFSMA), Comité Maritime International and InterManager, introduced document LEG 102/4 reporting on the analysis of the replies from Member States to the survey circulated by the Seafarers' Rights International (SRI) on behalf of ITF and IFSMA concerning the 2006 *Guidelines on fair treatment of seafarers in the event of a maritime accident* (the Guidelines).

2 A substantial number of Member States and several observer delegations expressed their support for the paper, and the Legal Committee concluded amongst other things that this was an important issue for seafarers and should consequently be placed on the work programme of the Legal Committee; that the Legal Committee should consider guidance on the implementation of the Guidelines for any Member States that requested it; that technical support and assistance should be provided by the Technical Cooperation Committee in order to facilitate the wide implementation of the Guidelines to improve the conditions for seafarers, taking into account human rights issues; and that it would be useful for Member States already

giving effect to the Guidelines to provide translated copies of their laws to assist other Member States with their implementation efforts.

3 At the sixty-fifth session of the Technical Cooperation Committee, document TC 65/3(b)/2 was submitted by ITF concerning the Guidelines and requesting that related forms of assistance be integrated within the Integrated Technical Cooperation Programme (ITCP). The Committee approved among others the development of training materials on the implementation of the Guidelines.

Further analysis of the SRI survey

4 Further analysis of the laws of Member States giving effect to the Guidelines reveals that Member States have adopted different approaches with regard to the implementation of the Guidelines.

.1 Member States have taken different approaches to the scope of the application of the Guidelines:

- One group of Member States have expressly passed the Guidelines into their national laws in parallel or in tandem with the Code for the Investigation of Marine Casualties and Incidents (the code), with the scope of the Guidelines being made applicable only to investigations into marine casualties and incidents conducted under the code.
- Another group of Member States have not expressly passed the Guidelines into their national laws. Instead, they have stated that their existing laws already adequately protect the human and other legal rights of seafarers contained in the Guidelines and that there is no need for the Guidelines to be passed into their existing laws. These Member States have generally ensured that the legal principles contained in the Guidelines are applicable not only in the event of investigations into marine casualties and incidents conducted under the code, but also in all other legal circumstances – including criminal investigations and proceedings – where seafarers might be detained.

.2 Member States have taken different approaches to the extent to which the legal principles contained in the Guidelines are adopted:

- The group of Member States that have expressly adopted the Guidelines in parallel or in tandem with the code have passed the legal principles contained in the Guidelines either in whole or in part into their national laws. The wording of the legal principles contained in the Guidelines has generally been repeated verbatim in the national laws.
- The group of Member States that have stated that their existing laws already adequately protect the human and other legal rights of seafarers contained in the Guidelines have not deemed it necessary to restate verbatim in their national laws the wording of the legal principles contained in the Guidelines. Nor do these national laws refer explicitly to "seafarers" or to all the legal principles contained in the Guidelines.

.3 Member States have taken different approaches to the types of legal instruments that are employed in the adoption of the Guidelines:

- The group of Member States that have expressly adopted the Guidelines in relation to the code have passed the principles contained in the code mostly by means of secondary legislation (including, for example, regulations, circulars and marine notices) that is subordinate to primary legislation. The application of such secondary legislation is often discretionary rather than mandatory. The legal principles contained in the Guidelines that already exists in the national laws of the other group of Member States are to be found in primary national laws; sometimes enshrined to some extent in constitutions and therefore subordinate to no other law. The application of these constitutional legal principles and primary national laws is not discretionary but mandatory.

5 The reasons for these different approaches would appear to include: different interpretations by Member States as to the relationship between the Guidelines and the code; different gap analyses revealing that the legal principles contained in the Guidelines already exist to greater or lesser degrees in the national laws of Member States; different legal systems and legislative drafting traditions between Member States; and different government ministries and/or independent legal entities within Member States that implement, administer and/or enforce the Guidelines.

Further work

6 Given the differences between the Member States in implementing the Guidelines, ITF considers that an effective way to take this subject forward would be the hosting of regional and/or national workshops as requested by Member States where the different approaches could be fully discussed and carefully considered with regard to their suitability for the Member States in question.

7 These workshops would be in addition to and not in substitution of written guidance on the implementation of the Guidelines, or the development of training material on the implementation of the Guidelines.

8 The ITF and SRI are ready to assist as deemed appropriate to facilitate the wide implementation of the Guidelines.

Action requested of the Legal Committee

9 The Legal Committee is invited to take note of the information provided in this document and to comment as it may deem appropriate. The Legal Committee is further invited to encourage Member States to request regional or national technical cooperation activities on the implementation of the Guidelines.