



Ukrainian Independent Maritime Trade Union

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OSCE Human Dimension Implementation Meeting 2016

Working Session 2

Mass Violation of Ukrainian Seafarers` Rights, International Human Rights Covenants and OSCE standards for Human Dimension, Safety, Non-Discrimination and Labour Migration

(rapporteurs – Borys Babin, Iryna Pogrebniak)

Much-esteemed chairman, dear representatives!

As it was mentioned repeatedly in the reports of our trade union for the OSCE events (HDIM.NGO/0054/12, HDIM.NGO/0137/12, HDIM.NGO/0500/13, HDIM.NGO/0501/13, HDIM.NGO/0457/14), issue of defense and providing the seafarers' rights is impossible to solve without full usage of regional mechanisms of cooperation. Human dimension on interstate level is tightly connected with the appropriate security for the personal, labor and social rights, first in context of problems of labor migrants, non-discrimination and freedom for workers' association.

Today seafarers become the specific group of labor migrants and their rights are non-defended. This is grounded on the features of the global trade shipping market that separates the nationality of seafarer, of ship-owner and of vessel that are different ones. Free concurrence on this market caused the significant role of some states contributing the working power to the global shipping where there is no fleet flying the coherent flag.

So more than 100000 Ukrainian citizens today are employed on Ukrainian and foreign vessels and such labor sources' distributing may give more than one milliard USD of direct investments to the Ukrainian economics annually. At the same time Ukrainian seafarers have no adequate level of social guarantees and providing own labor rights against violations by ship-owners, intermediary structures and state authorities. States of seafarer's nationality often do not contribute to their socialization, separate them from the social insurance systems, do not eliminate the double taxation of seafarers.

Realization of seafarers' personal, labor and social rights in OSCE region is complicated by the corruption in the national recruitment and placement systems, absence of the effective mechanisms of judicial and administrative influence to the ship-owners, lack of national strategies of the maritime training and teaching. We must not be silent for the seafarers' discrimination in the OSCE region; inter alia we would mention the EU bodies' decisions for restriction the quantity of third countries' seafarers in crews of vessels flying the EU flags.

In our previous reports to the OSCE UIMTU repeatedly stressed as on some glaring cases of discrimination the Ukrainian seafarers, so on the common mass violations the seafarers' labor rights in OSCE states. We stated that such violations the seafarers' rights, as the rights of labor migrants, by the foreign ship-owners and governing agencies – are caused by the long-term improper implementation of the present universal legal standards of the maritime labor by the OSCE member states.

But the situation was changed by the adoption the Maritime Labor Convention (MLC) in 2006 that come in force in August 20, 2013. This human rights covenant would stop the

structural and institutional seafarers' discrimination. Our union pointed for the OSCE attention to the positive examples of OSCE member-states accessed to the MLC; now there are more than 30 OSCE countries did it (Belgium, Bulgaria, Bosnia and Herzegovina, Cyprus, Denmark, Estonia, Finland, France, Germany, Great Britain, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Mongolia, Montenegro, Netherlands, Norway, Poland, Portugal, Romania, Serbia, Slovenia, Spain, Switzerland, Sweden).

At the same time separate maritime OSCE member states (first of all Ukraine) did not accede the MLC; such split of the legal field contributes to the displacement the Ukrainian non-conventional seafarers from the global maritime labor market. Both some OSCE member states (such as Russia) that acceded the MLC have no strict action plan for its implementation and use such accession only as a step for formal legalization of own seafarers and vessels – as conventional ones.

Our trade union since 2010 stands on sustainable position for the coercion the Ukrainian state authorities to the dialogue on duty of the accession the MLC. Alas both the total corruption and low competence of those state authorities, that crystallized in the first decade of XXI century, did not change since 2014; situation is dramatically increased by the absence in Ukraine since 2015 a separate executive state governing body with functions of national Maritime Administration.

Escalation from the February 2014 the Ukrainian-Russian interstate conflict, occupation by Russia the Autonomous Republic of Crimea, Sevastopol city and some coastal districts of Donetsk Region complicated and politicized issues of Ukrainian accession to the MLC. As the Russian jurisdiction, in conditions of Russian formal participation in MLC, is objectively more attractive for the seafarers with de-facto double citizenship (like Crimean ones) – maximal delay for a moment of Ukrainian ratification the MLC is an important task of Russian policy in Ukrainian state powers.

Since 2014 in conditions of corrupted or collaborated Ukrainian key state actors, that have competence in maritime governing issues, modern success of Russia in realization the pointed policy in Ukraine seems to be easy feasible.

Only after the perseverance of trade unions and civil activists in 2014 Ministry of Infrastructure of Ukraine was forced by society to develop the legislative drafts for acceding the MLC; but those drafts were not developed further on governmental and parliamentary levels till the summer of 2016 in the above mentioned negative conditions. Some of our initiatives were resulted by the including in 2015 the task of MLC ratification to the parliamentary Plan of Legislative Ensuring the Reforms in Ukraine (art. 107). But such result appeared to be the idle declaration as till the middle of September 2016 coherent law drafts are neither registered nor prepared for the parliamentary proceeding in Ukraine.

Inability of Ukraine to ratify MLC is compounded by the archaic character of national maritime legislation that, in particular, establishes the hardly realized demands for the registration the private vessels for Ukrainian flag. At the same time state-owned trade vessels, flying Ukrainian flag, are registered illegally by state enterprises with usage the offshore companies as “owners”, that makes impossible to defend the rights of their crew members even according to the Ukrainian legal standards. More, there are no any Ukrainian national legislation on territorial sea and internal water transport issues.

Also Ukraine is the only maritime European state that is out of Paris Memorandum of Understanding of Port State Control system. So, in conditions of corrupted, non-competent and collaborative Ukrainian state officials in area of maritime governing, the issue of

Ukrainian participation in this key treaty for the security of shipping is not even never discussed officially.

And of course the separate complex of problems arose for the Ukrainian seafarers residing in Ukrainian territories occupied by Russia, first of all in Crimea. Those problems first of all are caused by the mass, flagrant and purposeful breach by Russia its obligations as occupier state, fixed in the international humanitarian law, also as by the absence of distinct and human rights' corresponded policy of Ukraine relative to its citizens residing in Crimea. Those problems in common are:

- the sequential elimination by Russia the mechanisms of seafarers' certification, training and high school teaching in Crimea, recognized by the international community;

- the absence in the Crimea the effective mechanisms of transfer the seafarers' wages from foreign ship-owners and legal mechanisms of seafarers' repatriation to their residence location;

- the misanthropic, racist, chauvinist anti-Ukrainian Russian state propaganda in the Crimea and regions of Russia that complicate the possibility of seafarers' placement in one crew mixed from Ukrainian seafarers residing in Crimea, in other Ukrainian regions and from Russian seafarers – as the real risk of conflicts on board appeared;

- the non-implementing by Russian ship-owners, that operate the vessels in waters around Crimea and in Crimean ports closed by Ukrainian government, for those shipping the regime of the conflict zone that aggravates the risks for crews and reduces the guarantee of seafarers' rights;

- the illegal militarization by Russian army and navy authorities the trade vessels that carry out the extraction of natural resources and fishery in the parts of Ukrainian internal waters, territorial sea and exclusive maritime zone around Crimea that are controlled by Russia.

We would notice the impossibility of functioning in the occupied and illegally annexed Crimea legal and internationally recognized Ukrainian maritime trade unions also as the negative role of the Russian Federation of Maritime Transport Workers' Trade Unions and Russian Seafarers' Union of Russia (SUR) and monopole and pro-governmental structures that have direct tasks in the Crimea not to defend the local seafarers but to realize the politic targets of Russian authorities in area of support the "legality and lawfulness" of the "reuniting" the Crimea with Russia only.

Also we must notice on the negative role of the Russian Maritime Register of Shipping as the classification society directly controlled and operated by the Russian state authorities and issuing en masse obviously untrue documents and certificates on "compliance" the Ukrainian trade vessels and maritime industry structures, trapped illegally ("nationalized") by Russia in Crimea (see HDIM.NGO/0457/14), to the international conventions in areas of shipping safety, vessel nationality and defense the crew members` rights.

That is why our union recommends to the ODIHR and to other OSCE structures to make such activities for support and defense the seafarers` rights in 2016-2017:

- to organize the monitoring of situation for cases of violation the rights of seafarers with nationality of OSCE member states working in the international shipping and for full compliance with the relevant rules of MLC;

- to make the research on the national mechanisms of the seafarers' training, placement and recruitment, their self-organization and trade unions' functioning, of the seafarers' collective bargaining and coherent agreements in OSCE member states with compliance to the MLC;

- to develop the methodic guidelines for defense the seafarers' rights in condition of violating their rights by foreign ship-owners and governing bodies, to generalize the practice

of national protection mechanisms with identification of the most successful experiences as for solving the specific issues so for the MLC standards implementation;

- to organize consultations for changing the OSCE member states policy with relevance to modern negative practice of the offshore registration the companies able to own vessels and to duty to establish the real connection between the vessel and state of its flag;

- to promote the shared responsibility for providing the MLC guaranteed seafarers' rights in the OSCE region between ILO, IMO, OSCE, national governments, maritime trade unions, organizations of ship-owners and other civil society structures;

- to hold the consultations with Ukrainian government for the reasons and consequences of the Ukrainian non-participation in the key international agreement defending the seafarers' rights and ensuring the shipping safety in the OSCE region;

- to hold the consultations with Russian government for the duty of compliance by Russia on occupied Ukrainian territories all the relevant norms of the international humanitarian law, international maritime law and MLC – in areas of the unacceptability of trade shipping militarization in Black an Azov Seas, of providing the special safety and labor standards in conflict zone around Crimea, of the compliance the international standards such as STCW in areas of training and certification seafarers, ILO covenant standards for a workers' freedom of association, real MLC implementation;

- to incorporate the aspects of the ensuring and compliance the rights of Ukrainian seafarers, residing in the Ukrainian territories, occupied by Russia, and working in the international trade shipping, to the priority attention area of the OSCE Special Monitoring Mission to Ukraine.