

Translation. Only the Danish document has legal validity.

Guidance no. 11983 of 13 June 2001 issued by the Danish Maritime Authority

Guidance on the treatment of stowaways on board Danish ships

In 1999 the Danish Maritime Authority was approached about the compliance of the Danish provisions on stowaways with the provisions on deprivation of liberty stipulated in the European Convention on Human Rights.

After having presented the issue to the Danish Ministry of Justice, the Danish Maritime Authority has drawn up this guidance and specified the master's obligation to provide stowaways with information stipulated in the technical regulation on stowaways in ships. It has also been specified, among other things, in the technical regulation that stowaways are to follow the instructions given by the master of the ship or others acting on his behalf and that they must abstain from actions that may disturb the operation of the ship or present a safety risk.

Article 5 of the European Convention on Human Rights

According to article 5 of the Convention, everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the cases listed in the provision.

The question whether an action constitutes a deprivation of liberty covered by the provision is, according to the practice of the European Court of Human Rights, dependent on a specific assessment of, among other things, the intensity and duration. The Court of Justice has not taken a decision on whether the locking up of stowaways in, for example, a cabin on board a ship constitutes a deprivation of liberty in the sense of the Convention. Consequently, it may give rise to doubt whether it is a case of a deprivation of liberty in the sense of the Convention when a stowaway is locked up in a cabin while the ship is at sea.

However, the Danish Ministry of Justice has stated that they would be inclined to assume that the locking up of stowaways in a cabin could constitute a deprivation of liberty in the sense of the Convention. However, this does not mean that locking up of stowaways must not occur, but that it must be within the frames of article 5 of the Convention, which has been printed below.

Article 5, para 1(c) makes it possible to deprive a stowaway of his liberty when there is reasonable reason to consider it necessary to prevent him from committing an offence or fleeing after having committed an offence.

According to article 5, para 1(e), it is possible to deprive a stowaway of his liberty if he is assessed to be of unsound mind or to present a risk to himself, for example because he threatens to commit suicide.

Article 5, para 1(f) makes it possible to deprive a stowaway of his liberty to prevent him from entering unlawfully into a country.

Stowaways who are deprived of their liberty shall be informed of the reason for this as soon as possible as well as about the legal basis in a language which he understands. If the authorities in the port of call do not set the stowaway free after the master of the ship has presented him to them, the stowaway shall, furthermore, have the right to have deprivation of liberty reviewed at the courts in the state where the port of call is situated. However, the requirement for judicial review shall apply only to the extent the port of call is situated in a state that is a Party to the European Convention on Human Rights.

In Denmark, the European Convention on Human Rights has been implemented by law, cf. Consolidated Act no. 750 of 19 October 1998. Thus, the provisions of the Convention supplement the provision of the Danish Seaman's Act, section 62, on the master's right to take the necessary measures to maintain order on board.

Treatment of stowaways

When one or more stowaways are found on board a ship, various measures may be required to ensure that the stowaways do not disturb the operation of the ship or present a risk to either themselves or the safety of the crew, ship or cargo. The measures will depend on the stowaways' behaviour and number as well as on the type of ship, its arrangement and cargo as well as the number of crewmembers.

Consequently, stowaways shall be instructed how to behave on board and they shall be given the necessary instructions about general safety conditions on board. It may prove difficult to make the required instructions and information comprehensible to the stowaways due to lacking language skills. In such situations, the master should try to provide the information in as good a way as possible.

In this connection, it should be borne in mind that stowaways who cannot be instructed how to behave on board the ship for reasons of language could inadvertently interfere with the operation of the ship in such a way as to create a risk to the safety of the ship.

The master shall also ensure that the stowaway is given food and accommodation that is suitable, considering the conditions on board, has access to sanitary facilities and, where necessary, to medical treatment.

In addition, the master shall try to determine the identity of the stowaway and the port in which the stowaway has embarked as well as inform the shipping company and the relevant authorities about the stowaway.

Stowaways shall be deprived of their liberty only after the master has carefully considered the specific situation, possibly in consultation with the shipping company, and assessed that the conditions stipulated above are met and that other less radical measures are not available that may solve the problem. The locking up of a stowaway until it is possible to hand him over to the authorities in the port of call may, for example, occur when the master assesses that this is necessary to prevent assaults on the crew, robbery, theft, vandalism, arson and threatening behaviour or to prevent attempts to disembark the ship by means of life-saving appliances.

However, stowaways shall not be locked up automatically. There shall be specific circumstances that necessitate the locking up.

If stowaways are locked up, an emergency preparedness shall be established to ensure that the stowaways are released if a situation occurs where the locking up may present a risk to the stowaway, for example in case of fire on board or water ingress.

Attention is drawn to the fact that a number of countries impose very considerable fines on shipping companies if stowaways without valid entry permits escape from ships into the countries in question. Consequently, it will often be expedient to acquire the authorities' instructions about how to behave as early as possible before the ship arrives in port.

Danish Maritime Authority, 13 June 2001

Article 5 of the European Convention on Human Rights

Right to liberty and security

1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
 - (a) the lawful detention of a person after conviction by a competent court;
 - (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
 - (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
 - (d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
 - (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts, or vagrants;
 - (f) the lawful arrest or detention of a person to prevent his effecting an unauthorized entry into the country or of a person against whom action is being taken with a view to deportation or extradition.
2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and the charge against him.
3. Everyone arrested or detained in accordance with the provisions of paragraph 1(c) of this article shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.
4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.
5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this article shall have an enforceable right to compensation.