

THE EUROPEAN WAY OF UKRAINE FOR THE ORGANIZATION OF SEARCH AND RESCUE AT SEA

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Annotation. The article examines the legal framework for the organization of search and rescue at sea in Ukraine in the context of European integration, and also investigates the existing shortcomings and overlaps in the distribution of functions and assignment of tasks between the State structures of Ukraine, and identifies the areas for reforming the organization of search and rescue at sea to improve efficiency and bring Ukraine closer to the state of search and rescue at sea in the European Union (EU).

The relevance of the study lies in the strategic direction of Ukraine towards EU membership and the approximation of Ukrainian legislation to that of the European Union, which requires reform of legal regulation in the field of search and rescue at sea in Ukraine.

Ukraine, as a maritime state and a member of the International Maritime Organization, has assumed an international obligation under the International Convention on Maritime Search and Rescue, 1979, and acceded to it by Resolution of the Verkhovna Rada of Ukraine No. 2786-XII of November 17, 1992.

Accordingly, the purpose of the publication is to conduct a theoretical study of the issues related to Ukraine's implementation of the international obligation to search for and save human life in case of maritime disaster in the context of European integration and trends for its improvement.

The methodological basis of the study is a systematic structural analysis of the organizational (institutional) and legal regulation of search and rescue at sea.

The article also provides conclusions on the areas of legal reform and improvement of the efficiency of the organization of search and rescue at sea in Ukraine with a view to improving the legal regulation of this area of legal relations to a level which would be in line with international standards and bring it closer to the legislation of the European Union.

Key words: maritime search and rescue (SAR), maritime international obligations, European integration, reform of the SAR public service system.

1. Introduction.

A significant place in the economic development of Ukraine is occupied by the issues of safe use of maritime spaces: the waters of the Black and Azov Seas, which require ensuring the organization of maritime rescue at a high and proper level.

The temporary occupation of the Crimean peninsula in 2014 and the armed conflict in 2022 by the Russian Federation undoubtedly brings about relevant changes in the use of water, but they are temporary and do not affect the long-term prospects for the use of maritime space in the context of Ukraine's European integration.

Ukraine, as a state of Eastern and partly Central Europe, has chosen the path to joining the European Union as a member state as a strategic direction of its economic development.

The Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their Member States, on the other hand (hereinafter referred to as the Association Agreement), concluded in 2014, contains a large number of Ukraine's obligations related to the approximation of Ukrainian legislation to the EU legislation and the implementation of internal reforms in various areas of public life and public administration reforms.

On June 23, 2022, the European Council approved the recommendation of the European Commission and granted Ukraine the status of a candidate for accession to the European Union.

Ukraine's adherence to high European standards in various spheres of life, including the organization of search and rescue at sea, is one of the links in meeting the criteria for maintaining the status of a candidate state for accession to the European Union.

2. Analysis of scientific publications.

Significant contributions to the study of the issues of legal support for rescue at sea were made by such Ukrainian scholars as O. Balabanov (Odesa National Maritime University), A. Ivanova (National University "Odesa Maritime Academy"), as well as by such European scholars as Kristof Gombeer (Vrije Universiteit Brussel and the Europa Institute Leiden Law School), Melanie Fink (Europa Institute, Leiden Law School).

3. The aim of the work.

The purpose of the study is to conduct a theoretical analysis of the issues related to Ukraine's implementation of the organization of the search and rescue system at sea in the context of European integration and trends in their improvement.

The novelty of this study is its implementation in the context of European integration of legal support for search and rescue at sea in Ukraine and reform of its management aspect.

4. Review and discussion.

In the international law of the sea, the institute of rescue at sea is a complex legal institution. It has public law and private law components [1, p. 222].

Thus, the institute of maritime rescue includes such sub-institutions as the institute of rescue of human life at sea (search and rescue activities, public law part), the institute of property rescue (emergency rescue activities, private law part), the institute of environmental protection (emergency rescue activities, mixed), which are comprehensively interrelated but regulated by different international treaties.

In the context of this study, the emphasis is placed on the public law aspect of maritime rescue in terms of search and rescue of human life in the event of a maritime disaster, which is carried out free of charge and is an international obligation of each coastal state.

Preparedness for maritime emergencies requires a well-thought-out rescue plan, as time and the sea tide wait for no one.

Ukraine is a coastal state of the Black and Azov Seas, the Kerch Strait and the navigable part of the Danube River.

The total length of the maritime section of the state border of Ukraine is 731 nautical miles, of which 570 miles are along the Black Sea, 135 miles are along the Sea of Azov, and 26 miles are along the Kerch Strait. The length of the state border of Ukraine along the Danube River is 98 miles. The maritime search and rescue area of Ukraine covers an area of more than 137 thousand square kilometers with intensive shipping. After the occupation of the Autonomous Republic of Crimea

and the city of Sevastopol by the Russian Federation, 527 miles of the maritime section of the state border of Ukraine, 18.6 thousand square kilometers of the exclusive (maritime) economic zone and 35 kilometers of the continental coast of the Sea of Azov remain temporarily uncontrolled. [2].

At the same time, on October 12, 2022, the UN General Assembly adopted Resolution ES-11/4 "Territorial integrity of Ukraine: Territorial integrity of Ukraine: defending the principles of the Charter of the United Nations", which " Reaffirms its commitment to the sovereignty, independence, unity and territorial integrity of Ukraine within its internationally recognized borders, extending to its territorial waters " [3].

In view of the above, the temporary restrictions on the use and control of Ukraine's maritime waters during the periods of occupation of Ukraine since 2014 and the military conflict against Ukraine in 2022, as mentioned above, do not affect the prospects for the use of Ukraine's sovereign maritime space.

Maritime search and rescue area of Ukraine is an area of maritime waters of a certain size associated with the State Maritime Rescue and Coordination Center, within which Ukraine provides search and rescue of people at sea in accordance with its international treaties [4].

The organization and provision of air search and rescue over the sea is carried out within the flight information area of Ukraine, which is part of the airspace within which flight information services and emergency services (notification) are provided [5].

The total area of the upper flight information area of Ukraine is 776,266 square kilometers. The airspace of Ukraine and the airspace over the high seas, where Ukraine is responsible for air traffic services under international agreements, is defined and established in accordance with the standards and recommended practices of the ICAO (International Civil Aviation Organization), EUROCONTROL documents (European Organization for the Safety of Air Navigation), the Air Code of Ukraine, and the Regulation on the Use of the Airspace of Ukraine [6].

At sea, Ukraine's aviation search and rescue area coincides with the flight information area and amounts to 137,000 square kilometers.

Article 5 of the Agreement on Cooperation of the Black Sea States on Search and Rescue in the Black Sea stipulates that search and rescue areas are established on the basis of bilateral and/or multilateral agreements between the Parties.

At the annual conferences of the Black Sea countries on search and rescue held in accordance with the Agreement, Ukraine raises the issue of determining the coordinates of the maritime search and rescue area, but as of today, such agreements have not been concluded by Ukraine with neighboring states (Turkey, Romania, Bulgaria) and are in the process of being finalized.

In fact, the maritime search and rescue area of Ukraine has been formed:

- with the Republic of Turkey – under the Agreement on the Boundary of the Continental Shelf between Ukraine and the Republic of Turkey in the Black Sea of 30 May 1994 and the Agreement on the Boundary of the Economic (Maritime) Zones of Ukraine and the Republic of Turkey of 30 May 1994.
- with Romania – under the judgement of the International Court of Justice in The Hague of 03 February 2009, which considered the case on delimitation of the maritime state border in the Black Sea between Ukraine and Romania;
- with the Republic of Bulgaria – under the Agreement on the Establishment of the State Border [7, p. 25].

With regard to the agreement concluded with the Russian Federation, as of today, the Agreement between the Cabinet of Ministers of Ukraine and the Government of the Russian Federation on Cooperation in Maritime and Aviation Search and Rescue in the Black and Azov Seas, signed on 27 October 2010 in Kyiv and approved by the Cabinet of Ministers of Ukraine on 22 August 2011 No. 890, has been terminated due to a fundamental change in circumstances by Resolution of the Cabinet of Ministers of Ukraine No. 109 dated 07 February 2023.

The 1979 International Convention on Maritime Search and Rescue states that “The delimitation of search and rescue areas shall have no bearing on or prejudice the delimitation of any frontiers between States” (Annex to the Convention, Chapter 2, “Organisation”, paragraph 2.1.7) [8].

Meanwhile, the coordinates of the actual maritime search and rescue area of Ukraine coincide with and are equal to the coordinates of the state border.

Article 98, Duty of Assistance, of the 1982 UN Convention on the Law of the Sea, in paragraph 2 states: “Every coastal State shall promote the establishment, operation and maintenance of an adequate and effective search and rescue service regarding safety on and over the sea and, where circumstances so require, by way of mutual regional arrangements cooperate with neighbouring States for this purpose.” [9]

Consequently, at the international level, search and rescue at sea is regulated by the 1982 UN Convention on the Law of the Sea, the 1974 International Convention for the Safety of Life at Sea, and the 1979 International Convention on Maritime Search and Rescue.

At the regional level – the 1998 Agreement on Cooperation of the Black Sea States on Search and Rescue in the Black Sea.

Ukraine is a party to these international treaties and has assumed the relevant obligations.

There are three approaches to the powers of coastal states granted to the competent search and rescue authorities in domestic legislation.

Firstly, some coastal states’ domestic legislation does not at all foresee the possibility for their competent authorities to issue SAR instructions, or does, but without specifically clarifying their legally binding nature or geographical applicability. This is the case, for example, in relation to the Netherlands.

Secondly, some domestic legal systems of coastal states provide for competences of MRCCs to give legally binding SAR instructions within the territorial sea of that state. Examples of such schemes include those in Australia, Spain, and Italy.

Thirdly, some coastal states’ domestic legislation provides that their competent authorities can give SAR instructions to private vessels within their entire SRR, i.e. not only within their territorial sea but also in those parts of the high seas that are part of the SRR. Canada, Belgium, and France, for example, follow this approach. [10, p. 16].

The domestic legislation of Ukraine applies the third approach. Thus, according to clause 32 of the Regulation on the National Maritime Search and Rescue System, approved by the Resolution of the Cabinet of Ministers of Ukraine No. 227 of 6 March 2022, “Orders of the State Maritime Rescue Coordination Centre (maritime rescue sub-centre) issued by it during a search and rescue operation are binding on the subjects of search and rescue at sea” [4].

Meanwhile, the organisation of search and rescue in Ukraine has its own differences and peculiarities.

For example, with the adoption of the Civil Protection Code in 2012, Ukraine introduced the Unified State System of Civil Protection, which changed the structural approach to emergencies.

The regulatory acts that previously regulated the organisation of emergency services, the main of which was the Law of Ukraine “On Emergency Services”, have lost their force.

The Code of Civil Protection of Ukraine defines rescue and other urgent work to eliminate the consequences of emergencies and organise life support for the affected population as one of the tasks of the Unified State System of Civil Protection (Article 8) [11].

At the same time, the central executive authorities (ministries and departments), which were among the coordinators according to Article 14 of the Law of Ukraine “On Emergency and Rescue Services”, were removed from the list of coordinators by the Civil Protection Code of Ukraine.

From now on, the National Security and Defence Council of Ukraine and the Cabinet of Ministers of Ukraine shall coordinate the activities of executive authorities in the field of civil protection within their powers". The Cabinet of Ministers of Ukraine established the State Commission on Technogenic and Environmental Safety, Protection of the Population and Territories, Prevention and Response to Emergency Situations to coordinate the activities of central and local executive authorities, enterprises, institutions and organisations related to technogenic and environmental safety, prevention and response to emergency situations.

However, contrary to the provisions of the Civil Protection Code of Ukraine, by-laws, namely, the Resolutions of the Cabinet of Ministers of Ukraine No. 178 of 05 March 2009 and No. 227 of 06 March 2022, designate the Ministry of Infrastructure of Ukraine (currently the Ministry of Community, Territorial and Infrastructure Development of Ukraine) as the general coordinator. Neither the Cabinet of Ministers of Ukraine, nor the National Security and Defence Council of Ukraine, nor the State Commission on Technogenic and Environmental Safety and Emergencies are listed as coordinators.

At the same time, the Merchant Shipping Code of Ukraine assigns state supervision and implementation of the state policy in the field of merchant shipping to the Ministry of Community Development, Territories and Infrastructure, which organises and controls the search and rescue of people in distress at sea (Article 10) [12].

In fact, the search and rescue of human life in the event of a disaster at sea and over the sea in Ukraine is provided by the Ministry of Communities, Territories and Infrastructure of Ukraine, which is a civilian agency of Ukraine and whose management includes specialised enterprises that perform search and rescue:

At sea – the state enterprise "Maritime Search and Rescue Service" within the maritime search and rescue area of Ukraine – according to the Resolution of the Cabinet of Ministers of Ukraine No. 1069 of 20 October 2011;

above the sea – the State Enterprise "UKSATSE" within the aviation search and rescue area (flight information area) of Ukraine – in accordance with Article 1 of the Air Code of Ukraine and Order of the Ministry of Transport and Communications No. 87 "On the Organisation and Provision of Aviation Search and Rescue at Sea" dated 15 March 2011.

Accordingly, the legal regulation of the search and rescue of human life at sea remains ambiguous, fragmented and contradictory, and the effect of by-laws that do not comply with legislative acts indicates non-compliance with the rule of law.

With regard to the salvage of property carried out in accordance with the International Salvage Convention of 1989, to which Ukraine acceded by the Law of Ukraine No. 1968 of 22 March 2017, no responsible authority has been designated in Ukraine, and such an obligation currently remains only on paper.

Also, the International Manual on Maritime Search and Rescue (IAMSAR Volume I), paragraph 1.3, defines the legal basis for the search and rescue service, namely:

«1.3.4. Every State should have in place statutes and related provisions that establish a legal foundation for establishing a SAR organization and its resources, policies, and procedures. 1.3.5 SAR managers should seek legal advice on how domestic and international laws pertain to SAR policies and procedures».

In addition, IAMSAR, Volume I, paragraph 1.3.9. provides a sample legislative act in Annex A [13].

The study has established that today there is no such legislative act in Ukraine and the organisation of search and rescue of human life at sea and over the sea is regulated exclusively by by-laws.

Scholars, in particular, Candidate of Law A.V. Ivanova, have already drawn attention to the fact that "there is no clear system of transformation of international legal norms in this area into national law, which sometimes leads to gaps in the national legislation of states. This is typical for Ukraine as well." [14, c. 24].

Meanwhile, the European integration processes require legislators to look at the organisation of search and rescue at sea, taking into account the strategic direction of adaptation of Ukrainian legislation to the legislation of the European Union.

Thus, in pursuance of the Association Agreement, the Government of Ukraine approved the Action Plan for the Implementation of the Agreement (hereinafter – the Action Plan) by Resolution of the Cabinet of Ministers of Ukraine No. 1106 dated 25 October 2017, which, in particular, stipulates

- Adoption of basic laws on reforming the civil service system to implement Articles 4 and 6 of the Association Agreement (paragraph 2 of the Action Plan);
- implementation of public administration reforms on the basis of the Public Administration Reform Strategy for 2016-2020, approved by the Cabinet of Ministers of Ukraine on 24 June 2016 No. 474 to implement Articles 4 and 6 of the Association Agreement (paragraph 3 of the Action Plan);
- development of the infrastructure and material and technical base for integrated border management to ensure proper implementation of the Integrated Border Management Concept and interaction with the EU side to obtain appropriate financial assistance for its implementation pursuant to Article 16 of the Association Agreement (paragraph 14 of the Action Plan);
- organisation of joint operational protection of the state border and exchange of information at contact points with EU member states with the signing of bilateral agreements pursuant to Article 16 of the Association Agreement (paragraph 19 of the Action Plan);
- ensuring the approximation of Ukrainian legislation to EU legislation in terms of environmental policy regarding the environment of the Azov and Black Seas with the development of a draft maritime strategy to achieve good environmental status of the marine environment in accordance with Article 363 of the Association Agreement (paragraph 1714 of the Action Plan);
- ensuring the gradual achievement of compatibility of existing laws and future legislation with the EU *acquis* pursuant to Article 114 of the Association Agreement (paragraph 1792 of the Action Plan) [15].

In pursuance of this Action Plan, the Cabinet of Ministers of Ukraine approved the Integrated Border Management Strategy for the period up to 2025 (hereinafter – the Strategy) by its Resolution No. 687-r dated 24 July 2019, which already includes maritime search and rescue issues.

Moreover, this Strategy states that “one of the problems of state border management is the inability of maritime situation reporting systems in the Black and Azov Seas to provide the interested parties of integrated border management with complete operational information on the situation at sea, in particular during search and rescue operations” [2].

Moreover, the Law of Ukraine “On the State Border Guard Service”, which is tasked with ensuring the inviolability of the state border and protection of Ukraine’s sovereign rights in its adjacent zone and exclusive (maritime) economic zone, defines its activities in search and rescue operations for vessels (ships) and people in distress at sea as a specialised unit – the Maritime Guard of the State Border Guard Service (Article 9) [16].

It should be noted that the Resolution of the Cabinet of Ministers of Ukraine No. 1343 of 02 December 2022, in order to optimise the system of central executive authorities, reorganised the Ministry of Communities and Territories Development of Ukraine by merging it with the Ministry of Infrastructure of Ukraine, increasing its scope of activities in various areas.

Thus, according to the Regulation on the newly established Ministry of Communities, Territories and Infrastructure Development of Ukraine, approved by the Resolution of the Cabinet of Ministers of Ukraine No. 469 of 30 June 2015 (as amended by the Resolution of the Cabinet of Ministers of Ukraine No. 1400 of 17 December 2022), the Ministry ensures the formation and implementation of state policy in the transport sector (road, rail, sea, inland waterway transport, air transport), postal services, multimodal transport, as well as tourism and resorts, construction, urban planning, improvement of settlements, pricing in construction, restoration of regions, territories and infrastructure affected by the armed aggression of the Russian Federation against Ukraine, as well as in the field of architectural and construction control, control of housing and communal services, and in the field of energy efficiency of buildings.

The defined functional burden on the Ministry for Communities, Territories and Infrastructure Development of Ukraine, on the one hand, and the existence of an already established specialised unit – the Maritime Guard of the State Border Guard Service – suggests the expediency of a more rational distribution of responsibilities between state structures.

The Association Agreement, the Action Plan, and the Strategy suggest that one of the areas of adaptation is to bring state governance structures in line with European ones for more successful integration and efficiency of public administration.

At the same time, the European Parliament has defined the procedure for the operation and functioning of the European Border and Coast Guard Agency (Frontex).

Regulation (EU) No. 2016/1624 of the European Parliament and of the Council of 14 September 2016, paragraph 44, states that:

«National authorities carrying out coast guard functions are responsible for a wide range of tasks, which may include maritime safety, security, search and rescue, border control, fisheries control, customs control, general law enforcement and environmental protection. The Agency, the European Fisheries Control Agency established by Council Regulation (EC) No 768/2005 (1) and the European Maritime Safety Agency established by Regulation (EC) No 1406/2002 of the European Parliament and of the Council (2) should therefore strengthen their cooperation both with each other and with the national authorities carrying out coast guard functions to increase maritime situational awareness and to support coherent and cost-efficient action. Synergies between the various actors in the maritime environment should be in line with the European integrated border management and maritime security strategies» [17].

The issues of search and rescue at sea under the legislation of the European Union are regulated by Regulation (EU) No. 656/2014 of the European Parliament and of the Council of 15 May 2014, which in paragraph 1 of the preamble stipulates that:

“To this end, border surveillance is not limited to the detection of attempts at unauthorised border crossings but equally extends to steps such as intercepting vessels suspected of trying to gain entry to the Union without submitting to border checks, as well as arrangements intended to address situations such as search and rescue that may arise during a border surveillance operation at sea and arrangements intended to bring such an operation to a successful conclusion” [18].

Accordingly, in order to implement the European organisation of search and rescue at sea in Ukraine, taking into account the coincidence of the maritime search and rescue area of Ukraine with the state border in the Black and Azov Seas, the appropriate distribution of the functional load of state bodies, I consider the State Border Guard Service of Ukraine to be the most rational state structure in Ukraine, on the basis of which the functions of search and rescue of human life in case of disaster at sea are most efficient, effective and economically justified.

The effectiveness of maritime search and rescue in this case is achieved by optimising the number of employees, rationalising and automating administrative procedures, reducing the number of required assets or their maintenance; reducing costs; simplifying the transmission of emergency messages by emergency alert posts; improving coordination and exchange of experience in maritime search and rescue within the framework of integrated border management within the European Union.

5. Conclusions.

Search and rescue in the event of a maritime disaster is an international obligation of the coastal country, which is fulfilled in accordance with the:

The 1982 United Nations Convention on the Law of the Sea;

International Convention for the Safety of Life at Sea, 1974;

International Convention on Maritime Search and Rescue, 1979;

Agreement on Cooperation of the Black Sea States on Search and Rescue on the Black Sea of 1998.

Ukraine is a party to these international agreements and is obliged to comply with their provisions.

However, the legal framework for the organisation of search and rescue at sea in Ukraine has relevant shortcomings, which have internal and external aspects.

The internal aspects of the shortcomings relate to the fact that search and rescue at sea in Ukraine is regulated simultaneously by different legal acts of different levels and different legal force, which do not correspond to each other, and is ensured by imposing obligations on several state structures, as well as uneven functional load between state bodies, which indicates the lack of a clear and effective distribution of functions and responsibilities between structures and the presence of a negative aspect of duplication of functions.

The external aspect reveals the inconsistency of the existing legal framework for the search and rescue system at sea in Ukraine with international standards and Ukraine's strategic direction towards EU membership.

Reforming the organisation of search and rescue at sea and integrating this function into the State Border Guard Service of Ukraine will allow implementing the Action Plan for the Implementation of the Association Agreement in terms of adopting basic laws on reforming the civil service system; implementing public administration reforms; developing infrastructure and logistics for integrated border management with proper implementation of the Integrated Border Management Concept and interaction with the EU; organising joint operations with the EU side; and ensuring the proper implementation of the EU-Ukraine Border Guard Agreement.

Such an approach in the context of European integration will contribute to more effective maritime search and rescue in view of the integrated management of this function within the European Union and ensuring the gradual achievement of compatibility between existing European maritime search and rescue systems and the laws and future legislation of Ukraine on the EU acquis.

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