

## SEAFARER SUBJECT GUIDE

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### SHIP ARREST FOR SEAFARERS' WAGES IN POLAND

This Guide deals with the rights of seafarers of any nationality to arrest a ship for unpaid or underpaid wages in a port in Poland.

This document is not intended to be legal advice, nor does it constitute legal advice.

If a seafarer intends to arrest a ship in Poland, he is strongly advised to consult a lawyer qualified to practise in that country.

\*A full text version of this Subject Guide including footnotes will become available for subscription in due course. In the meantime if there is a specific inquiry on any Subject Guide, please contact SRI.

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#### **1. Can a seafarer arrest a ship for unpaid wages regardless of his nationality and regardless of the flag of the ship?**

- 1.1 As a general rule, a seafarer may arrest a ship in Poland for unpaid wages. Poland is a party to the International Convention Relating to the Arrest of Sea-Going Ships 1952 ('the 1952 Convention'), which states that a ship may be arrested to secure maritime claims, and, among those claims, wages of masters, officers, or crew are listed. According to the 1952 Convention, 'arrest' means the detention of a ship by judicial process to secure a maritime claim, but does not include the seizure of a ship in execution or satisfaction of a judgment.
- 1.2 Apart from regulations of the 1952 Convention, there are no specific regulations governing ship arrests under the Polish law. The right to arrest a ship exists regardless of the claimant's nationality and the flag of the ship. The procedure of arresting a ship is also governed by the Polish Code of Civil Procedure ('the PCC').

#### **2. What is the time limit within which a seafarer must start a claim for unpaid wages?**

- 2.1 If Polish law applies to the employment relationship, claims arising out of such relationship are barred by a limitation of three years from the date on which the claim became enforceable. In theory this does not mean they become extinguished, but in case the claim is pursued in litigation the debtor may (and if represented by a professional most definitely will), raise a defense of limitation after three years have passed, which will result in the claims being dismissed.
- 2.2 Otherwise, in order to arrest a ship, it can take three to four days (much depends on the judge). If an arrest has been granted, then points of claim must be filed pursuant

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to the PCC. The Polish court will determine the time limit to file details of the claim. The time limit should be no longer than two weeks from the time that the security via arrest has been granted by the court.

- 2.3 If the seafarer does not file the points of claim within a determined time limit, the ship-owner/charterer will be entitled to claim damages caused by the enforcement of the security (in this case, arising out of the wrongful arrest). Such a claim expires, if it is not pursued within one year from the day when the claim arose.

### 3. What documents are required to obtain an arrest of a ship?

- 3.1 According to the PCC, a person applying for an arrest should: (1) substantiate his claim and (2) establish legal interest in the security for a claim. Polish law differentiates between the burden of substantiation, and the burden of proof. To substantiate a claim is to provide the evidence which makes the claim seem probable (but not proven). These would be, for example, documents indicating that an employment relationship exists/existed and that the wages have not been paid. A legal interest in security for a claim exists if the lack of security would prevent or significantly hinder the enforcement of a ruling issued in a given case or otherwise prevent or seriously hinder satisfying the purpose of proceedings in a given case.
- 3.2 The documents, if not provided in Polish language, should be translated by a certified translator. They should also be notarised and legalised if they are not presented in originals and if a seafarer is not represented by a professional lawyer ('adwokat' or 'radca prawny').
- 3.3 Special attention should be paid to a power of attorney. Taking into account the formal approach of the Polish courts when international cases are concerned, a power of attorney issued in another country and/or another language might be required to be notarised and/or legalised with a possible necessity of apostille.

### 4. What are the costs of the arrest, including court expenses and other expenses?

- 4.1 As far as the costs of the arrest are concerned, the following apply:
- (1) court costs to obtain a judgement granting the security via arrest are approximately EUR 25 for the application, EUR 4 for the power of attorney fee (paid in advance) and lawyer's fees; and
  - (2) arrest proceedings costs are 2% fee of the sums claimed for the court execution officer to initiate the proceedings (to be paid in advance).

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- 4.2 The above fees do not cover the officer's expenses such as costs of announcements, transport expenses, custody expenses and postage costs which the court execution officer might ask the seafarers to pay in advance and which will be established depending on the circumstances of the case.
- 4.3 In addition to the costs listed above, one should expect to pay EUR 10 for each page of the document to be translated, should a necessity for translation arise (in Poland a 'page' is usually construed as consisting of 1500 to 1800 signs).
- 5. Does the arresting party have to lodge counter security against wrongful arrest?**
- 5.1 As provided by the PCC, the court may as a condition for the enforcement of a decision to award security, order bail to secure the shipowner's/charterer's claims arising from the enforcement of the decision to award security.
- 5.2 The amount of the security is calculated by the court and is dependent on the amount of possible claims of the shipowners/charterer that may arise out of wrongful arrest. Polish law provides no differentiation for crew claims in this respect.
- 5.3 In practice, it is rather rare for the courts to impose an obligation for counter security on the creditor, and it is not heard of in employment cases. Moreover, counter security regulations do not apply to arrest arising out of the cases where the unpaid wages claimed do not exceed the employee's full monthly salary.
- 6. Once a vessel has been arrested, will the court accept jurisdiction over the substantive claim?**
- 6.1 As a general rule, the jurisdiction over the substantive claim is not affected by the fact of the ship being arrested. The acceptance of jurisdiction will depend on the circumstances of the particular case and will be based on national and international laws, starting with regulations of PCC, through European regulations (in particular Council Regulation No. 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters and bi- and multilateral agreements).
- 6.2 There are, however, some factors which might be considered as additional grounds for jurisdiction of Polish courts when an arrest of a ship is concerned based on the 1952 Convention. These are: (1) if the claimant has his habitual residence or principal place of business in the country in which the arrest was made; or (2) if the claim arose in the country in which the arrest was made.

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6.3 Moreover, article 1103(4)<sup>7</sup> of the PCC might also be taken into consideration here. According to this article, Polish courts have jurisdiction when claims involve monetary rights, if the defendant has his property in Poland or is entitled to property rights in Poland of major value compared to the value of the matter at issue.

### **7. Will the crew and vessel be maintained/supported during the arrest?**

7.1 As a general rule, once the ship is arrested, the enforcement officer shall leave the ship in the possession of the shipowner/charterer. However, for important reasons (and without a doubt such reasons exist in case of ship arrest), the enforcement officer may, at any stage of the proceedings, entrust the ship to the custody of another person, however excluding the creditor (that is, the seafarers), even if this requires the property to be moved. That person shall act as the custodian of the ship.

7.2 A custodian or debtor who is entrusted with the custody of the ship entrusted to him must exercise sufficient diligence to prevent its loss of value, and surrender it at the enforcement officer's order or in compliance with a court ruling, or at the joint request of both parties. A custodian may request reimbursement of storage related expenses or compensation for the custody proportionate to his actual efforts. This shall not apply to the debtor, members of the debtor's family residing with him, and third persons from whom the ship was arrested. The total amount of expenses and the value of compensation are determined by the execution officer.

### **8. Is the presence of the crew on board the vessel necessary during the course of the legal proceedings or can the crew be repatriated before the ship is sold?**

8.1 The presence of the crew on board the vessel is not necessary during the course of the legal proceedings and the crew can be repatriated.

8.2 As far as the Polish law is concerned, the matters related to repatriation are governed by the Law on Labour on Sea-Going Commercial Ships.

8.3 A Polish seafarer who, during or after his employment relationship, remains abroad, has a right to immediate repatriation to Poland. A foreign seafarer has a similar right to repatriation to the port of his employment contract or to the neighboring port.

8.4 The obligation to repatriate a seafarer lies on the shipowner with whom the seafarer recently remained in an employment relationship. If the seafarer remains abroad without his fault, the reasonable costs of repatriation should be covered by the shipowner. The shipowner may demand a seafarer to bear the costs of repatriation if, without justified reasons, the seafarer refuses to undertake work for which he is

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qualified in a ship which would have taken him to the place of repatriation. If the shipowner is insolvent or liquidated, the costs of repatriation are to be covered by the state.

### 9. Do the seafarer's wages continue to accrue during the arrest?

9.1 As far as Polish law is concerned, the wages do continue to accrue, provided that the employment agreement remains in force. However, the limitation period applies.

### 10. How long on average does it take for the court to sell the vessel and then distribute the sale proceeds in settlement of the crew's claim?

10.1 In Poland, the proceedings related to litigation concerning crew's claims may last a long time. Obtaining a judgment on the merits may take from one to two years (with the exemption of obtaining default judgment or if the debt is acknowledged by the debtor in the court). If the ship is to be sold, one should expect from one to three years to get the money distributed.

10.2 The limitation period is interrupted once litigation begins and does not start to run anew until the proceedings are closed.

### 11. How are the lawyer's fees for arresting the ship paid?

11.1 The seafarer pays his lawyer in accordance with an agreement. Minimum wages in such cases are subject to the Regulation of the Minister of Justice of 28 September 2002 about the fees for legal counsels and the costs of the Treasury related to the legal assistance of the legal counsel appointed by the court, as well as the regulation of the Minister of Justice of 28 September 2002 governing the fees for advocates and the costs of the Treasury related to the legal assistance of an advocate appointed by the court. Below is a comparison of such minimum wages in relation to the value of the matter in issue.

value of the matter in issue (total sum of unpaid seafarer wages)	Minimum attorney's fee
less than ~123 €	~15 €
~123 € - ~370 €	~44,50€
~371 € - ~1233 €	~148 €
~1.234 € - ~2.466 €	~296 €
~2.467 € - ~12.332 €	~592 €
~12.333 € - ~49.329 €	~ 888 €
more than ~49.330 €	~1176 €

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- 11.2 These fees should, however, be treated as a point of reference for minimum fees in cases where lawyer is appointed on legal aid. In practice a seafarer should expect to pay around EUR 5.000 to a lawyer for the arrest of a ship. The legal costs are recoverable based on article 98 of the PCC, according to the 'loser pays' principle. In practice, the amount recoverable is usually limited to the minimum amounts specified above.
- 12. Are there any other procedures to enforce a seafarer's wage claim?**
- 12.1 Sister ship arrest is possible based on the 1952 Convention. Subject to the exception specified in the next paragraph, a seafarer may arrest either the particular ship in respect of which the claim for the unpaid wages arose, or any other ship which is owned by the person who was, at the time when the maritime claim arose, the owner of the particular ship, even though the ship arrested be ready to sail. The ships are understood to be under the same ownership when all the shares therein are owned by the same person or persons (be it a legal or natural person under the 1952 Convention).
- 12.2 The 1952 Convention provides an exception from that rule in article 3(4) in the case of a charter by demise of a ship where the charterer and not the registered owner is liable in respect of a maritime claim relating to that ship. In such cases the claimant may arrest such ship or any other ship in the ownership of the charterer by demise subject to the 1952 Convention but no other ship in the ownership of the registered owner shall be liable to arrest in respect of such maritime claim. This exception applies to any case in which a person other than the registered owner of a ship is liable in respect of a maritime claim relating to that ship.
- 12.3 It is important to stress that, besides having a maritime claim as a ground for arresting a ship, the seafarer should also have a maritime lien. Lacking the latter may result in the possible arrest of a ship by a seafarer, but not in successful seizure of the ship in execution or satisfaction of a judgment.
- 12.4 Finally, if the ship is registered in the Polish Ship Register, monetary claims may be secured by mortgaging a ship. This is governed by the abovementioned regulations of the PCC and supplemented by regulations of the Polish Maritime Code and the Law on Land and Mortgage Register.