

SEAFARER SUBJECT GUIDE

ABANDONMENT IN GERMANY

This Guide deals with the situation where seafarers are abandoned in a port in Germany or on a German flagged vessel in a port outside Germany. This document is not intended to be legal advice, nor does it constitute legal advice. If a seafarer is abandoned, he is strongly advised to consult a lawyer qualified to practise in Germany.

*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.

- 1. When is a seafarer considered abandoned according to your national case law or legislation? Is there any special legislation concerning abandoned crew?**
 - 1.1 As of August 2013, the Seearbeitsgesetz ('the SeeArbG') ('the Maritime Employment Act') governs the situation of an abandoned crew. The SeeArbG replaced the Seemannsgesetz ('the SeemG') ('the Seafarers' Act') and is the implementing legislation in Germany of the Maritime Labour Convention 2006.
 - 1.2 The Maritime Employment Act applies to all seafarers working in any capacity on board German merchant vessels (crew members). The crew members also include the captain and paid employees who are employed by an employer other than the shipowner (§3 of the SeeArbG – crew members). Self-employed individuals on board are also included as crew members. The personal scope of application is thus wider than the legislation in force prior to August 2013.
 - 1.3 The SeemG did not contain a definition of 'abandonment.' Prior to August 2013, abandonment applied if a crew member had to leave the vessel on the captain's orders. Abandonment required an active – deliberate – act by the captain. The SeeArbG provides a definition of abandonment, which 'applies if the crew member has to leave the vessel at the instigation of the captain.'
 - 1.4 The SeeArbG codifies the principle of prohibition of abandonment under the previous legislation. The main change brought by the SeeArbG is the transfer of responsibility from the port authority to the Employer's Liability Insurance Authority in dealing with abandonment. It sets out a number of rights for seafarers regarding abandonment, which include the following.

SEAFARER SUBJECT GUIDE

- (1) The right not to be abandoned abroad by the captain without the approval of the Employers' Liability Insurance Authority.
- (2) The right to guaranteed maintenance in the three months following abandonment. This is a condition for the Employers' Liability Authority to give approval, or a condition without the approval of the port authority if the seafarer agreed to abandonment. In the case of juveniles, the approval of a legal representative is mandatory. If a legal representative cannot be found, the Employer's Liability Authority must provide approval.
- (3) The right to repatriation. The entitlement to repatriation included appropriate accommodation and food, and shipment of property.

1.5 As of August 2013, the seafarer, the crewmember, is entitled to repatriation in the event of illness, injury, termination of the employment contract, and so on. In particular, the seafarer is entitled to repatriation under the SeeArbG if the shipowner no longer fulfils its statutory or employment contract obligations due to insolvency, sale of the vessel, amendment of the entry in the register of shipping or a similar reason.

1.6 The destination for repatriation is at the discretion of the seafarer:

- (1) the place of residence of the crew member;
- (2) the place in which the employment contract was concluded;
- (3) the place specified in the collective pay agreement; or
- (4) in any other place agreed in the employment contract.

1.7 Regarding the implementation and costs of repatriation:

'For the protection of the crew members employed on the vessel, the shipowner must provide evidence of a declaration of acceptance of costs covered by a surety or guarantee by an association, for cases of repatriation. Such a surety may take the form of a bank guarantee or an insurance policy such as for P&I insurance. This must be carried on board for the purposes of Port State Control.'

1.8 Where a shipowner fails to refund the costs of repatriation due to insolvency and lacks financial security under the SeeArbG, the Employer's Liability Insurance Association must arrange repatriation and advance costs, which the shipowner must refund. Seafarers also have a maritime lien on account of the repatriation entitlement

SEAFARER SUBJECT GUIDE

at the expense of the shipowner as a constituent part of the claim for pay. In the event of the inability of the shipowner to pay due to insolvency, arrangements can also be made by collective agreement.

- 1.9 So that the seafarer/crewmember is aware of his rights, the shipowner must ensure under the SeeArbG, 'that a copy of the applicable statutory provisions on repatriation is available to each crew member in a suitable language.'

2. What is the immigration status of abandoned seafarers in your country?

- 2.1 Visa stipulations affect seafarers, initially irrespective of the question of whether they were abandoned and/or are entitled to repatriation. These provisions must be respected when the vessel calls at a German port. Seafarers wishing to be hired on a German vessel, that is, a vessel sailing under the German flag, require a valid residence permit granted in the form of a national visa. Seafarers commencing work on a vessel flying a foreign flag and wishing to commence service on a vessel in a German seaport (for example, Hamburg or Bremerhaven) require a Schengen visa for entry into the Schengen area (for example, Frankfurt and Main airport).
- 2.2 Citizens of European Union countries do not require a visa for entry into Germany. Citizens of non-EU countries, that is, all other foreign citizens, require a visa to reside in Germany. The Foreign Office issues a summary of visa requirements and legal regulations to citizens of states for which the European Community has cancelled the visa requirement for visits of up to 90 days in any six month period. Furthermore, Regulation (EC) no. 415/2003 of 27 February 2003 on the issue of visas at the border, including the issue of such visas to seafarers in transit, the Residence Act (see §4(4) and §2 of the [German] Consular Act [KonsG] must be observed.

3. Can an abandoned seafarer get shore leave?

- 3.1 A seafarer can leave the vessel and go ashore but must remain in the port city. The Residence Regulation (exemption for seafarers) governs the fact that the vessel's civilian crew members are exempt from the requirement to have a residence permit for entry and residence under certain conditions. It states that vessel's civilian crew (captain and crew members) are exempt from the requirement to have a residence permit while in port if the passport obligation is fulfilled. The authorities commissioned with control of cross-border traffic have responsibility. A permit is then issued to allow the seafarer movement ashore in the port.

SEAFARER SUBJECT GUIDE

4. Is abandonment of seafarers considered a crime?

- 4.1 Abandonment constitutes 'only' an administrative offence, and '[a]nyone deliberately or negligently abandoning a crew member abroad contrary to §72(1)(1) is in breach of regulations.' Abandonment constitutes an administrative offence subject to a penalty of a fine of up to fifty thousand euros. The employers' liability insurance association is the administrative authority.
- 4.2 Anyone persistently repeating a deliberate act (abandonment) will be liable for punishment of up to one year's imprisonment or a fine. Anyone committing a deliberate act (abandonment) which endangers the health or ability to work of the individual concerned will be liable for punishment of up to one year's imprisonment or a fine.
- 4.3 The threat of a penalty was intended to protect crew members from being abandoned by the captain or his representative deliberately and without the approval of the port authority abroad, regardless of the nationality of the abandoned individual.
- 4.4 Criminal offences set out by the [German] Penal Code also apply under the SeeArbG. Culpability on the part of the captain could emerge under the [German] Penal Code (StGB), for example the offence of abandonment, bodily harm and abuse of vulnerable persons.

5. What entities and/or persons may be involved with or assist an abandoned crew?

- 5.1 Various entities and/or persons may be involved with or assist an abandoned crew.
- 5.2 Lawyers

See FIND ASSISTANCE on the SRI app which can be downloaded from the home page of the SRI website at www.seafarersrights.org

- 5.2.1 In addition, reference may be made to the Guide on Using Lawyers and Fact File available on the SRI app and at

https://www.seafarersrights.org/seafarers_subjects/using_lawyers/

SEAFARER SUBJECT GUIDE

5.3 ITF Inspectors and union officials

See FIND ASSISTANCE on the SRI app which can be downloaded from the home page of the SRI website at www.seafarersrights.org

5.4 Welfare agencies

See FIND ASSISTANCE on the SRI app which can be downloaded from the home page of the SRI website at www.seafarersrights.org

5.5 Governments and Embassies

Additionally the seafarer may need to access government official websites, including lists of embassies, to find an appropriate contact.