

SEAFARER SUBJECT GUIDE

ABANDONMENT IN POLAND

This Guide deals with the situation where seafarers are abandoned in a port in Poland as well as where seafarers are abandoned on a Polish flagged vessel in a port outside Poland. 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 Poland.

*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 national case law or legislation? Is there any special legislation concerning abandoned crew?

- 1.1 There are no laws in force in Poland to solve issues arising out of the abandonment of a seafarer. There is no legal definition specifying the criteria to be met to acquire the status of an abandoned seafarer. There are, however, regulations which might be considered applicable and relevant under certain circumstances related to abandonment. These are described below.
- 1.2 Under provisions of the Law on Labour on Sea-Going Commercial Ships ('the Law on Sea Labour'), seafarers employed under Polish law are protected by the law in the same way as all the other employees are. This means that - among other regulations - the Labour Code applies to the seafarer employment relationship. The Polish Civil Code provides that the employer (for example, a shipowner or charterer), as a party to contractual relationship, is obliged to remedy any damage arising from non-performance or improper performance of an obligation arising out of an employment relationship, unless the non-performance or improper performance is due to circumstances for which he is not liable. Therefore, as far as Polish law applies, a seafarer may rely on the regulations of the Polish Civil Code to claim damages arising out of his employer's non-performance.
- 1.3 Repatriation regulations should also be mentioned. According to the Law on Sea Labour, a Polish seafarer who, during the employment relationship or immediately after it ceased, remains abroad without his fault 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. The obligation to provide repatriation and the duty to cover its costs lies, as a general rule, on the shipowner, with whom

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the seafarer had an employment relationship. However, if a Polish shipowner becomes insolvent, or is liquidated based on a decision of a Polish government body, the costs of repatriation are to be covered by the state.

- 1.4 Finally, in certain circumstances, especially as far as a Polish charterer/shipowner is concerned, the regulations of the Law on Protection of Employees Rights in the case of Employers Insolvency ('the LPERI') may serve to further reinforce a seafarer's interest. According to the LPERI: an employee who is employed by a Polish employer; (ii) who does not satisfy employment-related claims for longer than two months because (iii) the said employer had ceased his activities, may apply for these claims to be funded from the government-based Fund of Guaranteed Employees Claims. The funds that may be obtained this way are, however, subject to limitations.

2. What is the immigration status of abandoned seafarers?

- 2.1 As a general rule, the immigration status of abandoned seafarers would be no different to that of any other person staying in Poland. A seafarer may be considered either to be a Polish citizen or a foreigner if he does not possess a Polish citizenship. Moreover, within the EU countries, a so-called 'European Union citizenship' exists, which is supplementary in its character and co-exists with other national citizenships. European Union Citizenship provides additional rights, chief among those is the right to move, reside and have access to labour markets within EU countries.
- 2.2 Apart from that, the rights and scope of protection afforded to foreigners in Poland differ depending on many circumstances, including a foreigner's age, whether or not he is seeking asylum or refugee status, whether or not his ancestors were of Polish origins, and other considerations.

3. Can an abandoned seafarer get shore leave?

- 3.1 Generally an abandoned seafarer can get shore leave. The Act on Labour on Sea-Going Commercial Ships provides that, where an employee's employment is terminated abroad, he has the right to be brought to the state of his nationality, and a foreign worker has the right to be brought to the port of the contract of employment, or an adjacent port.

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4. Is abandonment of seafarers considered a crime?

- 4.1 The Penal Code regulates penal liability. The Penal Code applies to an offender who commits a prohibited act in Poland, or on a Polish vessel or aircraft, unless Poland is party to an international agreement stating otherwise. The Penal Code is also applied to a foreigner who has committed a crime abroad against the interests of a Polish citizen.
- 4.2 Offences against the rights of people in paid work are regulated in the Penal Code. In accordance with the Penal Code, a person who maliciously or persistently infringes the rights of an employee resulting from a labour – contract relationship, while performing activities in the field of labour law and social insurance, shall be punished by fine, or restriction of liberty, or imprisonment for up to two years.
- 4.3 The scope of penal responsibility for abandonment of seafarers may also extend to the crime expressed in the Penal Code, which states that a person who fails to fulfill his responsibilities concerning occupational health and safety and thereby exposes an employee to an immediate danger of loss of life or serious injury is liable to imprisonment for up to three years. In accordance with the Penal Code, the offender is liable to a fine, restriction of liberty, or imprisonment for up to one year, if he acts unintentionally. And, according to the Penal Code, an offender who voluntarily prevented an impending danger will not be liable to the penalty.

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/

- 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

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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.