

SEAFARER SUBJECT GUIDE

USING LAWYERS IN POLAND

This Guide deals in general terms with using lawyers in Poland. It aims to help a seafarer understand the legal profession in Poland, and how to select, engage, and if need be, change his lawyer. This Guide does not, however, constitute specific legal advice in relation to the use of any particular lawyer. If a seafarer is dissatisfied with his lawyer, he is strongly advised to consult another lawyer qualified to practice in Poland.

1. What is the structure of the legal profession?

- 1.1 The legal profession is divided between legal counsels (also called attorneys-at-law) ('radca prawny') and advocates ('advokat'). Legal counsels can either be self-employed, or employed for example by a company as an in-house lawyer. Advocates can only be self-employed and cannot therefore work as in-house lawyers.
- 1.2 The main difference between legal counsels and advocates is that legal counsels are not entitled to appear as defence lawyers in criminal cases. Otherwise, legal counsels and advocates may represent seafarers in all matters and in all types of courts. Generally there are four levels of courts: the District Court, the Regional Court, the Appeal Court and the Supreme Court.

2. How is the legal profession regulated?

- 2.1 Legal counsels are regulated by the Act of Legal Counsels of 6 July 1982 and the Code of Ethics of the Legal Counsels. Advocates are governed by the Act of the Bar of 26 May 1982 and the Code of Ethics of the Advocates. Legal counsels are obliged to be members of the National Chamber of Legal Counsels, (www.kirp.pl) (website in Polish) while advocates are required to be members of the General Council of Advocates (www.nra.pl) (website in Polish). These bodies are in turn divided into Regional Chambers of Legal Counsels and District Councils of Advocates.

3. How can a seafarer find a lawyer?

- 3.1 A seafarer can find lists of legal counsels on the websites of the regional chambers of legal counsels. He should identify on the map the chamber appropriate to his location in Poland. A seafarer may also consult the Legal500 website, or the HG Global Legal Resources website, or the World Law Guide website, or the EU Lawyers & Solicitor Directory.

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3.2 Seafarers encountering civil disputes, should contact a legal counsel specialising in maritime law (<http://www.hq.org/law-firms/Admiralty-and-Maritime/Poland.html>) (website in English). Seafarers encountering criminal issues, should contact the General Council of Advocates or an advocate directly.

4. On what terms can a seafarer engage a lawyer?

4.1 There are no standard terms on which a seafarer may engage a lawyer. Generally, lawyers provide legal services based either on a legal services contract or on general conditions of co-operation. In many cases, law firms use general conditions of co-operation which they have drawn up. The legal services contract describes the rules of co-operation, obligations of the parties, conditions of payments and so on.

4.2 The seafarer may terminate the contract at any time in accordance with its terms, but he would be obliged to reimburse the lawyer for outstanding costs or fees.

5. How will a seafarer be charged fees by his lawyer?

5.1 In general there are two ways for lawyers to charge fees. Both legal counsels and advocates can charge at hourly rates, which may be set out in the legal services contract or in the general conditions of co-operation. Alternatively, the lawyers may fix a fee as a lump sum. The rates of fees vary, and often reflect the prestige and experience of the lawyers. The hourly rate may vary between 25 and 300 euros. If a case goes to court, the seafarer will have to pay additional costs, such as court fees.

5.2 Lawyers fees for trials in civil cases are based on the Regulations of the Minister of Justice of 28 September 2002 concerning: (a) the fees for legal counsels and the costs of the Treasury associated with the legal assistance provided by the legal counsel appointed by the court; and (b) the fees for advocates and the costs of the Treasury associated with the legal assistance provided by the advocate appointed by the court. The attorney's fees are set out in the table below:

| Value of the case | Attorney's fee |
|----------------------|----------------|
| less than ~123 Euros | ~15 € |
| ~123 € - ~370 € | ~44,50€ |
| ~371 € - ~1233 € | ~148 € |
| ~1.234 € - ~2.466 € | ~296 € |
| ~2.467 € - ~12.332 € | ~592 € |

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| | |
|-----------------------|---------|
| ~12.333 € - ~49.329 € | ~ 888 € |
| more than ~49.330 € | ~1176 € |

5.3 It is important to stress that the court is bound by these amounts when assessing fees and deciding on reimbursement. The court may, in complex cases, increase these amounts by multiples of four, or even six. Moreover, a legal counsel or an advocate is at liberty to agree on higher fees than the amounts provided for in the Regulations set out above, something which happens often.

5.4 In the legal services contract or general conditions of co-operation, lawyers may reserve the right to a 'success' fee, although, under the Codes of Ethics, they are not allowed to provide legal services purely on the basis of a 'success' fee.

6. Can a seafarer get legal aid in a criminal case?

6.1 A seafarer may be represented in criminal cases either by an advocate or by a legal counsel. In a situation where the seafarer is a defendant (accused) in a criminal case, the defence may be conducted only by an advocate.

6.2 Legal aid, in the form of free legal representation in a criminal case, may be granted to any person who proves that he cannot afford to hire a professional lawyer and is unable to represent himself.

6.3 In certain circumstances, professional representation is mandatory. This means that whenever the defendant cannot appoint a lawyer himself, legal assistance should be provided free of charge. This is particularly the case when the defendant is a juvenile, deaf, mute or blind or whenever there is a justified suspicion of insanity on the defendant's part. Moreover, professional representation must be provided whenever the court deems it necessary or if circumstances exist which might impair the defendant's legal position. Finally, professional representation is mandatory when the defendant is charged with a felony in front of a Regional Court or if he is already imprisoned when the indictment is filed.

7. Can a seafarer get legal aid in a civil case?

7.1 The procedure and forms for obtaining legal aid in civil cases vary, depending on the seafarer's domicile and habitual residency.

7.2 The general rule in civil procedure, which applies to those who are either Polish residents or are domiciled in Poland, is that legal aid is available if the person is able to prove that he cannot afford the services of a lawyer without this proving

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detrimental to his ability to support either himself or his family and is unable to represent himself. Aid may be granted to someone planning to file a lawsuit or to someone already party to a civil dispute. In order to obtain such legal assistance the application to the court must be made in Polish.

- 7.3 Natural persons, either domiciled or habitually resident in EU member states or legally staying in EU member states, may be granted legal aid in civil cases on special terms. Such a person may apply for exemption from court costs, free legal representation, and a refund of travelling costs arising from a court summons. Application is free of charge and should be made either in English or in Polish or translated into either of these languages. The seafarer should apply to the court where the proceedings are or would be commenced (if the application is addressed to the wrong court, the court is obliged to forward it to the proper court) or via the Polish Ministry of Justice (<http://ms.gov.pl/en/organisational-structure/department-of-international-co-operation-and-european-law/>) (website in English).
- 7.4 The application for legal aid should include: (a) a description of the family and financial situation of the applicant; (b) documentation proving that the applicant is either domiciled in or a resident of a EU member state or is legally staying in a EU member state; and (c) a declaration as to whether Polish legal aid has previously been granted to the applicant.
- 7.5 Legal aid may be granted fully or partially or refused entirely by the court, depending on the applicant's situation. The person appointed to provide legal assistance should be able to speak the applicant's language.

8. Can a seafarer get any other free legal advice?

- 8.1 There are numerous ways to obtain free legal advice, but much of it is available only in Polish. For example, many law faculties at Polish universities offer legal clinics where law students, mentored by academic staff, provide legal help. Such clinics currently operate in Szczecin, Cracov, Warsaw, Białystok, Toruń, Lublin, Rzeszów and Łódź. Contact information may be found on the Legal Clinic Foundation website: http://www.fupp.org.pl/index_eng.php (website in English).
- 8.2 In many cities non-profit organizations provide free legal assistance. They differ in size and the type of assistance offered. Those which are located in main Polish port cities are as follows:

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- .1 Szczecin: <http://www.bpo.szczecin.pl> (website in Polish),
<http://www.szczecin.oip.pl/index.php/porady-prawne> (website in Polish),
- .2 Gdynia: <http://www.ovum.org.pl/bpo/jak-dziala-biuro> (website in Polish),
http://familijny.pl/gdansk/biura_porad_prawnych/gdynia/2815 (website in Polish)
- .3 Gdańsk: http://familijny.pl/gdansk/biura_porad_prawnych/gdansk/2814
(website in Polish)

8.3 In particularly deserving cases, an advocate or a legal counsel may waive his remuneration for legal representation. Also, several times during the year, legal corporations organise meetings where legal advice is available free of charge. However, a seafarer should be aware that the scope of legal advice available during such consultations is limited. A seafarer cannot expect to have a complex legal problem solved during a brief meeting with a lawyer.

9. Can a seafarer sue his lawyer?

9.1 A seafarer may sue his lawyer. Lawyers are subject to civil, criminal and disciplinary responsibility. Agreement between the lawyer and his client is generally classified as an agreement of due diligence. This means that, in the absence of other contractual provisions, the lawyer is measured on his professional actions rather than on the results he achieves (or lack thereof).

9.2 The criminal responsibility of lawyers is identical to that of any other professional. However, advocates and legal counsels have immunity against prosecution for abuse of freedom of speech arising out of their professional activity.

10. How can a seafarer complain about his lawyer?

10.1 Should a seafarer wish to file a complaint against his lawyer, he should address it in Polish to the lawyer's local chambers, either the District Chambers of Advocates or the District Chambers of Legal Counsels ('Okręgowa Izba Adwokacka' or 'Okręgowa Izba Radców Prawnych' respectively). Lawyers are subject to disciplinary measures, which range from a reprimand to a denial of the right to practice as a lawyer. There are three parties to the proceedings: the accused, the prosecutor and the seafarer. The proceedings are held at the District Chambers Disciplinary Court in the first instance.

10.2 The seafarer may appeal to the High Disciplinary Court against the decision of the District Chambers Disciplinary Court within 14 days of receipt of the decision.

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11. How can a seafarer change his lawyer?

- 11.1 As a general rule, a seafarer may revoke a power of attorney or terminate a legal services contract at any time and is free to consult another lawyer.
- 11.2 The withdrawal of the lawyer is effective against the court and other parties to the dispute from the moment it reaches the relevant addressees.

12. Is a foreign seafarer treated differently?

- 12.1 As a general rule, foreign seafarers who pursue claims or who face criminal prosecution are not, and may not be, treated differently from Polish nationals.
- 12.2 However, in certain circumstances in civil cases, a foreign seafarer who is not resident in Poland may have to provide security for legal costs, especially when pursuing a claim in Poland.

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