

EU insolvency law protection can apply to non-EU ships

The United Nations Convention on the Law of the Sea says that ships have the nationality of their flag state, and that ships are subject exclusively to the flag state's jurisdiction on the high seas. The flag state also has a duty to assume jurisdiction over the ship, its officers and crew.

However, the European Court of Justice has recently held that seafarers living in a Member State, who are hired to work on a ship with a non-EU flag, may be protected under EU law if the company becomes insolvent.

EU insolvency protection

The EU Insolvency Protection Directive requires Member States to guarantee certain claims by employees against insolvent employers.

In the matter of *Elliniko Dimosio v Stroumpoulis and others* (C-292/14), claims were brought by seven Greek seafarers who lived in Greece, and who were employed by a Maltese-registered company to work on board a cruise ship flying the flag of Malta. At that time, Malta was not a member of the EU. Shortly after, the company which employed the seafarers was declared insolvent by a Greek court.

When the seafarers were refused a payment from state funds by the Greek Employment Agency for unpaid wages, expenses and compensation for the termination of their employment, on the basis that their claim fell outside the scope of the Insolvency Protection Directive, they brought proceedings against the Greek State.

What the court said

The Greek court asked the ECJ whether the EU insolvency rules applied to the seafarers. The ECJ concluded that these rules would apply, if:

- the seafarers lived in a member state, and
- the employer had its head office in a member state, and was declared insolvent according to the law of that member state, even if the seafarers' contracts were governed by the law of a non-EU country, and the flag state and the employer's registered office were in a non-EU country.

The ECJ noted that the EU insolvency rules had a "social objective" to guarantee employees a minimum level of protection at EU level if the employer became insolvent.

What this decision means for marine employers

This case is a reminder for employers of the potentially far-reaching ambit of EU protection laws. EU insolvency protection rights can apply to seafarers who work outside the EU, even if their employer is a non-EU company.



Author:
Heidi Watson



Author:
Corinna Harris