

SEAFARER SUBJECT GUIDE

SHIP ARREST FOR SEAFARERS' WAGES IN FRANCE

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

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

If a seafarer intends to arrest a ship in France, 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.

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

1.1 A seafarer of any nationality can apply for the arrest of the ship on which they are employed if it is in a French port or flagged to France. The exceptions are warships and state-owned ships employed in a public non-commercial service or ships proven to be necessary for the personal exercise of a professional activity, for example, fishing boats.

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

2.1 Action must be taken within six months of the non-payment. A claimant must institute legal proceedings within one month after the arrest of the ship or the arrest will automatically be held cancelled.

2.2 If all the necessary documents are provided in due time, an arrest can be made within the same day in an urgent case.

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

3.1 In practice, no original or notarised documents are needed; the petition must be substantiated with documents providing proof and validity of the claim. A petition under the 1952 Convention must also show the maritime character of the claim.

SEAFARER SUBJECT GUIDE

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

4.1 Seafarers do not have to pay a bond to the court, but bailiff's costs must be paid up front and are typically set between EUR 1,000 and EUR 1,500.

5. Does the arresting party have to lodge counter security against wrongful arrest?

5.1 French courts very rarely require counter security from the arresting party. Technically judges have the discretion to decide otherwise.

6. Once a vessel has been arrested, will the court accept jurisdiction over the substantive claim?

6.1 The 1952 Convention allows French judges to rule on the merits of the claim in certain circumstances. Usually the French courts would not look at the substantive claim if the only grounds to do so were that the ship had been arrested within their area of jurisdiction. They must meet the criteria and conditions set under the international rules of conflict in the 1952 Convention and the European Community Regulations.

6.2 It has been ruled that a ship arrested in France by abandoned seafarers under the 1952 Convention will be heard by French courts. Bringing an action to obtain wages before French Courts is highly controversial and in any other circumstance it is likely that French courts would pass a case over to the courts of the flag state, under the principle of ship extraterritoriality; the applicable law would be the law of the ship's flag or the legal contract.

6.3 Note that ship arrest and an action to obtain payment of the wages would not be brought before the same Courts, resulting in difficulties in finding a final and permanent solution.

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

7.1 There is no specific legislation applicable to foreign crew abandoned in France but French Marine Authorities ('Affaires Maritimes') set up a policy in 2002 to deal with cases of abandonment of seafarers in French ports. In theory the policy provides for careful follow up of ships locked in French ports, and the regular assessment of the life, health and financial conditions of seafarers.

SEAFARER SUBJECT GUIDE

- 7.2 There are a number of recent examples where French authorities provided regular visits, food deliveries, financial aid, emergency fuel delivery, hotel accommodation, translators, advance payment on seafarers' wages and contact with immigration authorities to ease repatriation.
- 7.3 In all cases, it has to be noted that there are also two private reserve funds, one managed by the Association Marseillaise d'accueil des Marins ('the AMAM') and another one managed by the Association de Gestion des Institutions Sociales de la Marine ('the AGISM'). The delegates of the Marseilles Association of Seafarers' Friends first created a solidarity fund based on personal donations.
- 7.4 These funds are supposed to help abandoned seafarers, after claiming their debt before the law with the help of a lawyer, to return home with an advance on their wages, with the balance to be paid to them upon sale of the ship, which also enables the Association to recover the sum advanced and build up the fund again.
- 7.5 Many projects, national and international, have been examined to put in place a global fund to insure the salaries of abandoned seafarers. French authorities have not fully achieved this goal to date.
- 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 crew do not have to stay on board the vessel throughout the many months of legal proceedings and may be repatriated.
- 8.2 French authorities require abandoned or arrested ships in French ports to be watched. Ships with abandoned seafarers on board can be watched by the crew.
- 8.3 The seafarers can be repatriated before the sale of the ship is completed. This repatriation will, in most cases, be organised jointly by immigration authorities and seafarers' associations.
- 9. Do the seafarer's wages continue to accrue during the arrest?**
- 9.1 Usually wages will not accrue and seafarers are advised to seek help from the seamen's protection association.

SEAFARER SUBJECT GUIDE

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 The legal proceedings for the sale and distribution of the ship are lengthy. A court may take approximately one year to decide upon the merits. The judicial sale of the arrested ship is possible once the petitioner holds an enforceable deed or judgement, which takes the court up to six months. In practice, the procedure for a judicial sale will then take between three and six months.

10.2 In the case of the insolvency of the shipowner, seafarers have no choice but to proceed to the forced sale of the ship. This action constitutes a third procedure, to be brought after obtaining a decision on the merits of the claim. This new procedure will be heard before a third court - the Civil Court (Tribunal de Grande Instance) and will take around one year. In turn, this will lead to a clock auction and the results of the sale will be distributed amongst creditors a further nine months later.

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

11.1 With regards to legal aid, foreign seafarers will not be entitled to government funded legal aid unless they are a national of the European Union, normally resident in France or they may be given legal aid if they are minors, assisted witnesses, indicted, accused, charged, convicted or plaintiffs.

12. Are there any other procedures to enforce a seafarer's wage claim?

12.1 Under the domestic regime ship arrests are defined in the Code of Transports and the Code of Civil Procedures of Execution.