

SEAFARER SUBJECT GUIDE

ABANDONMENT IN MALTA

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

*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 The Malta Merchant Shipping Act ('the MMSA') does not provide a definition of 'abandonment.' Instead the MMSA uses the words 'seamen left behind.' Generally, the issue of abandonment arises when a seafarer has a right of repatriation. A member of the crew or all the crew can be stranded in a port, which is not their home port or the proper return port, that is, the port where the voyage and hence their contract is concluded.
 - 1.2 Abandonment can occur for several reasons:
 - (1) when the vessel is arrested, shipwrecked or otherwise unable to complete the voyage;
 - (2) the shipowner becomes insolvent; or
 - (3) for reasons appertaining to the health or injury of the crewmember. 'Abandonment' is not caused by a seafarer's action, but by the employer, who has breached the employment contract through a unilateral failure to perform.
 - 1.3 If a seaman or an apprentice belonging to a Maltese ship is left behind, the master of the ship must enter into the official log book the belongings of that crew member including any wages due to him. On termination of the voyage, the master must, within 48 hours of arriving at port, present to the Maltese consular officer an account of the property belonging to the crew member left behind, his property, and wages subject to any deductions allowed by law. If the master does not comply he will be liable to a fine not exceeding 50 units.

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1.4 The MMSA provides that:

'the master of a Maltese ship shall not leave a seaman or an apprentice behind at any place, ashore or at sea, unless he previously obtains, endorsed on the agreement with the crew the certificate of the shipping master or of a Maltese consular officer stating the cause of the seaman or apprentice being left behind, whether the cause be unfitness or inability to proceed to sea, desertion, disappearance, or otherwise'.

If the master of the ship does not comply, he is liable for each offence to imprisonment for a period not exceeding two years or to a fine not exceeding 500 units or to both such imprisonment and fine.

1.5 Where a person belonging to a Maltese ship is wrongfully forced to be left behind then the person responsible shall be liable to imprisonment for up to two years and/or fine not exceeding five hundred units.

1.6 If the master or the shipowners do not pay for the maintenance, medical treatment and transport to a proper return port and the seafarer who has enough funds defrays the expenses, then these shall be recoverable as wages due to him. If the expenses are defrayed by the Maltese consular officer, then they are deemed to be a charge on the ship and are recoverable either at the suit of the person defraying the expenses, or, if they have been allowed out of public money, as a debt due to the Government of Malta. The case can be instituted either against the owner of the ship for the time being, the owner of the ship at the time of loss of the ship if the ship was lost, or the present shipowner or shipowner at the time of transfer in the case that a non-Maltese citizen transferred the vessel out of Malta. It is important, therefore, to be able to define when the shipowner has failed in his duty to repatriate, thus activating the responsibility of the flag state; otherwise, the natural reaction of the consul would be to send the seafarers back to the master or shipowner for a remedy.

1.7 This procedure is repeated again in article 158, which discusses termination of employment due to injury or illness. If it should happen that the government of Malta defrayed the expenses of medication, then these will be recoverable by the latter from the shipowner or master. If the government is not paid, then the expenses shall become a charge on the ship, regardless as to who is the shipowner at the time of the suit. The claim, according to article 159 of the MMSA, can be made by the person defraying expenses or as a debt due to the government of Malta.

1.8 Although the law clearly states that crew on a Maltese registered vessels shall in no way become a charge on the Maltese government, it does make allowances for humanitarian aid and relief. The expenses of such cases are considered to be a debt

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due to the government of Malta either by the shipowner or master of the ship or as a charge against the ship. This provision for relief is extended to crew on Maltese registered vessels and to all crew who are Maltese citizens on whatever ship they may be, be it commercial or governmental.

- 1.9 In the event that the ship has no market value or is considered a total loss or a constructive total loss, the MMSA provides that:

'the minister may make regulations with respect to the relief, maintenance and return to a proper return port of shipwrecked seamen found otherwise in distress in any place and may by these regulations make such conditions as he thinks fit ... and payment thereunder shall be a charge on the Consolidated Fund'.

- 1.10 This regulatory system solves two problems: the seafarer's and the Maltese register's. Should it automatically become a charge on the flag state, the register would attract unworthy shipowners.

2. What is the immigration status of abandoned seafarers?

- 2.1 Notwithstanding the fact that a seafarer works between states and on the high seas, he remains a national of one particular state and at the same time is subject to the law of the flag state whilst he is on the vessel in accordance with the territoriality principle. When the vessel docks in a foreign port, the seafarer does not have automatic status and is in turn subject to yet another legal system, that of the port state. The migration status of an abandoned seafarer is very important. The consequences of deportation are catastrophic for a professional seafarer.
- 2.2 Two conventions which deal with a seafarer as an international worker and his migration status are the 'Vienna Convention on Consular Relations - 1963' and the 'Seafarers' identity documents Convention 1958'. By means of these two conventions, Malta can ensure that vessels which ply between foreign ports comply with the standards and regulations as set by Maltese law.
- 2.3 The right of repatriation is also available under the terms of the Vienna Convention. However, it has its basis on consular practice and not on contractual rights. This means that in the case of consular repatriation, the seafarer would not have the choice of return destination (country of residence, state where engaged) under ILO 166, but would be repatriated by the consul to the country of which he is a national.
- 2.4 Malta as a port state treats all seafarers without ILO documents at par with those who possess such documents on condition that their identification documents are legitimate.

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3. Can an abandoned seafarer get shore leave?

- 3.1 Abandoned crew members have to stay on board the vessel unless they obtain permission from the port authorities to go onshore. This is mainly a security measure applied by the local authorities to retain control over the movement of seafarers. The general rule is that abandoned crew members must remain accommodated on board the vessel. The Maltese port authorities, in cooperation with the police and the immigration office, do consider ad hoc requests by such crew members, especially in case of humanitarian reasons.
- 3.2 Seafarers, although abandoned by their employer, are not under arrest in Malta and hence they are allowed to go ashore when necessary, such as attending court sittings, attending meetings with their lawyer at his office and buying necessities; however, they have to return to the vessel. When seafarers cannot stay on board the vessel, either due to the bad state of the vessel itself or following the sale of the vessel, the authorities will arrange alternative accommodation until repatriation arrangements are finalized.

4. Is abandonment of seafarers considered a crime?

- 4.1 The MMSA deals in detail with the obligations of the master of a Maltese ship who leaves behind one of his seaman or an apprentice.
- 4.2 If the master defaults in complying with such provisions the MMSA provides that the master will be subject to criminal proceedings against him by the Maltese authorities.
- 4.3 On the other hand, the MMSA does not provide for those cases where the seamen or apprentice is left behind by a master of a non-Maltese vessel.

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

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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

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.