

SEAFARER SUBJECT GUIDE

ABANDONMENT IN PORTUGAL

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

*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 Portugal is a member-state of the ILO Convention number 23 governing the Repatriation of Seaman 1926 ('Convention 23'). Under the terms of Convention 23 a seafarer is entitled to repatriation. If a vessel is sailing under the Portuguese flag and the shipowner fails to pay for the repatriation of a seafarer, the flag state of the vessel (that is, Portugal) has a duty to ensure that all seafarers working on board the vessel registered are repatriated.
- 1.2 After repatriation, Portugal may claim reimbursement of repatriation costs from the shipowner or against the vessel *in rem* under certain circumstances. These rules are also reflected in internal law and are usual in collective labour agreements which provide seafarers with the right to be repatriated.

2. What is the immigration status of abandoned seafarers?

- 2.1 Law 23/2007 dated of 04/07 deals with the entry, stay, exit and expulsion of foreign citizens from Portugal. Law 23/2007 is applicable to foreigners. The immigration status of abandoned seafarer depends on the seafarer's passport, and the kind of visa granted by SEF. SEF is a state entity which controls the entry and exit of foreign citizens at the ports and grants visas to foreign citizens.

3. Can an abandoned seafarer get shore leave?

- 3.1 Provided that a foreign seafarer has a valid permit from SEF, he can come ashore. The entity who takes care of this matter is the shipping agent appointed by the shipowner of the vessel at the port. He takes care of all the formalities required by

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SEF so that the seafarer is allowed to go to shore. Under articles 7 and 8, the international area of the port has restricted access, conditional upon SEF's authorization.

- 3.2 A foreign seafarer can be granted permission to come to shore, during the period he is at a port, by the maritime border posts. This permission, which allows the seafarer to move to the area immediately surrounding the port, is granted by SEF through the submission of a request by the shipping agent who gives a signed undertaking guaranteeing before SEF the seafarer's accommodation and travelling expenses. SEF can grant short stay visas at the maritime border posts under the terms of this Law.

4. Is abandonment of seafarers considered a crime?

- 4.1 It is not a crime if the shipowner has stopped paying wages due to economic reasons and cannot fulfill his obligations to his creditors, including seafarers.
- 4.2 Only in the most serious of cases will Portuguese law consider any action/omission to be a crime; and this must be classified as a type of crime under criminal law in order to subject the agent to criminal liability.

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.