

SHIP ARREST IN UKRAINE (Questions 1 to 9)



By Arthur Nitsevych & Oleksandr Chebotarenko*
INTERNATIONAL LAW OFFICES
nitsevych@interlegal.com.ua
www.interlegal.com.ua
2/4, Observatory lane, Suite 57,
Odessa, 65014, Ukraine
Tel. +38 (048) 715-58-55
Fax +38 (0482) 49-69-25



1. Please give an overview of ship arrest practice in your country.

Ship arrest in Ukraine is not simple though relatively inexpensive. The practice of ship arrest is rather wide, especially in the ports of Big Odessa (Odessa, Ilyichevsk, and Yuzhny). On the 7-th of September 2011 Ukraine joined the International Convention for the Unification of Certain Rules Relating to the Arrest of Sea-Going Ships, 1952. On the 16-th of May 2012 the Convention took effect for Ukraine. With Ukraine being a party to the Convention Ukrainian vessels could be arrested in the member countries under maritime claims only, as well as vessels of the member countries could be arrested under maritime claims only in the ports of Ukraine. In practice ship arrest pursues the following aims:

- 1) Taking preliminary procedural measures for detention of a ship.
- 2) Submission of a claim to the court which made a decision on a ship's arrest.
- 3) Debtor's encouragement to provide incurred obligations under the maritime claim.

The Commercial Procedural Code and the Civil Procedural Code of Ukraine were amended accordingly. Currently, Merchant Shipping Code of Ukraine (1995) provides for ship arrest procedure, however the practice of ship arrest is inconsistent. We expected more efficient solution of many problems related to ship arrest procedure when the Convention become operative in Ukraine, but, unfortunately, the practice remains rather controversial.

2. Which International Convention applies to arrest of ships in your country?

The International Convention for the Unification of Certain Rules Relating to the Arrest of Sea-Going Ships (Brussels, May 10, 1952) is the basic Convention. Also Ukraine adhered to the International Convention on Maritime Liens and Mortgages 1993 on 22 November 2002.

3. Is there any other way to arrest a ship in your jurisdiction?

There are many ways to arrest a ship in a Ukrainian port. As a rule vessels are arrested in Ukraine by means of:

- a) administrative detention by the Harbour master;
- b) preliminary arrest in security of a maritime claim pursuant to the order of the Court/ Commercial court;
- c) arrest in accordance with Court or arbitration award;
- d) arrest of a ship under a criminal matter.

Commercial courts and courts of general jurisdiction are the state courts which exercise jurisdiction over maritime disputes. The Maritime Arbitration Commission at the Chamber of Commerce and Industry of Ukraine is a domestic arbitral institution with a panel of arbitrators specializing in maritime arbitration.

4. Are these alternatives e.g. saisie conservatoire or freezing order?

These measures are similar to saisie conservatoire or freezing order.

5. For which types of claims can you arrest a ship?

A vessel can be arrested regardless whether claims are maritime or not, in principle. Nevertheless, according to the maritime law of Ukraine the vessel may be arrested only upon at least one of the following conditions:

- a claim referred to the category of privileged claims, particularly:
 - claims arising out of labour relations, claims for recovering damage inflicted by injury, other impairment of health or death;
 - claims arising out of nuclear damage and maritime environment pollution as well as elimination of said pollution consequences;
 - claims regarding port and channel dues;
 - claims regarding salvage and payment of general average contribution;
 - claims for reimbursement of losses resulting from collision of vessels or from other sea casualty, or from damage to port facilities and other property located in the port as well as to navigational aids;
 - claims for reimbursement of losses related to cargo or baggage;
 - a claim based upon the vessel's registered mortgage;
 - a claim referring to the rights of ownership or possession of a vessel;
 - a claim not indicated hereinabove and referring to the person that is the vessel owner by the moment of origination of the said claim and is responsible for this claim by the moment of starting a procedure connected with vessel's arrest;
 - charterer of the vessel on bareboat charter is liable for the said claim and is the vessel's bareboat charterer or her owner by the moment of starting a procedure connected with vessel's arrest.
- These rules shall not concern the vessels flying the State Flag other than Ukrainian. Such vessels are treated as a res in general legal sense.

6. Can you arrest a ship irrespectively of her flag?

It is possible to arrest a ship irrespectively of her flag in Ukraine, in principle.

7. Can you arrest a ship irrespectively of the debtor?

There is no proceeding in rem in Ukraine, so it is possible to arrest a ship owned by the debtor only.

8. What is the position as regards sister ships and ships in associated ownership?

Associated vessels can be arrested if by the moment of initiating the arrest procedure they were property of a person liable for the maritime claim and who was the proprietor/owner of the vessel to which the said claim has arisen.

9. What is the position as regards Bareboat and Time-Chartered vessels?

Associated vessels can be arrested if by the moment of initiating the arrest procedure they were property of a person liable for the maritime claim and who was the charterer of her on bareboat, time or voyage charter basis. The exceptions to this rule are claims with regard to ownership or possession of vessels.



** Mr. Arthur Nitsevych is a Managing Partner within the law firm "International law offices" in Ukraine, a supporting member of the LMAA (London maritime arbitrators association), MNI, and Chairman of the Nautical Institute of Ukraine. He focuses on business improvement and corporate development of the maritime and transport industry mostly. He has almost 10 years experience as a project leader and port legal advisor regarding investment planning, business planning, organisation, financial management & budgeting of maritime and transport systems including multimodal, ports and terminals all over Ukraine. Amongst his clients there are also developers, foreign law firms and commercial banks. Mr. Nitsevych is a certified attorney-at-law (since 2000).*

** Mr. Oleksandr Chebotarenko is a Senior Lawyer with the law firm "International law offices"/Interlegal, a lecturer, member of the Ukrainian Bar Association, and a Transport & International Law Expert. He focuses on business improvement and corporate development of the maritime and transport industry mostly. He has almost 15 years experience as a port and transport companies' legal advisor regarding investment planning, business planning of maritime and transport systems including multimodal, ports and terminals all over Ukraine. Amongst his clients there are also developers, foreign law firms and commercial banks. Mr. Chebotarenko is a certified attorney-at-law (since 1997). He is Member of the Odessa Division of the Ukrainian Bar Association, Honorary Member of the "Ukrainian Container Lines Association", and Associated member of the Nautical Institute of Ukraine.*

SHIP ARREST IN UKRAINE (Questions 10 to 20)



By Vagif Mallayev*
LEXCELLENCE Law Firm
v.mallayev@lexcellence.com.ua
www.lexcellence.com.ua
2. Chernomorskaya Str., office 15, Odessa 65014
Tel: +38 048 784 97 89
Fax: +38 048 784 97 92

10. Do your Courts require counter-security in order to arrest a ship?

The Courts may require counter-security as a prerequisite for arrest of a ship, but in practice it happens rarely. The better evidences are arranged and presented with the claim to the court the more chances to avoid the payment of counter-security.

11. Is there any difference in respect to arresting a ship for a maritime claim and a maritime lien?

There is no procedural difference in respect to arresting a ship for maritime claim and a maritime lien.

12. Does your country recognise maritime liens? Under which International Convention, if any?

Yes, Ukraine ratified the International Convention on Maritime Liens and Mortgages (Geneva, 1993) on 22.11.2002.

13. What lapse of time is required in order to arrest a ship since the moment the file arrives to your law firm?

Two-three business days will be required in order to arrest a ship.

14. Do you need to provide a POA, or any other documents of the claim to the Court?

As a rule a POA duly legalized/apostilled and translated into Ukrainian is to be presented to the Court and the State Enforcement Service of Ukraine. However within the civil and commercial court proceedings it is sufficient to present a warrant that was issued by a corresponding Bar of Association along with extract from a contract certified by an attorney and his client. For representation of Client's interests before the State Enforcement Service of Ukraine the POA duly legalized is required.

We need all documents relating to the claim which are in possession of the plaintiff, - the presence of the evidences may help to avoid a payment of counter-security to the Court.

15. What original documents are required, what documents can be filed electronically, what documents require notarisation and/or apostille, and when are they needed?

The Court may require an original or its notarized and legalized copy of any document the plaintiff referred to in his claim.

We recommend arranging of most important evidences (contracts, BLs, charter parties etc) in original or its notarized and legalized/apostilled copies. Other copies can be certified by the plaintiff's corporate seal and signature. In case your Ukrainian attorney received a document in original he may hold the original in his office and present the copy certified by him to the court.

Documents can not be filled electronically. Original Power of Attorney has to be notarized, dully legalized/apostilled and translated into Ukrainian.

16. Will your Courts accept jurisdiction over the substantive claim once a vessel has been arrested?

Yes. Unless a forum had been chosen by parties to consider the substantive claim in a foreign jurisdiction, the case may proceed on its merits in the Ukraine as per the Art 7 of the Ship Arrest Convention (1952), and in some cases when domestic law otherwise gives the court jurisdiction, e.g.: (a) any claims if one of defendants is domiciled in Ukraine; (b) proprietary claims relating to

the possession of a ship, title to or ownership of a ship or a share in a ship; (c) claims arising out of employment contract with ship's crew if a claimant is domiciled in Ukraine; (d) claims arising out of loss of life or personal injury to a person who is domiciled in Ukraine or in case the accident took place in Ukraine; (e) claims arising out of damage caused in Ukraine to property of private persons or legal entities during the operation of a ship; (f) claims arising out of any contract which specified a place of its execution or has to be executed in Ukraine only.

17. Which period of time will be granted by the Courts in order for the claimants to take legal action on the merits?

Civil proceedings: the Code does not provide a certain time – subject to a court's decision.

Commercial proceedings: there is no special reference to the ship arrest procedure, but generally, pursuant to the Art. 43-3 (3) of the Commercial Procedure Code of Ukraine a claimant must commence legal actions on the merits within 5 (five) days from the day of obtaining the arrest order.

18. Do the Courts of your country acknowledge wrongful arrest?

Yes, Ukrainian courts on request of defendant acknowledge a wrongful arrest in case of:

- (a) The arrest is cancelled by decision of a court.
- (b) The claimant fails to commence proceedings on the merits within the given time.
- (c) The claimant recalled his claim.
- (d) The claimant fails in his legal action on the merits.

In case a wrongful arrest is acknowledged defendant may claim to an initiator of arrest to cover all losses and damages incurred.

19. Do the Courts of your country acknowledge the piercing and lifting of the corporate veil?

No, Ukrainian courts do not acknowledge the pierce and lift of the corporate veil. The basic principle of civil law is that a shareholder or director/officers of a legal entity could not be held liable for any debts or liabilities of the corporation.

20. Is it possible to have a ship sold *pendente lite*; if so how long does it take?

No. A vessel's auction will take place only after the end of court proceeding as an enforcement of the final court judgment entered into force.



** Vagif Mallayev is a Head of the firm's Shipping, International Trade and Insurance arm. Vagif has been involved in a wide range of both dry and wet shipping disputes on the side of P&I Clubs and Owners. His broad experience in dry shipping includes charterparty, Bill of Lading, ship building, and he also has experience of handling claims in the wet side: collision, general average, personal injury/loss of life and pollution. Vagif is attorney at law, member of Odessa Bar Association, Ukrainian Bar Association and CNI of the Nautical Institute (UK). Before practice of law his career includes 7 years in insurance sector starting from executive officer to chairman of the Board of Ostra Insurance company. He graduated the faculty of law (LLB) of Mechnikov's Odessa National University in Odessa, Ukraine; the faculty of psychology (LLM) of the International Academy for Psychology in Sankt-Petersburg, Russia.*