

SHIP ARREST IN LITHUANIA



By Vytautas Ramanauskas, Partner*
RAMANAUSKAS IR PARTNERIAI Law Firm
v.ramanauskas@rplaw.lt
www.rplaw.lt
S. Daukanto 9, LT-92235 Klaipėda, Lithuania
Tel: +370 46 303430
Fax: +370 46 312393

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

The International Convention for the Unification of Certain Rules relating to the Arrest of Sea-going Ships, Brussels, 1952 (1952 Arrest Convention) was ratified by the Seimas of Lithuania on 26 March 2002 and since then it has been successfully applied by the Lithuanian Courts.

The Courts in Klaipėda have jurisdiction to decide on ship arrest applications only in cases when the main proceedings, in respect of which security is required, have been instituted or will be instituted in the same courts. If ship arrest is required for obtaining of a security in respect of a claim that is to be decided on the merits in a court of arbitration or in a foreign State Court, the District Court of Vilnius will have jurisdiction to decide on such ship arrest application.

There are no specialized maritime courts or judges in Lithuania, but all judges have some experience in applying provisions of 1952 Ship arrest Convention and no major difficulties should be expected when a ship arrest application is made.

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, 1952 (1952 Arrest Convention) and the International Convention on Maritime Liens and Mortgages (Geneva 1993) are ratified by Lithuanian Seimas and they are applicable.

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

A Ship that is registered and flying the State flags of the State that is a Member to the 1952 Arrest Convention can be arrested only in respect of the claims enumerated in the Article 1 of the Convention. Other ships can be arrested in respect of maritime and non-maritime claims. In accordance with the Article 12(1) on the Law of Klaipėda State Sea Port the Harbour Master may refuse clearance of the vessel in case that there are unpaid port charges or fines in respect of the vessel or the vessel has damaged port's infrastructure, until such charges, fines and/or claims for damage to of infrastructure have been paid or secured.

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

No.

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

The types of claims for which a ship can be arrested are enumerated in the Arrest Convention Paragraph a) to q) of Article 1(1).

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

In accordance with the Article 8(1) of the 1952 Arrest Convention a ship flying the State flag of the Member State of the Convention can be arrested only for the claims enumerated in the Article 1 of the Convention. A Ship that does not fly the State flag of the State that is Member to the 1952 Arrest Convention can be arrested for any claims under provisions of Code of Civil Proceedings.

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

Yes, in some cases. Several appeals filed on behalf of the arrested ship owners trying to challenge such arrest have been unsuccessful so far.

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

Under provision of the Arrest Convention a claimant may arrest the particular ship in respect of

which the debt arose or any other ship owned by the debtor. Therefore arrest of a sister ship is permitted, except in respect of the claims mentioned in the Article 1(1), o-q. Ships in the associated ownership can be arrested if it can be proved that the same persons beneficially own them. Demonstration on the company's website showing fleet of the company's vessels might be sufficient to prove that.

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

Part 4 of the Article 3 of the 1952 Ship Arrest Convention shall apply in respect of arrest of a Bareboat chartered vessels. Such vessel can be arrested in respect of maritime claims created by the Bareboat Charterer, or any other vessel that is owned by the Bareboat Charterer can be arrested. Generally, a vessel cannot be arrested in respect of claims created by her Time-Charterer.

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

No counter security is required before arresting the ship. The court on request of the ship's interest may order the arrestor to provide counter-security within certain period of time. If this is not complied with, the arrest will be lifted.

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

In case of maritime claim it is allowed to arrest either the ship in respect of which the maritime claim arose or any sister ship. The subject of the maritime lien is the offending ship only. It can be enforced against the ship regardless of who was in control or possession of the ship when the events which gave rise to maritime lien occurred. Maritime lien is not enforceable against a sister ship. Otherwise, there is no difference.

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

Lithuania does recognise maritime liens as per the International Convention on Maritime Liens and Mortgages, 1993.

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

Normally it takes 2-3 working days. In very urgent cases it might be possible to arrest within the same day on which we receive the instruction. The Courts are closed on Saturdays, Sundays and National Holidays. No ship arrest is possible then.

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

We require a written legal service agreement that needs to be signed by the Client. Faxed or emailed copy of the legal service agreement is sufficient to make a ship arrest application on behalf of the Client. The original copy of the legal representation agreement must be presented if requested by the Court later. No notarization or legalization of the legal representation agreement is required. Basic claim documentation evidencing existence of a maritime claim in favour of the arrestor is sufficient.

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

All documents can be filed electronically for the purpose of ship arrest. Only original legal service agreement should be available if so requested by the Court. A ship arrest application normally should be supported by:

- a copy of legal service agreement between the lawyer and the Client;
- a copy of an extract from the Companies' Register of the Client's State, confirming that the Client exists as a legal entity;
- a basic Claim documents that will depend on the type of claim;
- Copy of an agreement containing the arbitration clause in case that the arrest is for obtaining security in respect of maritime claim that is to be pursued in an Arbitration or an agreement to litigate in a foreign State Court, or an evidence that such proceedings have been commenced.

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

Yes, the Lithuanian courts accept jurisdiction over the substantive claim once the vessel has been arrested, subject that there is no agreement between the relevant parties to litigate in another jurisdiction or to submit dispute to arbitration.

17. What is the procedure to release a ship from arrest?

The Parties should make a written request to the Court to release the ship, in case they reach an agreement. Otherwise an adequate security needs to be deposited to the Court together with request to release the ship from arrest.

18. What type of security needs to be placed for the release?

Any type of security if the Arrestor agrees. Cash payment to the court's account or Lithuanian Bank's guarantee if there is no agreement as to type of guarantee.

19. Does security need to cover interest and costs?

Yes.

20. Are P&I LOUs accepted as sufficient to lift the arrest?

Not, if the arrestor does not agree with it.

21. How long does it take to release the ship?

One day if there is no dispute regarding type or amount of security.

22. Is there a procedure to contest the arrest?

Yes, but it can take few months.

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

14 days in the National Courts and 30 days in arbitration or in a foreign State Court.

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

The court may order the Plaintiff to pay damage for wrongful ship's arrest in case if:

-the claim in respect of which the vessel was arrested was rejected;

-In case of misuse of the procedural rights to seek the ship arrest, for example arresting the vessel despite the fact that an adequate security has been provided, submitting to the court knowingly wrong information when seeking a ship arrest etc. The ship's interest must prove what loss has been suffered due to ship's arrest.

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

There have not been relevant cases heard yet.

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

No.

**Vytas Ramanauskas (1963.03.26) is a leading shipping and maritime as well as insurance lawyer of Lithuania. He advises the Clients on various aspects of maritime law and has a vast experience of litigations in the courts and in arbitration. He had few years of a Sea-going experience before qualified as a lawyer and then worked as claims insurance manager for a Lithuanian Shipping company. Vytas Ramanauskas also had spent two years with one of London's leading shipping law firm before he set up his private law firm in Klaipeda.*

Vytas Ramanauskas is a Member of the Bar of Lithuania since 2001.

Professional education: 1992 Law Faculty of Vilnius University (LLM); 1984 Ship Navigation Department of Klaipeda Marine College. Languages spoken: Lithuanian, Russian and English.