

SHIP ARREST IN ALGERIA

By Dr. D. Ben Abderrahmane*
BEN ABDERRAHMANE & PARTNERS
ba@benlawyers.com
www.benlawyers.com
26, boulevard Zirout Youcef, 16035 Algiers
Tel: +213 21 74 91 32 / +213 661 80 30 14
Fax: +213 21 74 89 27



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

Algeria has a long tradition in maritime law, including maritime arrests. Algerian law is generally not restrictive in allowing conservatory and provisional measures. Algeria, and most specifically the ports of Algiers, Oran, Annaba as well as the oil and gas terminal of Arzew and Skikda has a favourable reputation for being a convenient place to arrest ships.

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

Algeria is since August 1964 member of the Brussels Arrest convention of 1952. Some general principles of the convention have been incorporated in the Algerian Maritime Code (hereafter called CMA).

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

In practice for the Algerian Courts, the provision of the CMA and the provisions of the Code of Civil procedure (hereafter called CPC) remain the major source of law for the arrest of ships.

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

No.

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

A ship can be arrested to secure a maritime claim. Algerian law provides an open list, which may include claims of maritime nature like insurance premiums. A request to obtain authorisation to arrest a sea-going vessel has to be presented before the President of the court which has jurisdiction for the port of call. It is a unilateral request, and the President immediately grants or rejects authorisation. In theory, according to the CPC, the request can be submitted at any time, even out of court hours and during the weekend (in Algeria Friday & Saturday). In practice, the request can be submitted only from Sunday to Thursday.

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

In theory there are two regimes:

- (i) A sea-going ship, flying the flag of a contracting State can be arrested in an Algerian port as a security for a maritime claim, as specified in letter a to q of Article 1.1 of the Brussels convention of 1952.
- (ii) A sea-going ship, flying the flag of a non-contracting State can be arrested in an Algerian port as a security for a maritime claim, as specified in Article 151 CMA. Pursuant to this provision maritime claim means any claims arising out of a contract or an event in connection with the operation or the management of the ship, any loss or damage caused by the ship due to its exploitation. In practice, Algerian courts tend to apply the provision of Article 151 CMA without differentiation.

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

The ship can be arrested even if the owner of the ship is not the debtor of the maritime claim. The owner of the ship, in order to have his ship released from arrest, has to give a guarantee for the payment of the claim of the author of the arrest. This means that the owner of the ship will have to guarantee the payment of the claim, even if a third person (charterer, issuer of the Bill of Lading) is the debtor toward the arresting party.

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

Pursuant to Article 154 CMA, it is possible to arrest another ship, which is owned by the person who, at the time when the maritime claim arose, was the owner of the particular ship in respect of which the maritime claim arose. However, to the difference of the jurisprudence of several European States, Algerian courts do not authorise the arrest of a ship owned by another company than the debtor of the claim. This even if the claimant has sufficiently established that the separate corporate personality is only a fiction that does not correspond to reality.

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

A vessel that is in the ownership of the charterer can be arrested for a maritime claim against a time charterer.

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

Algerian law impose on the claimant the deposit of a counter-security of ten percent (10 %) of the amount of the maritime claim; to cover costs, charges, damages, fees or other expenses deriving from a potential wrongful arrest. However the companies incorporated in countries that have signed a convention of judicial cooperation in civil and commercial matters with the Algeria are exempted from this requirement to provide security, are exempt from this obligation of companies incorporated the following countries: Belgium, Bulgaria, China, Italy, Portugal, Romania, Spain, United Arab Emirates, United Kingdom, and Vietnam.

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

No.

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

Yes.

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

In practice, two days. Please note that Algeria does not have the universal weekend. The Algeria weekend is Friday & Saturday, during these days the court is closed.

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

No Power of Attorney is requested from the attorney representing the claimant.

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 documents needed to arrest a ship are those evidencing the claim (such as contracts, bills of lading, letters requesting payments, protest or interim report of a surveyor, etc. Since the President will control very accurately the existence of a maritime claim, it is highly recommended to have as much documentary as possible to prove the alleged maritime claim.

In the first stage of the arrest procedure no original documents are needed. The above mentioned documents can be filed electronically, notarisation and/or apostille is not required. The documents shall be submitted along with their translation in Arabic. If the translation is made outside Algeria the signature of the translator has to be authenticated by a public authority of his country and by the Algerian embassy territorially competent. The translation can be made in Algeria by an official translator; in that case no authentication is required.

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

Yes.

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

To obtain a ship's release, the relevant party must file for release with the interim relief application. If the ship provides payment or otherwise satisfies maritime claims, and the courts accept this payment, then the court issues an order of release from arrest, which is delivered by a bailiff. If there is a dispute as to

what a sufficient payment is, then the courts will often make a decision.

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

The security for the release shall be agreed upon by the parties. If there is a dispute as to the security, then the courts may make a decision.

19. Does security need to cover interest and costs?

This issue shall be agreed upon by the parties. If there is a dispute as to the interest and costs, then the courts may make a decision, in such cases the court may not consider the costs and the interests but only the amount of the unpaid maritime debt justifying the arrest.

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

If the parties agreed on payment / security, it will take around three working days to release the ship.

22. Is there a procedure to contest the arrest?

The arrest can be contested with an interim relief application in the court.

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

Pursuant to Article 350 CPC, the claimant must institute a legal proceeding on the merits before the competent court, within 15 days from the day the Ordinance authorising the is issued, otherwise the arrest will be held null and void.

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

The arrestor bears the risk of arresting the ship. If he loses the contradictory summary proceedings or the case on the merits, his arrest may be considered wrongful and he could have to indemnify all costs and damages caused to the ship, as a result of such wrongful arrest.

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

However in practice, Algerian Judges are reluctant to countenance a claim for compensatory damages for wrongful arrest unless the bad faith or malice of the arrestor is established. Algerian Courts do not acknowledge the piercing and lifting of the corporate veil.

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

It is possible to have a ship sold pendente lite; the timeframe depends on the circumstances of the case.

*Dr. Dhaman BEN ABDERRAHMANE is the Founder of the law firm Ben Abderrahmane & Partners, which is one of the leading Algerian law firms; active in Algeria maritime law. Our practice focuses on arresting vessels in Algeria Jurisdiction.
Education: University of Frankfurt/Main (Germany); University of Paris 2 (Pantheon-Assas, France), University of Munich (Germany); Max Plank Institut für Ausländisches und Internationales Privatrecht, Hamburg (Germany); University of Paris 1 (Pantheon-Sorbone, France).
Career: Attorney at law, since 1985. Admitted in Algeria and in France; International Arbitrator.