

# THE ARREST news

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In this issue of *The Arrest News*, Tariq Idais and Sakher Alaqaileh of Al Tamimi & Co. review a landmark Federal Supreme Court's judgement regarding ship arrests by virtue of the UAE Law; Evgeniy Sukachev and Irina Dolya share recent developments and anticipated improvements in Proceeding Law of Ukraine; and a summary of the 14th Annual Shiparrested.com Members' Conference in St. Petersburg.

## **A Land-Mark Federal Supreme Court's Judgment on Ship Arrests Under the UAE Law**

This article is a review of a land-mark Federal Supreme Court's judgment (Appeal number 304/2016 (Commercial)) regarding ship arrests by virtue of the UAE Law. Such judgment overruled the Court of First Instance and the Court of Appeal's judgments, as the claim was procedurally filed in an unlawful way.

### **Nature of the Claim:**

On 18 June 2015, a ship agency (the "Claimant") obtained an arrest order over a ship (the "Ship") which was at Khorfakkan Port at the time. The Claimant based the arrest order application on an agency agreement. On 01 July 2015, the Claimant brought a claim before the Khorfakkan Court of First Instance against the Ship (the "Defendant") seeking the sum of USD 5, 323,869

(or its equivalent AED19,565,219) and legal interest at the rate of 9% as of the date the claim was made until the full payment is made. Interestingly enough the Claimant did not include the Ship's Owners in the claim.

The Claimant claimed that in mid-2013, the Ship was in peril (at risk) while it was at sea in the territorial waters of the UAE. The Ship's master requested the Claimant to rescue the Ship and guide it into Khorfakkan Port and allow her to enter Khorfakkan Port. Therefore, the Claimant did whatever it could do to rescue the Ship as per the agreement, as well as tugged her into Khorfakkan. Moreover, the Claimant claimed that on 20 January 2014 a ship agent agreement was signed between the Ship's master and the Claimant, where the

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Claimant was obliged to provide the Ship with support, food, supplies, medication, bunker, oil, money advances, port dues and any other fees and charges concerning port authority. Although the Claimant carried out all the required support works for the Ship and her marine crew as well as paid all the necessary fees and charges (which were in the sum of USD 5,323,869), the Defendant has still has not paid back the said amount to the Claimant.

#### **The Court of First Instance's Judgment:**

The Ship's Owners did not appear before the Khorfakkan Court of First Instance. On 31 August 2015 the said Court handed down its judgment by holding the Defendant liable to pay the Claimant the sum of USD 5,323,869 (or its equivalent AED 19,565,219) for all the support work that was carried out for the Ship, as well as the sum of AED 500,000 as damages for breaching obligations and validating the arrest order over the Ship.

#### **The Court of Appeal's Judgment:**

On 29 September 2015, the Ship's Owners challenged the Court of First Instance's Judgment before the Khorfakkan Court of Appeal. The Ship's Owners argued that since a ship is deemed to be moveable property according to Article (12) of Federal Law No. 26/1981, from the UAE Maritime Commercial Law (the "Law"), the Ship does have a legal capacity to be sued and the Claimant should have filed the claim against the Ship's Owners rather than the Ship herself. Accordingly, the Claimant's claim should be dismissed.

In addition, the Ship's Owners confirmed that the documents that were filed at the Court by the Claimant were either photocopies and/or produced by the Claimant, as a result they shall not be evidence in this claim according to Article 45 of Federal Law No. 11/1992, the Civil Procedures Law. Therefore, the Claim should be rejected for lack of evidence.

Alternatively, the Ship's Owners argued that the claimed amount is exaggerated and the same does not reflect the true value of the support work that was carried out

for the Ship. Accordingly the judged amount should be reduced.

On 14 March 2016, the Khorfakkan Court of Appeal rendered its judgment and amended the Court of First Instance's Judgment by holding the Defendant liable to pay the Claimant the sum of AED 12,223,158 for all the support work that was carried out for the Ship and apart from the amendments of the judged amounts, the Court of First Instance's judgment was upheld.

#### **The Federal Supreme Court's Judgment:**

On 12 May 2016, the Ship's Owners filed an appeal before the Federal Supreme Court in Abu Dhabi. The Ship's Owners stressed that the Claimant's claim should be dismissed on the following grounds:

1. The claim was not filed against the Ship's Owners but rather filed unlawfully against the Ship herself, notwithstanding that she does not have a legal capacity to be sued according to Article (12) of the Law; and
2. The Claimant did not file the claim in the required form under Articles 119 and 120 of the Law.

Article (12) of the Law states:

*"A vessel shall be deemed to be moveable property, to which the provisions pertaining to moveable property shall apply, save insofar as there is any stipulation in this Law making any provisions relating to real property applicable thereto."*

Article 119 of the Law states:

*"1. Copies of the notice of arrest shall be delivered to the master of the vessel or his deputy thereon, a second copy to the relevant maritime authority in the port in which the arrest is effected to prevent the vessel from sailing, and a third copy to the Registration Bureau in the said port. 2. If the vessel is registered in the State, the Registration Bureau of the port in which the arrest is effected, whether within the State or abroad, shall notify the vessels Registration Bureau of the arrest for endorsement thereof on the register."*

Article 120 of the UAE Maritime Commercial Law states:

*"1. The notice of arrest shall contain a summons to attend before the relevant civil court in the area of which the arrest is effected for adjudication on the validity of the debt, of whatever amount. 2. A time shall be fixed for the hearing not later than thirty days from the date of the notice of arrest. The court shall speedily enquire into the claim, and the time shall not be further extended."*

Furthermore, the Ship's Owners argued that the claimed amount is exaggerated and the same does not reflect true value of the support works that was carried out to the Ship. Accordingly the judged amount should be reduced.

On 29 June 2016, the Supreme Court in Abu Dhabi issued its judgment and decided to dismiss the Claimant's claim, as the same was filed against the Ship and not the Ship's Owners and it was not filed in the required form under Articles 119 and 120 of the Law.

#### **Comment:**

It is established that any claim arising out of or in connection to a ship must be filed against the registered ship's owners and not against the ship itself; otherwise the claim will be dismissed, as ships do not have legal capacity to be sued.

Furthermore, the procedures set out in Articles 119 and 120 of the Law have not been followed by the UAE Courts previously. However, this Supreme Court's judgment suggests that there has been a change in approach and the procedures set out in Articles 119 and 120 of the Law will start to be applied from now on.



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## **Significant changes in Proceeding law of Ukraine are expected**

On March 23, 2017, the President of Ukraine initiated an immediate project ("The Project") "On changes to Commercial Proceeding Code of Ukraine ("The Commercial Code"), Civil Proceeding Code of Ukraine ("The Civil Code") and Administrative Proceeding Code of Ukraine and other acts submission".

Since June 8, 2017, The Project is being discussed by the Parliament. The Project provides significant changes that improve Ukrainian proceeding law and make court proceedings faster and more effective.

The new edition of The Commercial Code stipulates the court's right to use business customs in unregulated relations and establish the small claims adjustment procedure. Small claims are determined as a claim under 168 400 UAH (approx. 5675Euro).

To be precise, changes in Ukrainian proceeding law give parties the right to use electronic signatures, present and receive documents through the Uniform court informational-telecommunication system, present electronic evidence such as electronic documents, graphic files, printed web sites, databases, etc. Parties may obtain reimbursement for legal assistance expenses in full, according to the Attorney Agreement regulations and payment documents.

The new editions of The Commercial Code and The Civil Code stipulate ship arrest as a specific measure of claim security and that ship arrest procedure may be initiated before the main claim is presented.

The new editions of both Codes stipulate that after ship arrest imposition, the applicant has a period of 30 days to present the maritime claim to the court, arbitration, or tribunal. The new editions also give the applicant the right to apply for the ship arrest to the local court where the ship planned to arrive, in addition to the current law that application must be made to local courts where a ship was birthed or is registered.

Application on the ship arrest is decided without claimant and debtor notification according to the new edition. A Court's decision on the ship arrest may be presented directly to the harbour master of the port.

The new editions of The Commercial Code and The Civil Code are objects of active discussion now in Ukraine. Such changes are only anticipated and should be further developed. Moreover, for provision of effective and sufficient legal assistance, immediate legal projects must be considered.

I, the undersigned, have taken an active part in the development of New Codes in Maritime Law with partners from the Ukrainian Maritime Bar Association and have held many special events for the legal society during the past several years.

### **Ship arrest Seminar for Ukrainian judges**

On April 19, 2017, Denis Rabomizo and I, acting as the President and the Board Member of the Ukrainian Maritime Bar Association, coordinated a Seminar on "Ship arrest in respect of the Maritime claims in Ukraine and Liability for Wrongful arrest" for judges of the Commercial and Civil Courts of Ukraine on the Ukrainian National School of Judgment base during the mandatory, annual special courses for judges in Ukraine. The Seminar covered such aspects as the historic aspect of ship arrest in respect of the maritime claims, claims as grounds of ship arrest, liability for the wrongful arrest, ship arrest in respect of the maritime claims procedure and regulations, and court practice on the ship arrest.

According to the participants' feedback, judges received new information on the topic, got new experience and noted readiness to participate in other trainings on ship arrest and other aspects of Maritime law. A questionnaire shows that almost all participants rated the Seminar's organization as excellent, 70% noted that the material for the Seminar was highly informative; 35% of the participants admitted that their view on the topic changed significantly, and 45% of the participants changed their view partially. Approximately half of the

participants responded that they understood the ship arrest procedure in the context of Ukrainian Proceeding law. Participants understood what they need to do, how it should be done and in what terms. In addition, the same amount of participants noted that they had never decided cases on ship arrest. Since ships can only be arrested by the local court where it is berthed or registered, the courts of the Odessa region, Mykolaiv region and Kherson region handle the majority of these cases. Most of the participants determined that the Seminar gave them a better understanding of the Brussels Convention, 1952 enforcement.

To sum up the feedback, participants said that the Seminar should last longer to cover all controversial questions and admitted that the Seminar was informative and well balanced to cover the main topics of the ship arrest procedure.

In light of the excellent results of the Seminar, the Ukrainian Maritime Bar Association has already set in motion preparations for the next meeting with Ukrainian judges. Our team expects that much fruit will come of our labor with Ukrainian courts to provide adequate ship arrest procedure in Ukraine according to the international standards and demands of the merchant shipping community.

In conclusion, we are very proud of the opportunity to develop Ukrainian legislation in Maritime law, and to make it more useful, understandable, and closer to that of international standards.



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## Another successful annual members' conference on the books

Eighty legal and industry delegates from thirty-one countries participated in the 14<sup>th</sup> Annual Shiparrested.com Members' Conference this past 6-8 July in St. Petersburg, Russia.

Local members Lex Navicus Concordia, Egorov, Puginsky, Afanasiev & Partners, and Jurinflot co-hosted the event, providing attendees with a warm St. Petersburg welcome.

Thursday night's festivities kicked off with a cocktail party at the eccentric locale, China Gramota, on the Moyka River embankment. Despite a summer drizzle at the start of the evening, the restaurant and bar's famous rooftop terrace provided guests with the perfect place to enjoy extraordinary views of the city landscape and historic sights. The following day, conference delegates participated in various presentations and panel discussions which covered a wide variety of topics. Our local co-hosts, Natalia Usanova, Konstantin Krasnokutskiy, and Alexey Karchiomov held lectures on the complexity surrounding ship arrests in Russia. The morning session ended with the annual competition of the strangest arrest case. Noteworthy

competitors Marc De Man, Brian van Egmond, Jorge Loaiza, and Murali Pany gave winner of this year's competition, Alberto Batini, a run for the prize whiskey. Batini's intriguing case of a 'Shipowners' liability for pirates' attack' presented too strange of an arrest to beat.

After lunch, members Zeynep Özkan, Alexey Remeslo, and Augustin Zabrautanu discussed ship arrest procedures in their respective country of the Black Sea region. Recent developments were shared by Asko Pohla & Martin Männik in Estonia; Alessandro Tricoli, of the UAE and the recent opening of the Emirates Maritime Arbitration Centre (EMAC); and Tony Swinnerton on an important Supreme Court decision in The Ocean Victory case. Last but certainly not least, Amir Cohen-Dor, Yoav Harris, and Abraham Stern gave captivating presentations on concrete cases that generated excellent dialogue amongst members.

To cap off the conference, attendees enjoyed an evening boat ride to the closing dinner at the Flying Dutchman, which according to UNESCO, opens up to one of the best panoramic views in Europe. The bright Russian summer night allowed for the picturesque scene to be enjoyed late into the evening when attendees unanimously voted on the host city of the milestone 15th Annual Members' Conference in 2018

to be in Malaga, Spain.

As is the custom, Saturday's farewell leisure activity saw the majority of conference participants join in for a half-day bus and boat tour to see the most symbolic sights of St. Petersburg topped off with a typical Russian lunch at the Vodka Room restaurant.

(Members can access conference content here: [shiparrested.com/st-petersburg-speaker-presentations/](http://shiparrested.com/st-petersburg-speaker-presentations/))

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## Shiparrested.com 'Who's Who' Member Spotlight

Highlighting two of our members who travelled over 10,000 kilometers to attend the 14th Annual Shiparrested.com Members' Conference in St. Petersburg



**Jorge Loaiza | ARIFA | Partner**

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**Shiparrested.com Members since:** 2001

### Biography

Over 27 years of experience in the maritime industry and a strong background in corporate and commercial law, prepares Mr. Loaiza with the insight and global perspective to creatively overcome obstacles while extensively working with major ship finance banks, shipping companies and investors worldwide, with sophisticated and timely advice on structured ship financings, construction, acquisitions, litigation and registration of all types of ships, mobile drilling units, FPSOs and other equipment in the shipping and energy sectors.

From his current position as Head Partner of the ARIFA Shipping and Transportation Practice Group, Mr Loaiza has also been involved in maritime litigation, promoting the creation of judicial precedents on asset arrests and flag arrests of ships, administrative filings, and other unconventional procedures.

Mr Loaiza stands among leading shipping lawyers in the country called upon the Panama Maritime Authority to assist in the review and compilation of laws of the maritime sector contributing with innovative legislative proposals. He was one of the main contributors to a newly adopted Law for Promotion of Maritime Projects Financing,

Mr. Loaiza is an ARIFA Compliance Committee member, an active member of Shiparrested, and member of the Transportation & Logistics Committee of the American Chamber of Commerce Panama. Jorge Loaiza III joined the firm in 1990 and held the position of resident lawyer in the ARIFA London office from 2000 to 2005. Prior to joining the firm, Mr. Loaiza worked as a foreign associate with Kelley Drye & Warren in Washington D.C

### Education

- Master of Laws, Southern Methodist University (1989) (concentration on comparative and international law)
- Bachelor of Laws (Licenciatura en Derecho y Ciencias Políticas), Santa Maria La Antigua University (1988)

### Bar Admission

- Panama Bar

### Professional Activites & Affiliations

- Member of the drafting Committee and contributor to the amendments of 2009 to Law 8 of 1982 of Maritime Judicial Procedure
- Member of the joint Commission (Government and Maritime Lawyers) for complementary regulations to Law 57 of 2008 of the Merchant Marine Administration
- Various posts within the Board of Directors of the Panama Maritime Law Association, including Vice-President in his last term (2008-2012)

### Languages

- Spanish, English

## Shiparrested.com 'Who's Who' Member Spotlight

Highlighting two of our members who travelled over 10,000 kilometers to attend the 14th Annual Shiparrested.com Members' Conference in St. Petersburg



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**Shiparrested.com Members since:** 2011

### Biography

Mr. Stern heads PACHECO COTO'S Transportation Law Division, including Maritime and Aviation Law, with expertise in Bills of Lading, Collisions and Property Damages, Cargo Claims, Vessel Charters, Maritime Liens and Maritime Insurance. He is also a member of the Corporate Law and Real Estate Divisions, counseling multinational clients on real estate development and condominium structuring. Prior to joining Pacheco Coto, Mr. Stern worked at Chaffe McCall in New Orleans, Louisiana, where he focused his practice on maritime law, aviation accident law and international corporate transactions.

### Education

- ✦ Tulane University, School of Law (Master of Laws in Admiralty), 1995
- ✦ Universidad de Costa Rica. Licentiate in Law (JD equivalent) with honors, 1994

### Bar Admissions

- ✦ Louisiana State Bar Association, 1997
- ✦ Admitted to Practice Law as an Attorney in the East, West and Middle United States District Court of Louisiana, 1997
- ✦ Admitted to Practice Law as an Attorney and Counselor at the United States Court of Appeals for the Fifth Judicial Circuit, 1997
- ✦ Admitted to the Bar of the Republic of Costa Rica, 1994

### Professional Activites & Affiliations

- ✦ Consul of the Republic of Costa Rica in the State of Louisiana, U.S.A., 1994 –1996
- ✦ Treasurer of Gulf Coast Hispanic Chamber of Commerce, New Orleans, Louisiana. 1997-1998
- ✦ Professor of International Private Law at the University of Costa Rica. Department of International Legal Studies. San José, Costa Rica., 1999-2000.
- ✦ Professor of the Maritime and Aviation Law at La Salle University, San José, Costa Rica, 2000-2003

### Languages

Spanish, English, and Hebrew

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