

SHIP ARREST IN BULGARIA (QUESTIONS 1 TO 9)

By Roumen Lyutskanov & Katerina Gramatikova*
Dobrev & Lyutskanov Law Firm
25, Khan Kroum Street
Sofia 1000 Bulgaria
lyutskanov@legaldl.com
www.legaldl.com
Tel: 00359 2 980 38 76



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

In principal, the arrest of a ship according to the Bulgarian law is a procedure that provides pre-judgment security for future claims or already brought proceedings. The arrest of a ship shall be allowed, if without it, it will be impossible or difficult for an eventual future court decision to be executed, until the necessary guarantees are provided by the shipowner. Notwithstanding the relatively formal character of the procedure according to the Bulgarian law, after the country became a party to the International Convention on Arrest of Ships, 1999, the number of applications for security of maritime claims through an arrest was increased, as well as the terms and condition for allowance of such applications were unified.

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

The Republic of Bulgaria is a State party to the International Convention on Arrest of Ships, adopted on March 12, 1999 at the United Nations/International Maritime Organization Diplomatic Conference on Arrest of Ships, held in Geneva ("The Convention"). The Republic of Bulgaria has signed the Convention on July 27, 2000 and ratified it in accordance with the constitutionally established procedure. In accordance with its Article 14 (1), the Convention went into force on September 14, 2011, six months after the Republic of Albania became the 10th State to accede it. State parties include Albania, Algeria, Benin, Bulgaria, Denmark, Ecuador, Estonia, Finland, Latvia, Liberia, Norway, Pakistan, Spain and the Syrian Arab Republic.

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

The merchant ship, which is located at a Bulgarian seaport, regardless of its flag, can be arrested only for securing a maritime claim for the purposes of Art.1, para.1 of The Convention. Besides the above procedure, the Bulgarian Merchant Shipping Code envisages a specific procedure for the arrest of ships sailing in inland waterways, as a prejudgment security for future claims or already brought proceedings. The grounds for arrest of ships sailing in inland waterways are identical to those provided in the Convention. Arrest of a ship, according to the domestic law might be allowed: By the district court at the location of the ship (the respective port) in a procedure for securing of a claim, including a future claim, by imposing of a collateral measure "arrest of a ship" under the provisions of the Bulgarian Civil Procedure Code for a claim arisen in connection with the ship.

In addition to the above, the Bulgarian Merchant Shipping Code provides for a specific procedure concerning the arrest of a ship and cargoes only for unpaid sums of customs, port and other fees, taxes and fines. The Executive Director of the Bulgarian Maritime Administration or the captain of a port may arrest Bulgarian or foreign ships for such claims, if the request is made on behalf of governmental and judicial authorities, by the State Enterprise "Port Infrastructure" or by a foreign maritime administration. The arrest shall continue until elimination of the grounds for it.

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

Such instruments are not provided and applicable according to the Bulgarian law.

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

Grounds for arrest of a ship, according to the Convention are maritime claims, as defined in Article 1 (1) of the Convention. The competent authority is the Court.

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

The Bulgarian Merchant Shipping Code does not specify exceptions to this general rule, stipulating that authorities "may arrest Bulgarian or foreign ships and cargoes". Article 8, para 1 of the International Convention on Arrest of Ships, 1999 states that the rules and regulations set by the Convention apply to any ship within the jurisdiction of any State Party, whether or not that ship is flying the flag of a State Party. Article 8, para 2 however makes an exception, declaring that said rules and regulations do not apply to any warship, naval auxiliary or other ships owned or operated by a State and used only on government non-commercial service.

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

The general rule, according to the Bulgarian law is that a ship arrest is admissible for maritime claims against the persons who are responsible under the maritime claim. The ship-owner is the owner of the ship, entered in such capacity in the register of the ships or any other person who utilizes the ship on other legal grounds (by example on the ground of a bareboat charter agreement) at the time when the maritime claim arose and the arrest is effected. In order for the arrest of the vessel to be allowed the debtor should be responsible under the maritime claim as well as a person specified in Art. 3 of the Convention.

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

The Bulgarian Merchant Shipping Code stipulate that the sister ships and ships in associated ownership may be arrested for claims arisen from other ship, according to the Convention, under certain terms and condition. In this procedure, the arrest is admissible for any other ship or ships which when the arrest is effected, is or are owned by the person who is liable for the maritime claim and who was, when the claim arose: (a) owner of the ship in respect of which the maritime claim arose; or (b) demise charterer, time charterer or voyage charterer of that ship.

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

9.1. Regarding the Bareboat-Chartered vessels

Arrest is permissible of any ship in respect of which a maritime claim is asserted if the demise charterer of the ship at the time when the maritime claim arose is liable for the claim and is demise charterer or owner of the ship when the arrest is effected; or the claim is against the demise charterer and is secured by a maritime lien which is granted or arises under the law of the State where the arrest is applied for.

9.2. Regarding the Time-Chartered vessels

The Vessels, which are used on the grounds of concluded contract for Time-Chartered, may be arrested only as a security for a maritime claim for which the owner is deemed responsible. The arrest of a ship as security marine claim against Time-Charter is permitted for ship or ships which, when the arrest is effected, is or are owned by the person who is liable for the maritime and who was, when the claim arose, time charterer.

The long effective provision regarding the administrative procedure for detention of a vessel, provided for in the initial version of the Merchant Shipping Code (MSC), has been replaced by the provision of Article 364a of the MSC, which is intended to eliminate conflicting case-law that has led to a conflict of laws in the

interpretation and implementation of the provisions of the MSC and the International Convention on the Arrest of Ships, done at Geneva on 12 March 1999. Thus, the only legal possibility for the arrest of a merchant vessel while in a Bulgarian sea port, regardless of the flag she is flying, is solely and exclusively in order to secure a maritime claim within the meaning given by Article 1, paragraph 1 of the International Convention on the Arrest of Ships, done at Geneva on 12 March 1999 (ratified by the Republic of Bulgaria by a law promulgated in the State Gazette No. 7 of 2001).

A vessel is arrested and released from arrest by the Harbour Master of the port in which the vessel is, in furtherance of a judicial act decreed in conformity with the conditions provided for in the International Convention on the Arrest of Ships by:

1. The first-instance or the intermediate-appellate-review Bulgarian court where before the maritime claim case is pending;
2. The district court exercising jurisdiction over the location of the vessel: where a future maritime claim is secured.

**Mr. Roumen Lyutskanov is a Partner at Dobrev & Lyutskanov Law Firm. Mr. Lyutskanov graduated from Sofia University, Faculty of Law (LL.M. 1984, Specialization: Maritime Law) and is a member of the Sofia Bar Association, foundation member of the Bulgarian Commission of Jurists – a national branch of the International Commission of the Jurists and member of the Bulgarian Association of International Law. He has extensive experience and practice in the areas of banking and finance; maritime law, transport, insurance; dispute resolution.*

**Ms. Katerina Gramatikova is Junior Partner at Dobrev & Lyutskanov Law Firm, which she joined in 2006 as Associate. She has graduated from Sofia University St. Kliment Ohridski (LL.M. 2003), specialisation Jurisdiction and Public Administration and is member of the Sofia Bar Association. Currently she heads Competition Law; Public Procurement and Concessions. She is working as well in the areas of Corporate and M&A; Environment and Utilities and Infrastructure, Litigation and ADR and Infrastructure, Transport and Communication. Maritime law is an important aspect of the activities of the Law Firm. Its practices include consultations on the conclusion and implementation of maritime transportation contracts, sale and purchase contracts, maritime claims, litigation, and arrest of ships. Ms. Gramatikova speaks English and Russian.*

SHIP ARREST IN BULGARIA (QUESTIONS 10 TO 26)

By Vladimir Penkov*
PENKOV, MARKOV & PARTNERS
lawyers@penkov-markov.eu
www.penkov-markov.eu
13B, Tintyava Str., Fl. 6, Sofia 1113
Tel: + 359 2 971 3935
Fax: +359 2 971 1191



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

Depending on the specific judge's discretion a guarantee (usually up to 20% of the claimed amount) might be requested.

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

There are not exact provisions in the Bulgarian law concerning maritime claims and maritime liens.

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

No.

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

Usually 2 to 3 days upon receipt of the documents needed.

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

The following documents will be needed in general for the ship arrest procedure in Bulgaria:

- a. A copy of the carriage contract or the contract for the services;
- b. Invoices regarding the deliveries (copies would suffice at first time);
- c. Certificate of good standing of the creditor of the vessel;
- d. Excerpt from the Maritime Register about the vessel's owner;
- e. Power of Attorney.

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 document under the item "c" should be verified with apostille as per the requirements of the Hague Convention of 1961, in order to be officially translated and legalized in Bulgaria. The documents under the other items should be officially translated in Bulgarian language, which may be accomplished in Bulgaria upon their receipt. The set of the documents should be presented to the court as attachments to the claim.

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

No.

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

The release from arrest is regulated under the terms and provisions of Art. 4 of the International Convention on the Arrest of Ships from 12 march 1999.

In addition, any merchant vessel, which has already been arrested and released from arrest or in respect of which security has already been provided to secure a maritime claim, regardless of the State where this has been done, may not thereafter be rearrested in respect of the same claim except in the cases covered under Article 5, paragraph 1 of the International Convention on the Arrest of Ships. The provision of Article 5, paragraph 2 of the International Convention on the Arrest of Ships applies in respect of any other vessel that would be subject to arrest in respect of the same claim.

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

No specific type of security is provided for, but the most common case in practice is to provide a bank guarantee.

19. Does security need to cover interest and costs?

The exact amount of the provided security is also not determined specifically, whereby our experience in such cases shows that the minimal amount of security should match the amount of the creditor's claim. Interest in cases of delay or the expenses for effecting the arrest itself could also be included in the amount of required security.

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

Bulgarian law does not regulate this particular form of security.

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

Usually 2-3 days after the provision of a security.

22. Is there a procedure to contest the arrest?

The arrest of a ship is allowed by the respective district court as a first instance and may be appealed before the respective court of appeal as second instance, whereas the decision of the latter is then final.

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

The court order for the arrest of a ship is valid for a term of up to 30 days, unless a lawsuit is filed against the debtor, whereby the effect of the order could last throughout the court procedure. If the claim is not filled within the deadline given by the court, the arrest shall be lifted.

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

In case of groundless arrest the liability shall be borne by the person to the request of whom the arrest is imposed.

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

No.

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

According to the Bulgarian Law is not possible to sell the arrested ship during the time of the court proceedings. After the court decision the creditor may apply for an enforced sale of the ship.

**Vladimir Penkov is the founder and Managing Partner of Penkov, Markov & Partners. He is specialized in commercial and company law, banking & finance, competition & antitrust, investment management, project development, IT, media & telecommunications, licenses and know-how, privatization, mergers and acquisitions, concessions, taxation, international commercial arbitration, maritime law. He has handled numerous acquisitions and joint venture establishments, including representation of the Bulgarian government in the privatization of Navibulgar (Bulgarian sea commercial fleet) and the Bulgarian River commercial fleet.*