

SHIP ARREST IN GEORGIA

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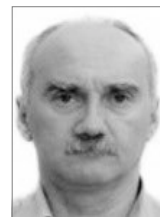
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1. Please give an overview of ship arrest practice in your country.

Georgia is not a signatory part of the International Convention for the Unification of Certain Rules relating to the Arrest of Sea-going Ships (Brussels 1952) and UN International Convention on Arrest of Ships (1999), but has implemented provisions of the Conventions into maritime legislation.

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

The source of law during a ships arrest procedure implementation is the following:

1. International legal instruments the 1982 UN Convention on Law of the Sea.

2. Domestic legal instruments:

Maritime Code of Georgia (15.05.1997r. N 715 - IIC).

The Law of Georgia «On maritime areas» (N°1756 ot 24.12.1998).

The Law of Georgia «On international private law» (29.04.1998r. 1362- IIC)

The Law of Georgia «On State Boundary» 17.07.1998 N°1536-PC

Georgia Code of Civil Procedure (14.11.1997r. N°1106- 1C)

3. Judicial practice of Georgian courts State arbitration has been abolished from the justice system of Georgia, and the system was generated in the form of general courts of three instances, administering justice through civil, administrative and criminal jurisprudence. As a result, a specific judicial form of ships arrest has been gradually formed.

In accordance with Article 831 of Maritime Code of Georgia ship's arrest is implemented only for maritime claim security. Maritime claim comes from the ship's ownership and from other property relations that arise in the construction, management, maintenance, commercial use, and mortgage or as a result of activities related to the salvage of the ship. In accordance with the general provision of Article 831 of Maritime Code of Georgia and Civil Procedure Code (CPC) the only competent authority, which is authorized to consider the issue of arrest and release of a vessel in Georgia is general court. And the procedure of arrest and release of a vessel is carried out in accordance with the CPC of Georgia. Taking into consideration the structure and provisions of the CPC we can clearly conclude that the arrest of the ship can be realized only as a form of security for the claim, which logically should be a maritime claim. In Georgia, as well as in Romano-Germanic legal systems, there is a standard regulation when a court considers a case involving a foreign element. In particular the court shall:

- Determine a jurisdiction of the court to the claim (suit, petition) being considered
- Determine the qualification and the nature of the claim being considered.

In such cases, as a rule, general competence is substantiated by the main legal instrument of the international maritime law - the UN Convention on Law of the Sea. Domestic regulations of competence of the courts in this part are stipulated for by the Law of Georgia «On maritime areas». In particular: in accordance with Art. 26 legal enforcement measures with the purpose of civil claim security can be applied to a foreign vessel which left internal sea waters of Georgia and crossing its territorial sea, or is in the territorial sea of Georgia. The important regulations substantiating the competency are provided by the Law of Georgia «on international private law», which is - unlike Maritime Code or the Law on Maritime Areas one of the most common and used laws by the courts.

According to the generalized provisions of this law in relation to the Georgian courts competence, the following can be concluded:

- General courts of Georgia have special international competency in the applications regarding legal enforcement if their implementation or claim for implementation or realization is carried out in Georgia.
- For claim security Georgian court is competent if interim and conservatory measures of relief are enforceable in the courts of Georgia or courts of Georgia have international jurisdiction.

Use of CPC of Georgia as procedural and legal substantiation of consideration and implementation of ship's arrest, is imperatively provided by Article 831 of Maritime Code of Georgia. Carrying out the arrest of vessel as an interim and conservatory measure of relief Georgian law provides protection of the shipowner's interests. In accordance with the Law of Georgia «On international private law» foreign citizens and legal entities, participating in the civil process under Georgia jurisdiction, enjoy the same legal safeguard as legal entities and physical persons – residents of Georgia.

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

In accordance with the laws as listed above three types of detention and arrest are applicable:

- a) detention by Harbour Master for 72 hrs.
- b) ship's arrest via the competent court decision.
- c) ship's arrest against legal decision of a foreign arbitrage or a court.

Each type has its own character and procedure

a) detention by Harbour Master – the limit of such detention is 72 hrs., days off and public holidays are not included in this period. It is implemented on the base of an application of any physical person or legal entity, which has got grounds for claim for commercial damage compensation or claim regarding the cargo etc. In order to implement this, a physical person or legal entity should apply to the Harbour Master providing the copies of all the documents proving the fact of damage or claim. The application should be in the Georgian language. Such detention is applied for a short period in order the Parties could solve the issue peacefully or a competent court could make a decision regarding detention of the vessel for a certain period of time. In order to make such detention the preliminary 2 days notice is required.

b) ship's arrest via the competent court decision – as a rule, preliminary court arrest is carried out for the period of 10 days for claiming on the merits to the appropriate authority (arbitrage or court), which has competency for consideration of the claim on the merits.

c) ship's arrest against legal decision of a foreign arbitrage or a court – Georgia is a part of New York Convention on Enforcement of Arbitral Awards and therefore foreign arbitrage decision after the procedure of recognition and implementation by the Supreme Court of Georgia, is implemented as domestic judicial act. Recognition and implementation procedure takes 10 days from the date of acceptance the appropriate petition into processing.

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

Such alternatives are possible. Saisie conservatoire can be applied to any movable and immovable property, providing the court is given documents proving the defendant's ownership of the subject regarded as a matter of security.

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

Base for detention and the appropriate legal actions are the main three reasons: First reason is connected with Georgian law and regulations infringement. The second reason is connected with providing of safety of navigation. The third reason – application of any physical person or legal entity having base for claiming for commercial damage compensation, claim for cargo etc.

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

There are not any privileges, rather than it is a governmental vessel, whose immunity is provided by international law.

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

Detention can be carried out only in relation to the shipowner and in rare cases - in relation to the bareboat charter owner.

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

Maritime claim can be applied to any vessel, if its ownership is documentarily proved.

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

Detention can be carried out only in relation to the shipowner and in rare cases - in relation to the bareboat charter owner providing Bareboat ownership documentary proof.

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

In the case of ships arrest the adequate form of security in order to release the vessel - can be depositing the amount of claim to the court's account by the defendant. Or some other forms of coercive measures can be applied, such as a bank security, P&I security or some other, including those not provided by the legislation of Georgia. In any case the court's decision completely depends on the Party demanded the vessel's arrest.

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

No difference if the third reason occurs – application of any physical person or legal entity having base for claiming for commercial damage compensation, claim for cargo etc.

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

Georgia law and courts recognize maritime liens for the debtor's property irrespective of damage claim base – breach of obligations (law or contract) or delict. The provisions of the International Convention on Maritime Liens and Mortgages Geneva, 6 May 1993 are incorporated into Art. 350 – 355 of Maritime Code of Georgia.

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

In order to make such detention the preliminary 3 days notice is required.

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

The following documents are necessary: original Power of Attorney to the lawyer (in Georgian and English, as a rule) Statement of claim, copies of all documents regarding this case.

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

Georgian courts require originals or notarized copies of all important documents (contracts, bills of lading, charter-parties, correspondence between the parties) of the plaintiff as stated in the application. Translation of all the documents into Georgian is carried out by a certified translator. Documents translation takes time and the client should bear this time factor in mind. Other documents can be presented as copies, certified by a seal and signature of the plaintiff. The documents (apart from the LOA) can be presented in electronic copies.

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

Georgian court can accept a claim on the merit for consideration if its competency is in accordance with the Law of Georgia "On international private law", irrespective where the vessel is, or of the Parties have agreed in written form for proceeding the case in Georgia, are presented by lawyers and have been familiarized with their right of objection in regards of the court's competency.

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

A vessel can be release by the order of the Court, which took a decision to arrest her, or by the order of the Court of Appeal, if any appeal had been submitted.

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

Civil Code of Georgia provides that instead of arrest of the vessel – as claim security – financial security can be applied as a local bank guarantee or a deposit submitted to a deposit account of the Court. However, in practice this provision is applied quite rarely.

19. Does security need to cover interest and costs?

No interest is imposed on the penalty amount. When applying to the court the court fee is fixed: about USD 90. Court of Appeal fee is approximately the same.

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

Maritime Code of Georgia provides that P&I Club or first-rate bank guarantee can be submitted. In practice, this provision shall not apply in cases of administrative delinquencies. In the private law disputes the application of this provision of in the private law disputes the application of this provision depends on the goodwill of the Party who seeks arrest of a ship on property requirements.

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

A vessel's release depends on the grounds of the arrest. If the arrest was implied as a security for a property claim, the time of release can be until the conclusion of the dispute on the merits. In the cases of administrative delinquencies, the vessel is released from the arrest in 1-2 days upon payment of the penalty.

22. Is there a procedure to contest the arrest?

Procedure of appeal exists and is widely applied.

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

In the case the court has made a decision to implement interim and conservatory measures of relief before the claim on the merits has been arisen, the court grants 10 days period for declaring to the competent court, and this period is not subject to extension in accordance with CPC. On expiration of this period interim and conservatory measures of relief are withdrawn by the court and the Party concerned cannot appeal to the court with the same claim on the same base. In the case the claim on the merits has been declared security measures remain in force until the final decision of the claim on the merits.

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

In the case of wrongful arrest a court can take a decision on release of the vessel providing:

- (a) The interim and conservatory measures of relief appeared to be unjustified as the plaintiff's (concerned party's) claim was dismissed and the decision has entered into force.
- (b) The plaintiff has not applied to the competent court for considering the claim on the merits, that's why the court withdraws the interim and conservatory measures of relief. If the arrest has been recognized as unjustified, the defendant can declare a claim against the arrest initiator in order to compensate the sustained loss.

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

Georgian corporate law recognizes property accountability of a subject only based on organizational structure of the defendant if this company is registered in Georgia. As for a company not registered in Georgia this issue is decided by the court on the basis of the common provision as provided by the Law of Georgia "On international private law"

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

With the purpose of court and arbitration decisions enforcement on the basis of a writ of execution issued by the competent court of Georgia, enforcement is carried out by the Executive Bureau of the Ministry of Justice of Georgia. The procedure is as follows: the debtor is given a written notice of the voluntary implementation of the court decision, after that the vessel is auctioned by posting statements on the appropriate websites. After two failed auctions the property is transferred to the creditor and the appropriate act of the Executive Bureau is issued.

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