

Arrest of Ships in Turkey

Introduction

1 The route passing through the Bosphorus (Istanbul Strait), the Sea of Marmara and the Dardanelles (Çanakkale Strait), connecting the Black Sea to the Aegean and the Mediterranean Seas, is one of the most significant waterways in the world. According to the data given by the Turkish Ministry of Transport and Infrastructure, 42.978 ships passed through the Bosphorus and 44.615 ships passed through Dardanelles in 2017. Moreover, the Bosphorus itself is one of the world's busiest waterways. Especially cargo vessels as well as ferries, local passenger ships and fishing boats are keeping the Bosphorus busy day and night. For these reasons, Istanbul is a leading maritime center in the world.

In the field of arrest of ships, two international conventions have been adopted. These are; (I) International Convention Relating to the Arrest of Sea-Going Ships of 1952 which came into force on 24 February 1956, and (II) International Convention on Arrest of Ships of 1999 (AC 99) which came into force on 14 September 2011. Turkey is not party to any of these Conventions however, ratification process for AC 99 is underway and it is expected that Turkey will become party to the AC 99 in the near future.

Ships sailing through Turkish waters can be arrested under provisions of the Turkish Commercial Code (TCC). On the other hand, TCC, which came into force on 1 July 2012, has adopted the provisions of the AC 99 with slight changes.

This article aims to provide a brief overview of ship arrest procedure under Turkish law.

Law of Ship Arrest

Governing Law

All matters relating to the procedure of arrest, enforcement, judicial sale of ships and effects of this sale including the transfer of the ownership of the vessel are to be regulated by the law of the State where the vessel is located at the time of enforcement. Accordingly, if a foreign ship is arrested in Turkish waters, the provisions of TCC will be applicable.

Grounds for Arrest

There must be a maritime claim to arrest a ship according to TCC. The list of maritime claims stated in Article 1352 of TCC is identical with Article 1/1 of the AC 99 with one exception. According to Article 1/1(p) of the AC 99, claims arising out of "*disbursements incurred on behalf of the ship or its owners*" are regarded as maritime claims. However, according to Article 1352/1(p) of the TCC "*disbursements incurred on behalf of the ship or its owners including loans taken for the ship*" are regarded as maritime claims. Therefore, financial institutions providing loan for a ship will have a right to arrest the vessel if the loan is unpaid.

The list of maritime claims stated in Article 1352 of TCC are as follows:

- (a) loss or damage caused by the operation of the ship;
- (b) loss of life or personal injury occurring, whether on land or on water, in direct connection with the operation of the ship;
- (c) salvage operations or any salvage agreement, including, if applicable, special compensation relating to salvage operations in respect of a ship which by itself or its cargo threatened damage to the environment;
- (d) damage or threat of damage caused by the ship to the environment, coastline or related interests; measures taken to prevent, minimize, or remove such damage; compensation for such damage; costs of reasonable measures of reinstatement of the environment actually undertaken or to be undertaken; loss incurred or likely to be incurred by third parties in connection with

such damage; and damage, costs, or loss of a similar nature to those identified in this subparagraph (d);

(e) costs or expenses relating to the raising, removal, recovery, destruction or the rendering harmless of a ship which is sunk, wrecked, stranded or abandoned, including anything that is or has been on board such ship, and costs or expenses relating to the preservation of an abandoned ship and maintenance of its crew;

(f) any agreement relating to the use or hire of the ship, whether contained in a charter party or otherwise;

(g) any agreement relating to the carriage of goods or passengers on board the ship, whether contained in a charter party or otherwise;

(h) loss of or damage to or in connection with goods (including luggage) carried on board the ship;

(i) general average;

(j) towage;

(k) pilotage;

(l) goods, materials, provisions, bunkers, equipment (including containers) supplied or services rendered to the ship for its operation, management, preservation or maintenance;

(m) construction, reconstruction, repair, converting or equipping of the ship;

(n) port, canal, dock, harbour and other waterway dues and charges;

(o) wages and other sums due to the master, officers and other members of the ship's complement in respect of their employment on the ship, including costs of repatriation and social insurance contributions payable on their behalf;

(p) disbursements incurred on behalf of the ship or its owners including loans taken for the ship;

(q) insurance premiums (including mutual insurance calls) in respect of the ship, payable by or on behalf of the shipowner or demise charterer;

(r) any commissions, brokerages or agency fees payable in respect of the ship by or on behalf of the shipowner or demise charterer;

(s) any dispute as to ownership or possession of the ship;

(t) any dispute between co-owners of the ship as to the employment or earnings of the ship;

(u) a mortgage or a "hypothèque" or a charge of the same nature on the ship;

(v) any dispute arising out of a contract for the sale of the ship.

Competent Court

The regime of Turkish straits is governed by Montreux Convention and according to Article 2 of this Convention, without prejudice to Article 3, foreign merchant vessels shall enjoy complete freedom of transit and navigation in the Straits by day and night. Under Turkish law, if subject of the arrest is a foreign ship, the competent court is determined according to the place where the foreign ship is anchored, moored or undergoing repair. In other words, foreign merchant vessels passing through Turkish straits can be arrested if the voyage of the ship is interrupted. In case of Turkish ships, in addition to this rule, the court at the place of her registry has also jurisdiction.

In Istanbul, the 17th Commercial Court of First Instance has sole jurisdiction over all maritime disputes including right to arrest.

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Exercise of Arrest

Arrest is permissible; if the person who owned the ship at the time when the maritime claim arose is liable for the claim and is owner of the ship when the arrest is effected; or if the demise charterer of the ship at the time when the maritime claim arose is liable for the claim and is the owner of the ship when the arrest is effected; or if the claim is based upon a mortgage or hypothèque or a charge of the same nature on the ship; or if the claim relates to the ownership or possession of the ship; or if the claim give rise to a maritime lien under Turkish law.

Counter-Security

The claimant requesting for arrest of a ship should file a written application to the competent court. The application should prove that the claim is one of the claims listed in Article 1352 of TCC (i.e. maritime claim) and should show evidence of the claim's value.

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Claimant should also deposit a counter security which is a standard sum of 10.000 Special Drawing Rights. This rule has an exception: Claims for wages and other sums due to master, officers and other members of the crew are not obliged to deposit any security. Claimant has a right to request a reduction and the corresponding party has a right to request an increase in this standard sum. The court should take into account daily operating cost of the vessel and loss of profit due to the arrest when deciding the increase of the security.

Arrest Procedure

Following the court decision, the claimant should request the arrest of the vessel within 3 days from the enforcement office. Enforcement office should commence the proceedings immediately. The TCC requires that the enforcement office should inform the Consulate of the ship's flag about arrest of the vessel.

Time Limit for Action

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Once the ship is arrested, the claimant has to commence legal proceedings within one month. This period will allow parties to negotiate the dispute or to file a lawsuit in abroad or to opt for arbitration.

Release from Arrest

There are different ways of releasing the ship from arrest. In order to obtain the release of a ship; a real security, a ship mortgage, a bank letter of guarantee, a sum that corresponds the full value of the ship or a sufficient security that covers the full amount of maritime claim including interest and all expenses should be provided.

Wrongful Arrest

The court, which has granted the arrest, has also jurisdiction in case of an action brought to compensate the damages caused by wrongful arrest. TCC does not contain any special provision on the issue, therefore general provisions apply for such actions. In case of

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a wrongful arrest, the offending party will be liable regardless of fault or negligence as it is regarded as strict liability under Turkish law.

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