

Arrest of Ships in Bulgaria in the Light of the Amendments to the Merchant Shipping Code

The International Convention on the Arrest of Ships of 12 March 1999 was signed by the Republic of Bulgaria in New York on 27 July 2000 and ratified with a law passed by the 38th National Assembly on 12 January 2001 (The State Gazette, No. 7 of 2001). It is a legal instrument for the unification of the rules related to the arrest of sea-going ships. In the international maritime law, “arrest” means any detention or restriction on removal of a ship by order of a Court to secure a maritime claim. The detailed description of the types of maritime claims is laid down in Article 1, paragraph 1 of the Convention.

Although Bulgaria has been a State Party to the Convention since 2000, it was not until February 2012 that the Convention became a part of the Bulgarian legislation, when its text was also promulgated in The State Gazette in accordance with the requirements under Article 5, paragraph 4 of the Constitution of the Republic of Bulgaria¹. In the meantime, Bulgarian courts were rejecting claims to arrest ships, which were lodged under the terms and conditions set out in the Convention. The refusals were substantiated with the absence of the conditions precedent for the application of the Convention because of the failure to fulfill the constitutional requirement for the text of the Convention to be promulgated as a condition existing separately and independently from the ratification requirement. The Bulgarian courts invoked the fundamental principle that the application of a piece of legislation is inconceivable if there exist no opportunities for examination of an officially proclaimed provision thereof.²

After the promulgation of the text of the Convention in The State Gazette in the beginning of 2012, it was incorporated into the domestic legislation and thus the arrest of sea-going ships within the territorial waters of the Republic of Bulgaria, regardless of their flag, became possible for the purposes of securing a maritime claim³ against the owner of the ship, arising out the grounds for its arrest.

It should be noted that the Convention is applicable only to the arrest of sea-going ships. Therefore a dual regime has been introduced for the arrest of ships: one for sea-going ships under the Convention and another one for ships sailing in inland waterways under Article 365 of the Merchant Shipping Code (MSC)⁴. Insofar as the existence of a dual regime of the same legal figure based solely on the type of the ship is inadmissible and given the fact that there

¹ International agreements ratified in accordance with the constitutional procedure, promulgated and entered into force for the Republic of Bulgaria, shall be incorporated into the domestic legislation of the country. They shall have precedence over those provisions of the domestic legislation which contravene them.

² The Convention Ratification Act does not reproduce the contents of the Convention.

³ The definition of the term “maritime claim” is given in Article 1, paragraph 1 of the International Convention on the Arrest of Ships.

⁴ (prior to the amendment) The Executive Agency Maritime Administration may arrest ships flying the Bulgarian or a foreign flag, or cargoes also at the request in writing by natural or legal persons, arising out of claims for incidents, collisions, rescue operations, other services provided or out of the implementation of the carriage agreement pending the provision of the required guarantees by the owner of the ship of the consignee.

exist no uniform international rules relating to the arrest of ships sailing along the river Danube, a law was enacted and promulgated at the end of December 2013 to amend the Merchant Shipping Code, ensuring maximum synchronization between the rules governing the arrest of sea-going ships and ships sailing in inland waterways. Two separate provisions were introduced, whereby one applied to the arrest of a merchant ship located at a Bulgarian sea port, and the other one related to the conditions and admissibility of the arrest of a ship located at a Bulgarian river port. In the new provision which contains the grounds for the arrest of a sea-going ship, the law-makers give an explicit reference to the definition of “maritime claims” laid down in the Convention. The earlier provision relating to the arrest of ships at the request of a party concerned (Art. 365 MSC) has been fully re-worded to become applicable only for the arrest of a ship located at a Bulgarian river port. With a view to avoiding any discrepancies in the grounds and procedures for the arrest of sea-going and river-going ships, the MSC has introduced an exhaustive list of the grounds for a ship to be arrested at a Bulgarian river port, which replicate the provisions relating to the arrest of sea-going ships under the Convention.

The amendments to the legislation, which were adopted at the end of last year, introduced yet another important change. In its previous wording, the law made it possible for the Executive Agency Maritime Administration to arrest a ship at a Bulgarian port at the request of a party concerned for a period of 72 hours. That option existed for the purposes of enabling the party concerned to obtain a court order on the arrest of the ship within those 72 hours. The Executive Agency Maritime Administration was empowered by the law to make an assessment of the probable justification of the arrest and, where it deemed the request of the third party for the arrest of the ship to be justified, it could issue an order on the arrest of the ship for 72 hours. On the one hand, that enabled the party concerned to obtain a court order prior to the departure of the ship from the port and thus guaranteed the effective security of the maritime claim through the arrest of the ship. On the other hand, the arrest of a ship is a measure to secure the creditor claiming recovery should the court rule in his favour. The only competent authority to rule on the admissibility or non-admissibility of security measures related to claims is the court.

In closing, it should be noted that the amendments are intended to ensure unification of the practice of rapid and effective arrest of ships to secure recovery for creditors under existing or possible future maritime claims, while minimizing the risk of unjustified arrest of ships that would lead to huge damage for the owner of the ship.