

Spain is a State Party to the 1999 Geneva Convention on Arrest of Ships which came into force on 14 September 2011. Spain was a Contracting State to the 1952 Brussels Convention on the Arrest of Sea-Going Ships from 1956 but the Convention was denounced in 2012. The Geneva Convention was implemented together with the specific arrest provisions included in the Spanish Shipping Act which was enacted in September 2014. From a practical point of view, it is important to focus first on the different categories of arrest that arise under the new regulation, since the requirements for an arrest vary depending on the flag of the ship and/or the usual residence or principal place of business of the arresting party.

The Shipping Act declares that the arrest of a foreign ship belonging to a State Party to the Geneva Convention will be subject to the Convention. This means that it will be necessary to assert a maritime claim under article 1 and to satisfy the requirements provided by article 3 dealing with the exercise of the right to arrest in order to obtain an arrest order. This last provision created a new scenario and in principle the arrest will be only feasible if either the ship belongs to the debtor or the claim is secured by a maritime lien. This seems to be the correct understanding bearing in mind the last paragraph of the same article which provides that the arrest of a ship which is not owned by the person liable for the claim shall be permissible only if, under the law of the State where the arrest is applied for, a judgment in respect of that claim can be enforced against that ship by judicial or forced sale of that ship.

However, as regards the arrest of a foreign ship not belonging to a State Party, the Shipping Act provides for such arrest to be subject to the requirements of the Convention with the exception of the need to assert a maritime claim. It would be possible to seek the arrest by alleging any type of claim against the Owner. This is of a practical importance since a limited number of States have signed/ratified the

Geneva Convention (Albania, Algeria, Benin, Bulgaria, Congo, Denmark, Ecuador, Estonia, Finland, Latvia, Liberia, Norway, Pakistan, Spain and Syria). If the vessel does not belong to any of the foregoing States, her arrest in Spain will be permitted in respect of any claim. The other requirements provided by the Geneva Convention will have to be met; this means that the claim will need to be established against the vessel's Owner. Though it has to be noted that there are only fifteen (15) States Parties to the Geneva Convention which do not include the most important States in terms of tonnage. Thus, there are in principle more possibilities of arresting a foreign ship in Spain in respect of any type of claim (again, provided that requirements of article 3 of the Geneva Convention are satisfied).

The above specific regime also applies in respect of the arrest of Spanish ships physically within the Spanish jurisdiction procured by a person whose usual place of residence or principal place of business is in Spain, or by any other person who has acquired a claim from such person by subrogation, assignment or otherwise. The arrest of a Spanish ship procured by any other person shall be subject to the general requirements of the Geneva Convention, including the need to allege a maritime claim.

In light of the above, the scope of the interpretation by the Spanish Courts of the definition of "maritime claim" under article 1 of the Geneva Convention is of relative practical importance and parties will in most cases be able to obtain an arrest without the need to assert a maritime claim. In this regard, the Spanish Court of Appeal's decision dealing with the validity of an arrest of a ship enforced to secure a lawyer's invoice which has been recently subject to published commentaries, would be of relative material significance.

The Court of Appeal's decision made it clear that there was a difference between the purely legal services



“In short, according to the Court of Appeal’s decision, purely legal services rendered by lawyers do not fall under the definition of “maritime claim” in article 1 of the Geneva Convention. If, however, the lawyers render management services to the ship, they could be accepted within article 1.1 (l).”

The Charterer – November 2015

continued from page 7

rendered by the lawyers (in the subject matter, legal assistance to release an arrest) and other services related to the management of the ship, equally rendered by them. The Court of Appeal ruled that only the latter would fall under the definition of “maritime claim”. In particular, article 1.1. (l): *“goods, materials, provisions, bunkers, equipment (including containers) supplied or services rendered to the ship for its operation, management, preservation or maintenance”*.

In this case, the arresting party failed to identify which services were legal and which were part of the management of the ship. The Court of Appeal decided to uphold the decision of the First Instance Court on grounds that the defendant had not satisfied the burden of proof by failing to establish which services would fall under each of the categories. It is only as a result of the failure to satisfy the burden of proof that the entire claim was accepted by the First Instance

Court as a “maritime claim” and its decision upheld.

Finally, it is also appropriate to deal with other issues like countersecurity and the deadline to pursue the substantive proceeding on merits since there are specific provisions in the Shipping Act to this effect. In brief, the Shipping Act obliges the Court to require countersecurity from the arresting party in an amount not below 15% of the claim. In relation to the period to pursue the proceeding on the merits, the Shipping Act provides that if the Spanish Courts do not have jurisdiction to deal with the merits, the Court will grant the arresting party a period of no less than thirty days and no more than ninety days to provide evidence that the proceeding on the merits has been commenced before a Competent Court or Arbitration Tribunal.



**Javier
Portales**

jportales@alborsgaliano.com