

SEAFARER SUBJECT GUIDE

SHIP ARREST FOR SEAFARERS' WAGES IN TURKEY

This Guide deals with the rights of seafarers of any nationality to arrest a ship for unpaid or underpaid wages in a port in Turkey.

Although these rights are explained, this document is not intended to be legal advice, nor does it constitute legal advice.

For legal advice about his own case, a seafarer is strongly advised to consult a lawyer qualified to practise in Turkey.

*A full text version of this Subject Guide including footnotes will become available for subscription in due course. In the meantime if there is a specific inquiry on any Subject Guide, please contact SRI.

1. Can a seafarer arrest a ship for unpaid wages regardless of his nationality and regardless of the flag of the ship?

- 1.1 The unpaid wages of seafarers constitute both a maritime lien and a maritime claim Under Turkish law. A claim for wages and other sums due to a seafarer in respect of his employment on the vessel, including costs of repatriation and social insurance contributions payable on his behalf is a maritime claim and shall constitute a ground for the arrest of a vessel. The nationality of a seafarer is not taken into consideration in regard to the arrest of a vessel for a maritime claim for the unpaid wages of the seafarer.
- 1.2 The flag of the vessel, which is to be arrested, is considered in respect of the jurisdiction of the court. A decision to arrest a Turkish flagged vessel can only be given by a court where the vessel has moored, or has moored to a buoy, or has kedged, or has berthed, or has dry docked; and by the courts listed below:
 - (1) the court of register for the vessels that are registered to a Turkish Vessel Registry;
 - (2) the court of the place of residence of the shipowner for the unregistered vessels,
 - (3) the court of the place of residence of the charterer for the vessels registered to the special registry.
- 1.3 For the foreign flagged vessels, the decision for the arrest of a vessel can be given by the court where the vessel has moored, or moored to a buoy, or kedged, or berthed or dry docked.

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- 1.4 Consequently, if the above conditions are satisfied a seafarer can arrest a Turkish or foreign flagged vessel regardless of the seafarer's nationality.
- 2. What is the time limit within which a seafarer must start a claim for unpaid wages?**
 - 2.1 There are two separate time limits for unpaid wages. The right to enforce a maritime lien in regard to unpaid wages will extinguish after one year, starting from the time when the seafarer departed from his vessel.
 - 2.2 The general time limit for unpaid wages is determined by the general time limit under the Code of Obligations which is 10 years.
- 3. What documents are required to obtain an arrest of a ship?**
 - 3.1 It is sufficient for the claimant to submit evidence which would satisfy the court that the claim is a maritime claim and show the monetary value of the maritime claim. In practice, the contract between the shipowner/charterer and the seafarer, seafarers' identity card, documents showing that the vessel is within the jurisdiction of the court (like port authority or port company records), documents showing that the vessel is owned or chartered by the company/person that the seafarer has entered into contract with (like the equasis website records), and the Supreme Court precedents are submitted together with the arrest application.
 - 3.2 The documents submitted to the court must be translated. The translation of the document is generally certified by a certified translator or notaries before the document is submitted with the arrest application. If the foreign document is an official document, the document must be approved by the competent foreign authority of the country which issued the document or a Turkish Consulate. If the official document is approved, it will be an official document before the court.
 - 3.3 Usually the courts would accept copies regarding interim injunctions, however during the procedure on the merits, the court may request the original documents to be provided.
- 4. What are the costs of the arrest, including court expenses and other expenses?**
 - 4.1 Seafarers are exempt from the requirement of depositing security (10.000 SDR) for the arrest application. However, if there are documents in a foreign language, certification or notary expenses for these documents may arise. On the other hand,

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court tax which amounts to approximately 30,00.- Euros must be deposited for the arrest application.

- 4.2 After the arrest of a vessel is granted by the court, the execution of the arrest must be performed within three business days, starting from the date of the arrest. The arrest will be executed by the Enforcement Office within the jurisdiction of the court, which issued the decision or where the vessel is located via an execution writ. There will be Enforcement Office's fees and expenses and other expenses which costs around 400,00.-Euros.
- 4.3 The Enforcement Office is responsible from taking any necessary measures for the administration and management of the vessel together with the maintenance and protection of it. Consequently, during the arrest of the vessel the Enforcement Office will have authority to decide for example on the payment of crew by the shipowner.
- 4.4 Such costs will be paid from the sale proceeds; however if the sale proceeds cover the claims of all of the debtors, the Enforcement Office will prepare a sale order. The expenses and disbursements arising from the maintenance and protection of the vessel, the subsidization of the crew starting from the date of arrest of the vessel and during the arrest procedure, the foreclosure of the vessel, apportionment of the sale price, and the claims related to the time elapsed for the arrest will be accorded first ranking. These claims rank equally among each other. Thus the crew's wages accruing during the arrest will be paid from the sale proceeds within the first rank.
- 5. Does the arresting party have to lodge counter security against wrongful arrest?**
 - 5.1 Maritime claims arising from unpaid wages of seafarers are exempt from the requirement of depositing counter security.
- 6. Once a vessel has been arrested, will the court accept jurisdiction over the substantive claim?**
 - 6.1 The court that has decided to arrest the vessel will have jurisdiction over the substantive claim, unless there is an agreement on jurisdiction or arbitration in regard to the substantive claim between the parties.
- 7. Will the crew and vessel be maintained/supported during the arrest?**
 - 7.1 The enforcement office is responsible for taking any necessary measures for the administration and management of the vessel together with the maintenance and protection of it. Consequently, during the arrest of the ship the Enforcement Office

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will have the authority, for example to decide on the payment of crew by the shipowner.

8. Is the presence of the crew on board the vessel necessary during the course of the legal proceedings or can the crew be repatriated before the ship is sold?

8.1 The Enforcement Office's Manager will enforce the arrest decision via an execution writ drawn on the port authority. There is no requirement for the crew to be on board during the arrest proceedings. The arrest order may be served on the master, or the possessor, or the shipowner who is not the possessor of the vessel, or the agent. Consequently, it is generally preferred to serve the arrest decision on the master to achieve efficiency and to save time during the legal proceedings.

8.2 There is no national legislation or law explicitly restricting this right of the seafarer. However, as will be explained below, a seafarer who is not Turkish citizen is an alien as per the Passport Law. Thus the seafarer must obtain a valid visa, if he has to enter into Turkey for repatriation. Turkey is a contracting party to the Seafarers' Identity Documents Convention, 1958 (No. 108) ('Convention No.108') this Convention was enacted on 15.07.2003 with the number 4939. According to article 6 of Convention No.108:

- (1) 'Each Member shall permit the entry into a territory for which this Convention is in force of a seafarer holding a valid seafarer's identity document, when entry is requested for temporary shore leave while the vessel is in port.
- (2) If the seafarer's identity document contains space for appropriate entries, each Member shall also permit the entry into a territory for which this Convention is in force of a seafarer holding a valid seafarer's identity document when entry is requested for the purpose of:
 - (a) joining his vessel or transferring to another vessel;
 - (b) passing in transit to join his vessel in another country or for repatriation; or
 - (c) any other purpose approved by the authorities of the Member concerned.'

8.3 Thus the seafarer may request a visa from the Turkish authorities for repatriation, provided that the seafarer holds a valid seafarer's identity document.

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- 8.4 Repatriation costs, claims for wages and other sums due to the master, officers and other members of the vessel's complement in respect of their employment on the vessel, including costs of repatriation and social insurance contributions payable on their behalf, constitute a maritime lien and a maritime claim. Thus, the repatriation costs will be met from the sale proceeds of the vessel. However, this may be actualized after the sale proceedings are completed. Consequently, the court does not pay for the repatriation costs.
- 8.5 Nevertheless, Turkey is a contracting party to the International Labour Organization Convention (No. 166) concerning the Repatriation of Seafarers and this Convention ('Convention No. 166') was enacted on 15.07.2003 with the number 4941.
- 8.6 The seafarer will be entitled to repatriation in the circumstances defined under article 2 of Convention No.166 and the seafarer may request the shipowner to pay for the repatriation costs.
- 8.7 If the shipowner fails to make the necessary arrangements, the competent authority of a member state in whose territory the vessel is registered shall arrange for and meet the cost of the repatriation of the seafarer concerned; if it fails to do so, the state from which the seafarer is to be repatriated or the state of which he is a national may arrange for his repatriation and recover the cost from the member in whose territory the vessel is registered.
- 9. Do the seafarer's wages continue to accrue during the arrest?**
- 9.1 This depends on whether the contract was terminated by the shipowner or the seafarer before the arrest. If the contract was not terminated the arrest of a vessel does not constitute a ground for the valid termination of the employment contract by the shipowner or the seafarer. Wages will thus continue to accrue during arrest.
- 10. How long on average does it take for the court to sell the vessel and then distribute the sale proceeds in settlement of the crew's claim?**
- 10.1 The sale of the vessel is executed via the Enforcement Office. The claimant seafarer must request the sale of the vessel within three months starting from the date of service of the payment order on the debtor, or the date of payment by the debtor. The Enforcement Office will prepare a list of charges and notify this to the seizers of the vessel and the debtor. The seizers or the debtor may object to the list within three days from the date of the notification. If an objection is brought to the list, the enforcement office would submit the file to the Enforcement Court and the Court will assess the objection claims pursuant to the procedure of replevin.

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- 10.2 The sale price of the vessel will be determined by an appraisal report prepared by experts, which will be submitted to the Enforcement Office. During the preparation of the appraisal report, the effect of the list of charges on the price of the vessel will also be considered by the experts. The appraisal report will be notified to the related parties, including the shipowner and the creditors of the vessel. The notified parties may object to the report within seven days from the date of the notification before the Enforcement Court. A new appraisal report may be prepared provided that the necessary costs and expenses are deposited with the court. If the necessary costs and expenses are not deposited within seven days from the date of objection, the objection will be rejected by the Enforcement Court.
- 10.4 After the sale price of the vessel is finalized as per the appraisal report tendering will be conducted. If the sale price of the vessel is not sufficient to pay the claims of all the creditors of the vessel, the Enforcement Office will prepare a list of creditors and distribute the sale proceeds in accordance with it. An objection can be brought to the list of creditors within seven days starting from the date of notification. The Enforcement Court will assess the objection as per the simple hearing procedure. Usually when the vessel is sold the sale price does not meet the creditors due to low prices resulting from the current financial situation.
- 10.5 Consequently, if an objection is brought against the list of charges, list of creditors or the appraisal report, this will extend the procedure and the distribution of the sale proceeds. The proceedings regarding the claim for an objection to the list of creditors may take between one to three years due to a large number of creditors of the vessel and the workload of the courts. However, assuming that no objection was made to the procedure for the sale of the vessel and to the distribution of the sale proceeds, the settlement should occur within three months, starting from the request of sale to the enforcement office.

11. How are the lawyer's fees for arresting the ship paid?

- 11.1 There are two different legal fees. The court in accordance with the minimum attorney fee tariff, which is published every year in the Official Gazette, will calculate legal fees for the arrest claim and the substantive claim. The party against whom the decision was granted has to pay the legal fees and expenses of the other party. The legal fees will also include the payment of attorney fees. As the judgment will include the payment of the legal fees by the owner, the proceeds of sale would be used to cover the claim amount.
- 11.2 The second type of legal fee is the fee charged by the lawyers to provide their legal services in terms of a power of attorney. There is not an upper limit for the fees that

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can be charged. However, they cannot be lower than the fee tariff. These fees cannot be recovered via the proceeds of sale.

12. Are there any other procedures to enforce a seafarer's wage claim?

12.1 The seafarer may choose to start enforcement proceedings against the shipowner by a payment order via the Enforcement Office. However, this option will not be as effective and efficient as the arrest of a vessel. Also, the seafarer does not have a similar advantage in terms of exemption from the requirement to deposit security. Together with this disadvantage, starting an enforcement proceeding will be deemed to be a waiver of the right to a maritime lien.

12.2 The arrest of a sister ship or an associated ship is possible if certain conditions are met, namely:

'Arrest is also permissible of any other vessel or vessels 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 vessel in respect of which the maritime claim arose; or
- (b) demise charterer, time charterer or voyage charterer of that vessel.'