

# Spain

*Francisco Peleteiro Gallego*

## Part I. Arrest of Vessels

*This chapter has been reviewed by the Author and  
is up-to-date as of June 2021*

GALLEGO

SPAIN

Table of Contents

LIST OF ABBREVIATIONS	vii
Part I. Arrest of Vessels	1
CHAPTER 1. Sources of National Law	1
CHAPTER 2. Applicable International Conventions	1
CHAPTER 3. Competency of Courts or Other Authorities	2
CHAPTER 4. Immunity of State-Owned Vessels	2
CHAPTER 5. Types of Claims for Which an Arrest Can Be Requested	3
CHAPTER 6. Other Specific Preconditions to an Arrest	3
CHAPTER 7. Definition of ‘Vessel’	3
CHAPTER 8. Evidence That a Claim Exists and Other Preconditions to an Arrest	4
CHAPTER 9. Sister Ships	4
CHAPTER 10. Demise-Chartered or Time-Chartered Vessels	4
CHAPTER 11. Form of Application	5
CHAPTER 12. Must the Arresting Party Put up Security?	5
CHAPTER 13. Representation by Lawyers; Powers of Attorney	6
CHAPTER 14. Court Hearing	6
CHAPTER 15. Provision of Bail by Defendants	7
CHAPTER 16. Proceedings for Maintaining an Arrest	7

GALLEGO

CHAPTER 17. Costs and Advances for Court Proceedings and Custody	7
CHAPTER 18. Enforcement of the Order of Arrest	8
CHAPTER 19. Service of the Order of Arrest	8
CHAPTER 20. Time Element	8
CHAPTER 21. Appeal by the Defendant	8
CHAPTER 22. Forced Sale in the Arrest Procedure: Priority of Claims in Rem	8
CHAPTER 23. Claims for Damages by the Owner of the Arrested Vessel	9
CHAPTER 24. Special Remarks	9
SELECTED BIBLIOGRAPHY	11

SPAIN

*Francisco Peleteiro*

Francisco Peleteiro has studied at Universities in Santiago de Compostela, Madrid, Leuven, Dublin and Malmoe and is senior partner of the law firm Zamorano & Peleteiro Abogados SLP in Coruña (Spain), with more than thirty years of experience in the Maritime Law Practice.

GALLEGO

SPAIN

## List of Abbreviations

BOE	<i>Boletín Oficial del Estado</i> (Official State Gazette)
CC	<i>Código Comercio</i> (Commercial Code)
LEC	<i>Ley de Enjuiciamiento Civil</i> (Code of Civil Procedure)
LNМ	Maritime Shipping Law Act 14/2014
LOPJ	Ley Organica Poder Judicial. Judiciary Organisation Act, Act 6/1985
TRLPEMM	Merchant Marine and State Ports Law (RDL 2/2011)

GALLEGO

## Part I. Arrest of Vessels

### 1. SOURCES OF NATIONAL LAW

The relevant rules concerning the arrest of vessels in Spain can be found in three different sources:

- (1) Articles 470–479 of the Maritime Shipping Law, which regulates the nature, regulation and procedure of the preventive arrest of vessels.
- (2) Convention on the arrest of Seagoing Ships, signed in Geneva on 12 March 1999 and ratified by Spain through the Adhesion Instrument published in the National Official Gazette (BOE) on 2 May 2011 which gives effect in Spain to the 1999 Geneva Convention on the Arrest of Seagoing Ships. Although the title suggests that its application is limited to vessels flying a foreign flag, it is well established that it may also be used to arrest national ships as long as the requirements of Article 1 are accomplished. Spanish flag vessels, together with foreign non-contracting state vessels, may also be arrested in respect of any other claims which may lead to an arrest under Spanish law.
- (4) Ley 1/2000 de 7 de enero, de Enjuiciamiento Civil (Civil Procedural Law, LEC), Articles 721 and following which set up the interim measures system.

### 2. APPLICABLE INTERNATIONAL CONVENTIONS

Spain was a party to the 1952 Brussels Convention on the Arrest of Seagoing Ships, which was ratified by Ratification Document (*Instrumento de ratificación*) of 11 September 1953 and published in the Official State Gazette (*Boletín Oficial del Estado* (BOE)) on 5 January 1954. Later, already a decade ago on 2 May 2011 (as already stated), Spain ratified the 1999 Geneva Convention on Seagoing Ships, being one of the first European Union countries to ratify it. The specific provisions of this law will be discussed under the appropriate headings of the following sections.

### 3. COMPETENCY OF COURTS OR OTHER AUTHORITIES

According to Article 722 of the LEC 2000, any party to a foreign judicial or arbitration proceeding can request the Spanish courts to grant interim measures accordingly, when the Spanish courts are not the only competent ones to decide the claim.

That is the principle also followed by Articles 470, 471 and 479 of the Maritime Shipping Law (Law 14/ 2014, which entered into force on 25 September 2014) and also Article 2 of the Geneva 1999 Convention.

Article 723 of the LEC 2000 establishes that the court that is competent to decide on the main matter is also competent to decide on the application for the granting of an interim measure. According to Article 45 of the LEC 2000, the action (and interim measure) has to be brought before the Commercial Courts JUZGADO DE LOS MERCANTIL Following the LOPJ – Judiciary Organization Act 6/1985 Article 86 ter, (*‘2. Commercial courts will also hear any questions that fall under the competence of the civil judicial sphere in relation to the following: a) (. . . ). b) Claims that arise in accordance with regulations relating to shipping, whether national or international. c) Claims relating to the enforcement of Maritime Law’*). Therefore nowadays there is no doubt that the local competent courts are the Commercial Courts.

Article 724 of the LEC 2000 establishes the competency in special cases, i.e., arbitration and other cases. In the first case the competent court will be the court of the place where the arbitral award has to be enforced, and in the second one the court of the place where the measures have to take place. The same applies when the judicial proceedings are being decided in a foreign court.

Article 730 of the LEC 2000 establishes that the plaintiff that has applied for the granting of an interim measure then has twenty days to formally present the claim.

Article 479 LNM must be observed.

### 4. IMMUNITY OF STATE-OWNED VESSELS

If a vessel is employed in public service it will, as a general principle, be immune from arrest. That was the effect of section 3 of the 1926 Brussels Convention on the Immunity of State-Owned Ships. However that, the text of Article 475 LNM *‘every ship showing a maritime lien could be arrested under the terms and conditions of the International Convention on arrest of Ships’*. Therefore we should conclude that following the 14/2014 Act every vessel, regardless of being a state-owned or a private-owned vessel may be arrested.

## SPAIN

A state-owned ship might be subjected to a preventive arrest under the provisions of the LEC 2000, though it is possible that any such action would be struck down as circumventing the provisions of the Convention.

### 5. TYPES OF CLAIMS FOR WHICH AN ARREST CAN BE REQUESTED

Under Law 2/1967 a vessel could be arrested in order to secure the payment of ‘maritime liens<sup>TM</sup>’ as defined in section 1 of the 1952 Brussels Convention. That section sets out a wide list of maritime claims by which a foreign vessel may be arrested in Spain.

The in-force 1999 Geneva Convention on the Arrest of Seagoing Ships, Article 3 provides the same contents as those in the 1967 Law. Article 1 of such Geneva Convention includes the definition of maritime lien and the basis a claim must be arisen out.

### 6. OTHER SPECIFIC PRECONDITIONS TO AN ARREST

Article 1 of Law 2/1967 provides that any party seeking to arrest a foreign vessel must state in its application to the court the rights or liens claimed and their cause and put up security in order to cover the possible damages, loss and legal costs that can arise.

In order to obtain a preventive arrest under the LEC 2000, Article 728 establishes that the plaintiff must justify in his claim the *periculum in mora*, the *fumus boni iuris* and *put up security*.

### 7. DEFINITION OF ‘VESSEL’

The general definition of ‘vessel’ in Spanish law is that contained in Article 56 LNM. The definition given is as follows:

Vessel must be understood as any vehicle with structure and capacity to navigate by sea and transport cargo or persons with a continuous bulkhead deck and length equal or longer than 24 meters.

Article 57 of the same LNM, refers to the definition of boat which is basically the same as long as she has no continuous bulkhead deck and length is shorter than 24 meters. Finally, Article 58 refers to naval artefact. In short the LNM 2014 contains different definitions included in different articles depending basically on the length.

Article 9 of the RDL 2/2011 TRLPMM (Port and Commercial Marine Law) provides a much wider definition: ‘ a civil vessel is any ship, platform

or floating artefact propelled or not, suitable for navigation and not affected to the national defense’.

A further definition is contained in Article 146 of the *Reglamento del Registro Mercantil* ‘Commercial Registry Rules’. That definition extends not only to vessels intended for navigation on the high seas or coasts but also to floating jetties, pontoons, dredges, hoppers, and other floating apparatus used in commercial, maritime or river trade.

The definitions mostly accepted are those included in the LNM, although the others are arguable as long as they are convenient to our arguments.

#### 8. EVIDENCE THAT A CLAIM EXISTS AND OTHER PRECONDITIONS TO AN ARREST

Under LNM 14/2014 Article 472.1 all that is required in order to effect the arrest of a foreign vessel is an allegation of the claim together with a statement of facts in support of it, but no documentary proof is required.

#### 9. SISTER SHIPS

No express mention is made in the Spanish legislation as to the number of ships which may be the subject of an arrest. Again we should follow the contents of Article 475 LNM 14/2014, which states that every vessel is suitable to be arrested as long as credit lien is alleged as it is performed under the terms and conditions of the 1999 Geneva Convention. The claimant may arrest either the vessel to which the claim relates or any other vessel belonging to the person who, at the time the claim arose, was the owner of the vessel to which the claim relates (section 3.2 Geneva Convention). Sister ship arrest is permitted only if the vessel is in the same ownership as the vessel in respect of which the claim arose. A second possibility would be in the case of the bareboat charter, time charter, or voyage charters of the same vessel. This section would not be applicable to maritime liens referred to property or possession of the said vessel.

#### 10. DEMISE-CHARTERED OR TIME-CHARTERED VESSELS

As previously established, following the incorporation into the BOE of the 1999 Geneva Convention on the Arrest of Seagoing Ships, it has direct effect in Spain together with the LNM, Law 14/2014, is limited in its express terms to the setting out of certain special criteria for the implementation of arrest and guarantees which will be required. Such matters as the treatment of vessels which, at the relevant time, are the subject of a demise-charter or

## SPAIN

timecharter are governed by the provisions of the Convention, particularly section 3.2.

In this respect, section 475 of the LNM refers directly to the contents and regulation included in the Geneva Convention, no doubt seeking an international common perspective and regulations. Therefore section 3.2 would be directly applicable.

### 11. FORM OF APPLICATION

The form of application for an arrest in Spain depends upon the particular procedure used. Where an arrest application is made simultaneously with the issue of the writ in the principal action, the arrest of the vessel may be requested in the writ itself by insertion of a section called the '*otrosi*' (*kind of addendum*), in which the arrest is specifically requested. In cases in which an arrest is sought either before or after the issue of a writ, the arrest application should be made in writing; however, there is no requirement that it adheres to any strict form. In case of a preventive arrest sought under the LEC 2000, following the contents of the written application is subject to the allegation of maritime lien. Although the bona fides principle is implicit, it is recommended the writ be accompanied by a document or documents which give evidence (or a principle of evidence) of the existence of the claim. The written request must set out the rights and liens claimed, together with the circumstances which give rise to the claim.

### 12. MUST THE ARRESTING PARTY PUT UP SECURITY?

With respect to an arrest in support of a claim for a maritime credit as defined in section 1 of the 1999 Geneva Convention, Article 472.2 of Law 14/2014 provides that where an arrest application is made in respect of a 'maritime claim' as defined in section 1 of the said Convention, the judge shall, in all cases, require security for the applicant sufficient to indemnify the ship-owner against all damages, loss and legal costs which might result from the arrest. It is further provided that such security may be in any form which is countenanced by law, including a bank guarantee (it must be a bank with an official domicile or branch in Spain). The figure of the security was a traditional debate that has been solved by Article 472.2 of Law 14/2014, which clearly states that the guarantee will be for a minimum of 15% of the total defend credit lien. Likewise, in a case in which a general preventive arrest is sought under the provisions of the LEC 2000 (Article 728(3)), unless established otherwise, security will be required to indemnify the ship-owner against all damages, loss and legal costs which might arise. Article 529(3) of the LEC 2000 establishes the different types of securities that would be

accepted. The regulations pertaining to the requirement of security in Spain are therefore strict and allow little scope for judicial discretion according to the circumstances of the case.

When the party seeking the arrest is foreign it will have to contact the correspondent bank in their country or one of the main Spanish banks located in the city of the court (as the local legal representative of the bank could be called by the court to confirm the security), to issue a bank guarantee for the amount fixed by the court. It has to be borne in mind that undertaking letters are not accepted.

### 13. REPRESENTATION BY LAWYERS; POWERS OF ATTORNEY

Under Spanish law, the issue of an arrest or preventive arrest order will, in all cases, be handled by a judge and therefore a party seeking the arrest of a vessel will be required to be represented by a lawyer. Where the party seeking to carry out an arrest in Spain is a foreign company, then a power of attorney must be issued to a Spanish lawyer who is a member of the bar association of the city in whose jurisdiction the arrest is sought. Such power of attorney should also be granted in favour of a '*procurador*', a legal official – kind of summon server – peculiar to the Spanish legal system, whose function may be briefly described as the representation of the parties interests in court.

A power of attorney constitutes an official document within the 1961 Hague Convention, to which Spain is a contracting state, and is therefore – if the Poa is given in a foreign state – required to be legalized by means of a Hague apostille. The apostille must be issued by the competent authority of the jurisdiction from which the document emanates.

### 14. COURT HEARING

When the arrest of a vessel is sought in Spain, there must be a hearing in the form of an application to the court. When the arrest is sought under the LEC 2000, Article 733 establishes, as the general rule, the audience of the defendant in the form set up by Article 734 of the LEC 2000, the exception being the non-audience of the defendant when the plaintiff proves urgency or the possible jeopardy of the interim measure itself. Following Article 476 of Law 14/2014 the principles of urgency and the danger of procedural delay are presumed and will be considered as ruled by Articles 728,730.2 and 733.2 of the LEC 2000. In the case of the arrest of a vessel and its judicial sale as an executory decision (Commercial Code), a full court hearing must have taken place with the issue of an order condemning the vessel to be arrested and sold.

## SPAIN

### 15. PROVISION OF BAIL BY DEFENDANTS

In Spain (as in almost all other jurisdictions) the purpose of bail is to ensure that the final judgment may be enforced. If, after a vessel has been arrested, bail is provided by or on behalf of the defendant, the need to retain the property (vessel) is extinguished and hence the arrest will be lifted. In accordance with this general principle, Articles 746 and 747 (734) of the LEC 2000 provide that an arrest shall not have effect if the party against whom it is ordered applies for and therefore is accepted to furnish bail. In cases of arrest under Law 14/2014, the rules contained in 1999 Geneva Convention would apply, namely that the provision of bail will result in the release of the vessel in question. Following Article 473 LNM 14/2014, when the arrested vessel is a Spanish flag vessel, the arrest could be substituted by the annotation of the arrest and the prohibition of any disposition of the vessel in the Register of Property (Vessels Section).

### 16. PROCEEDINGS FOR MAINTAINING AN ARREST

Under Spanish law, a distinction must be made between arrests which are of a preventive nature (LEC 2000 and Law 14/2014). In the case of an arrest of a vessel under the provisions of the LEC 2000, the action must be commenced within twenty days (Article 730(2)). When the Spanish courts (following the contents of the 1999 Convention) are not competent to analyse the merits of the file, the court will notify a term no shorter than thirty days and no longer than ninety days (always working days) to initiate proceedings before the competent foreign court. If those terms are not observed, the vessel will be released.

### 17. COSTS AND ADVANCES FOR COURT PROCEEDINGS AND CUSTODY

A party who applies for a vessel to be arrested is usually required to deposit a sum of money with the court to cover the costs likely to be involved. Such deposit takes the form of a '*fianza*' (security/guarantee), as described in section 12 above. There is no provision in Spanish law as to the amount of the required deposit: that is a matter which is at the discretion of the judge, although a minimum of 15% must be observed (Article 472.2 of Law 14/2014). In practice, the amount required will depend on the place where the arrest takes place.

## 18. ENFORCEMENT OF THE ORDER OF ARREST

The warrant of arrest issued by the judge is handed to the marshal of the court, who in turn passes it to the ‘*Capitan del Puerto*’ (harbour master). The harbour master effects service of the writ on the vessel, either directly or through her agent. In practical terms, enforcement usually takes the form of confiscation of piece or item of the vessel, for example, an essential part of the main engine, as well as the retention of the relevant documents of the vessel.

## 19. SERVICE OF THE ORDER OF ARREST

In principle, the warrant must be served on the master or other officer having command of the vessel. The date of service may have important consequences with regard to time limitation periods, as in order to respond (i.e., submitting an opposition) to the arrest.

## 20. TIME ELEMENT

The purpose of an arrest, in most cases, is to procure tangible assets out of which a final judgment may be satisfied. In Spain, the arrest procedure aims, in practice, to fulfil the need for rapid action and providing that all the required elements discussed in the above sections are met, it will be possible to arrest a vessel within a matter of days.

## 21. APPEAL BY THE DEFENDANT

Under Spanish procedural law (Articles 739, 740 and 741 of the LEC 2000), the party against whom an arrest has been ordered *ex parte* has the right to challenge the arrest order, within twenty days from the order date, on general grounds with no limitation. The challenge writ will be passed on to the plaintiff and a hearing at which both sides will be represented will take place. The court decision will be issued within five days.

## 22. FORCED SALE IN THE ARREST PROCEDURE: PRIORITY OF CLAIMS IN REM

A forced sale is not possible in the arrest procedure. A sale order may be made only after the judgment is given. Section 480 LNM and on provides that a vessel may be the object of a judicial sale upon public notice being

## SPAIN

given as determined by the tribunal which orders the sale of the vessel. It is provided that the period of notice of such sale must not be less than thirty days. Article 482 LNM sets out the terms and contents of such notification order of priority in which claims will be dealt with. The order and priority is ruled by Article 122.3 of Law 14/2014, together with the 1993 Geneva Convention on Maritime Liens and Mortgages. Articles 123, 124 and 125 of Law 14/2014 must also be observed.

### 23. CLAIMS FOR DAMAGES BY THE OWNER OF THE ARRESTED VESSEL

Under Spanish law and according to Articles 742 and 745 of the LEC 2000, the defendant damaged by the ‘wrongful arrest’ of the vessel has the right to claim damages and prejudice from the plaintiff according to Articles 712 and the following of the LEC 2000.

### 24. SPECIAL REMARKS

Spanish procedural law does not lay down a single special measure for the arrest of vessels. As will have emerged from the various chapters of this contribution, it is necessary to distinguish between a preventive arrest and an executory one. The former type of arrest is provided for by Law 14/2014 and by the LEC 2000, together with Legal Instrument published ratifying the 1999 Geneva Convention both of which allow the arrest of a vessel prior to the issue of proceedings on the principal claim. Executory arrests are dealt with in the relevant provisions of the relevant articles of Law 14/2014 relating to arrest and judicial sale of vessels.

GALLEGO

SPAIN

SELECTED BIBLIOGRAPHY

**Textbooks**

- Alonso Ledesma, Carmen: *Los Privilegios Maritimos*, Civitas, Madrid, 1995.  
Arroyo Martinez, Ignacio: *Curso de Derecho Maritimo*, Jose M<sup>a</sup> Bosch Editor y Alferal, S.L., Barcelona, 2001.  
Berlingieri, Francesco Arrest of Ships, LLP, London 2000.  
Berlingieri, Francesco; Arrest of Ships, LLP-CMI, London 1992.  
Gabaldon, José Luis, Ruiz Soroa, José Maria ; Manual de Derecho de la Navegación Maritima, Madrid 2002.  
Myburgh, Paul; The arrest Conventions International Enforcement of Maritime Claims, London 2019.  
Various Authors, Comentarios a la Ley de Navegación Marítima, Dykinson, Madrid 2015.  
Legal Texts. – BOE (Official State Gazette).

GALLEGO