PERSONAL INJURY / SHIP'S ARREST / SECURITY

November 2024



ETIC offer services in France, Africa

New Caledonia

and Tahiti…



WHAT DO WE DO ?

ASSISTANCE TO INJURED VICTIMS, including :
- PASSENGERS
- CREW MEMBERS
- THIRD PARTIES

MONITORING OF MEDICAL SURVEYS

ARREST OF YACHTS / COMMERCIAL VESSELS

SETTLEMENTS OF CLAIMS and/or MONITORING OF RECOVERY PROCEEDINGS



Ship's Arrest


SERENE



Arrest as per the Brussels Convention of 10th May 1952

Scope of application:

The Convention applies when the arrest is carried out in a contracting State and relates to a vessel flying the flag of a contracting State.

Arrest may only be carried out for a "maritime claim", of which the Convention provides a list of 17 categories set out in Article 1 §1 :

1. Damage caused by a ship either by collision or otherwise;
2. Loss of life or personal injury caused by a ship or arising from the operation of a ship;
3. Assistance and salvage;
4. Contracts relating to the use or hire of a vessel by charter party or otherwise;
5. Contracts for the carriage of goods by ship under charter party, bill of lading or otherwise;
6. Loss or damage to goods and baggage carried by a vessel;
7. General average;
8. Wholesale loan

9. Towing;
10. Piloting;
11. Supplies, wherever made, of products or materials to a vessel for its operation or maintenance;
12. Construction, repairs, equipping of a ship or bilge expenses;
13. Captain's, officer's or crew's wages;
14. Captain's disbursements and those made by shippers, charterers or agents on behalf of the vessel or its owner;
15. Contested ownership of a vessel;
16. Disputed co-ownership of a vessel or its possession or operation, or rights to the proceeds of a co-owned vessel;
17. Any maritime mortgage and mortgages."

Mere allegation sufficient:

The mere allegation by the claimant of the existence of a maritime claim is sufficient to ground her/his right to arrest the vessel to which this claim relates. It is not necessary to prove the full claim at this stage.

The injured victim claimant may arrest :

1. The specific vessel to which the maritime claim relates.
2. Or any other vessel belonging to the same owner as the vessel concerned by the claim, provided that this owner was the owner at the time when the claim arose.

If the debtor of the maritime claim is not the owner of the vessel concerned, the claimant can only arrest :

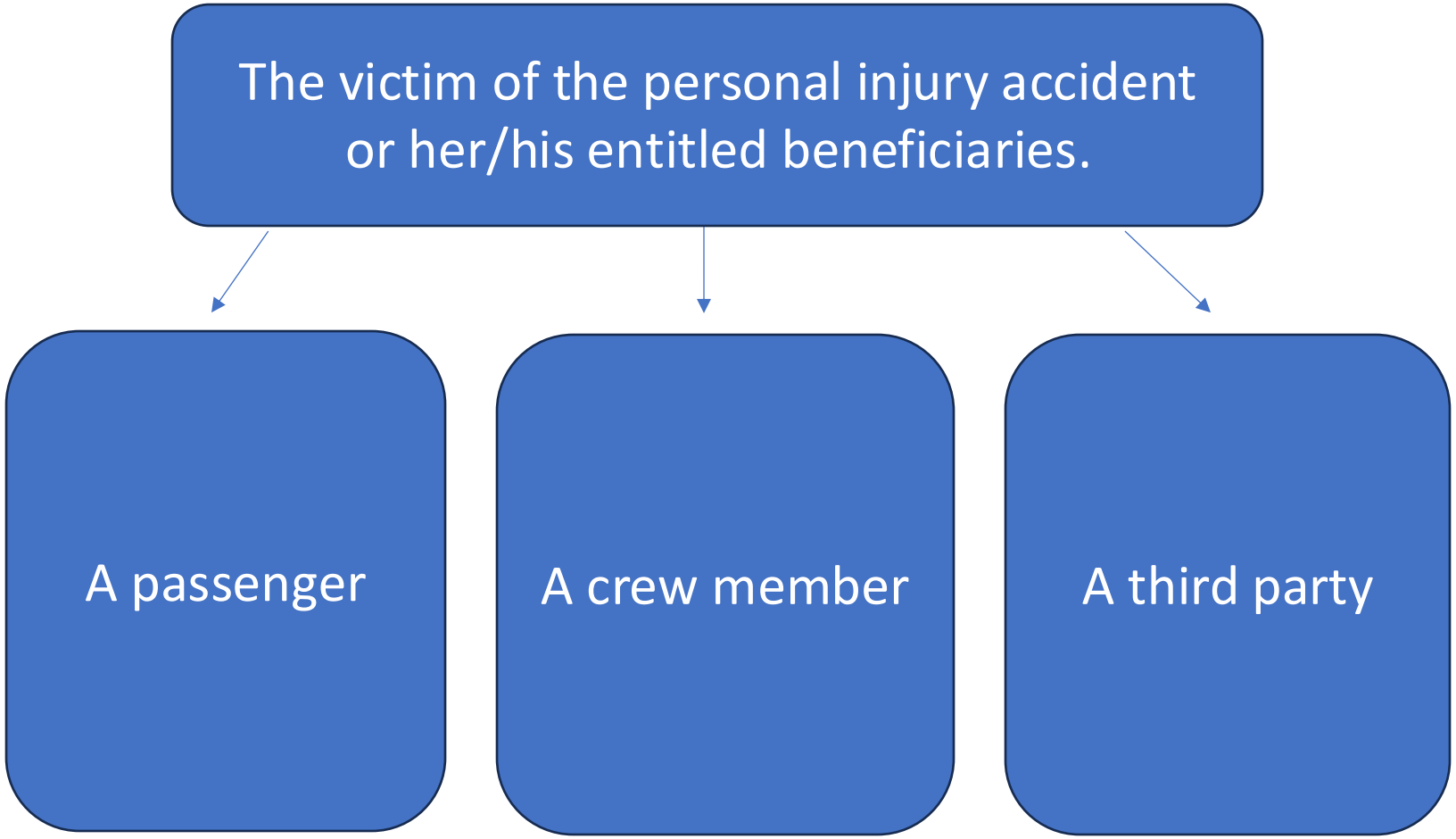
1. The specific vessel to which the claim relates.
2. Any other vessel belonging to the debtor (and not to the owner of the vessel concerned).

Arrest subject to French Law

A number of conditions must be met for French law to apply:

- The claim must appear to be well-founded in its principle.
- The vessel must fly the French flag.
- The claimant must be resident in France.
- The arrest must take place in France.

Who can seize the vessel ?



Arrest procedure

Jurisdiction: ratione materiae

The competent Judge is mainly the Juge de l'Exécution/ Tribunal Judiciaire .
Alternatively, the President of the Commercial Court may be competent if the claim is commercial and no action on the merits has yet been brought.

Territorial jurisdiction: rationae loci

The Court with territorial jurisdiction is that of the place where the order is to be executed.
In major ports, several Courts may have jurisdiction, depending on the exact location of the vessel.

Arrest procedure

1- The claimant must submit a unilateral request to the judge towards arrest.
2- The judge issues an order authorizing the arrest and arbitrates the amount.
3- The Bailiff notifies the arrest to the ship’s Master, the Harbor Commander, the Maritime Authority, the ship’s agent and the lag state. He collects the ship's documents.
4- A technician may be called in to dismantle certain parts of the vessel (pleasure craft or yacht).
5- The local Authorities prohibit the arrested vessel from sailing.
6- If the ship flees away, she may be boarded by the Authorities or the French Navy. In this case, the Master will be prosecuted for deviating arrested assets.

Validation proceedings

Once the conservatory arrest has been carried out, the claimant must file an action on the merits of the case within two months.

This deadline is crucial, as it enables the conservatory arrest to be converted into an execution arrest, thus making the measure final.

If the creditor fails to meet this deadline, the conservatory arrest may become null and void, meaning that it will no longer be valid and the claimant may not be able to reclaim his assets.

Time bar period : Contract or torts ?

1. The limitation period for bringing an action on the merits seeking compensation for personal injury under the Athens Convention (reproduced in EC Regulation 392/2009) is 2 years.
2. This 2-year period runs from the date of disembarkation of the passenger from the ship concerned.
3. The Athens Convention applies to the international carriage of passengers by sea, including cruises.
4. The liability regime may vary according to the nature of the accident:

- For “events at sea” (shipwreck, collision, etc.), the carrier's liability is presumed.
- For individual accidents (such as a fall on board), the passenger must prove that the carrier is at fault.
- 5. In torts, 10 years from consolidation (MMI)

Shipowners' options against arrest

Legal action

1. Action towards release :

An action for release is a recourse whereby the debtor (in this case, the shipowner) asks the court to lift an arrest served on his assets. This action may be provisional or final .

Provisional release temporarily suspends the effects of the arrest, while final release puts a permanent end to the arrest, generally after a judgment has been rendered in favor of the owner. To obtain release, the owner must evidence that the claim on which the arrest is based is arguable or illegitimate. The Court then examines the argument and decides at short notice.

Legal action

2. Limitation of liability situations / action :

For big claims, limitation of liability is a procedure that allows the owner to request that the arrest be limited to a specific amount, often less than the total amount owed. Calcul of limitation fund is made from GRT of vessel.

Financial security

Deposit of security / bond :
When a shipowner contests an arrest, he may nevertheless be required to provide a guarantee in order to obtain release or limitation. This is often done by :

Opening an escrow account:

Funds are placed in an escrow account until an enforceable Order is rendered on the merits.

Issuing a letter of undertaking signed by a P&I Club or Mutualist Association :

Association guaranteeing payment of a specific amount on conditions

Bank guarantee:

A bank can provide a guarantee that assures the creditor that funds will be available if the debtor is condemned

Settlement agreements

In addition to legal action, shipowners may consider transactional settlements to resolve the dispute out of Court and avoid publicity.
This usually involves negotiations between shipowner and claimant to reach an amicable settlement on the amount owed and terms of payment, cancellation of security.

Continuation of the case on the merits

An enforceable Court decision is a judgment that enables the claimant to take direct action to recover his debt once the judge has ruled on the merits of the claim.

To cash money from security, the order does not need to be final but just enforceable. This does not apply for ship's auction when only final unappealable judgement will be considered.

Enforcement on deposited assets:

If a guarantee has been provided (such as a deposit in an escrow account or a letter of guarantee), the claimant requests execution on this guarantee to recover the sums due.

Auction of the vessel :

If the vessel is still under arrest, the claimant can also proceed with execution on that specific asset (in rem), meaning that he acts directly against the asset rather than against the owner in person.

- If the arrest of the vessel yet performed turns finally insufficient to guarantee the claim or if such arrest was not possible

- Then bunkers can always be arrested…

- REMEMBER : best action of the arrest is the threat of arrest . Obtain arrest order and negotiate before service.

Thank you for your attention !

It was too long, I know…

Let’s hope it brings some knowledge !