



ICLG

The International Comparative Legal Guide to:

Shipping Law 2013

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A practical cross-border insight into shipping law

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1 Marine Casualty

1.1 In the event of a collision, grounding or other major casualty, what are the key provisions that will impact upon the liability and response of interested parties? In particular, the relevant law / conventions in force in relation to:

i) Collision

Pursuant to Arts. 235-245 of the Greek Code of Private Maritime Law (CPML) in case of vessels' collision, due to a random event of *force majeure*, damages shall be covered by the parties involved. In case one of the vessels caused the collision, damages shall be covered by this party. If both vessels are responsible for the collision, each of them shall pay according to the level of responsibility. When the responsibility cannot be estimated, damages shall be equally covered by both parties.

Apart from the above, the International Convention of Brussels dated 1910 for the Unification of Certain Rules of Law with respect to Collisions between Vessels is applicable along with the Collision Regulations of 1972, as in force.

ii) Pollution

Pursuant to the Presidential Decree 55/1998, the captain and the representative of the ship shall, in case of pollution within national waters, immediately report the accident to the competent Port Authority or the Ministry and take any necessary measures for avoid, limit or confront pollution. The aforementioned PD provides for a series of sanctions, compensation for the damages, as well as imprisonment for the parties causing the pollution. We shall note that the PD 55/1998 regulates pollution by polluting sources of ports, shores, territorial waters or even open sea (Art. 2).

Greece has also ratified a) the Convention of Brussels of 1969 for the liability for damages due to sea pollution from oil, b) the Convention of Barcelona (Medpol 1976) for the protection of Mediterranean sea from pollution, c) the Convention of London, Mexico, Moscow and Washington of 1972 (Dumping), and d) the Convention of Marpol 73/78 concerning pollution in international sea waters.

iii) Salvage / General Average

The Greek CPML (Arts. 246-256) regulates the issue of salvage. Particularly, salvage is any kind of rescue by a ship to another in danger. In case of a good outcome, remuneration shall be paid. The International Convention on Salvage, IMO 1989, applies as well.

As far as the general average is concerned, the provision under Arts. 219-234 of CPML are applicable. According to Art. 219 of CPML, the general average is any kind of damages or special costs for the

rescue of a ship in danger. The rescue/salvage shall be made under reasonable judgment.

In addition, the York Antwerp Rules have been developed to provide a uniform approach to the handling of general average losses. Many contracts of carriage provide for the application of these Rules. Where they do not apply general average claims, compensation is determined by local law.

iv) Wreck Removal

According to the Greek legal framework (Law 2881/2001), the ship owner is responsible for the wreck removal. Port Authorities and the Coast Guard are responsible for the enforcement of the relevant provisions.

v) Limitation of Liability

Art. 84 of CPML fixes the limit of liability of the ship owner for torts by the captain and crew during the provision of services.

Pursuant to the Convention of London 1976 for the limitation of liability, ratified by Greek Law, the scope of liability for certain claims is limited (Art. 2). The limitation of liability is excluded in case of a personal act or intentional default (Art. 4).

1.2 What are the authorities' powers of investigation / casualty response in the event of a collision, grounding or other major casualty?

Pursuant to the LD 712/1970 concerning the "Administrative investigation of marine casualty" a special procedure is provided, including an inquest council.

2 Cargo Claims

2.1 What are the international conventions and national laws relevant to marine cargo claims?

The applicable conventions are Hague Rules and Hague-Visby Rules, as well as Rotterdam Rules. The applicable Greek legislation is CPML.

2.2 What are the key principles applicable to cargo claims brought against the carrier?

First of all, pursuant to Art. III Rule 6 of Hague-Visby Rules (ratified by Greece), indemnity claims are time-barred after one year of the delivery date of the goods or of the date when they should have been delivered. This period, may however, be extended if the parties so agree after the cause of action has arisen. Moreover, according to

article 6 *bis*, an action for indemnity against a third person may be brought even after the expiration of the year provided for in the preceding paragraph if brought within the time allowed by the law of the Court seized of the case. However, the time allowed shall be not less than three months, commencing from the day when the person bringing such action for indemnity has settled the claim or has been served with process in the action against himself.

In a sea carriage case governed by the Rules the plaintiff has the initial burden of proving the following matters: a) right and title to sue; b) the identity of the carrier; c) receipt of the goods by the carrier in good order and condition; d) failure to deliver or delivery by the carrier in a damaged condition; and e) damages suffered by the plaintiff as a consequence of the above d).

Pursuant to Art. III of Hague-Visby Rules carrier must exercise due diligence before and at the beginning of voyage to: a) make ship seaworthy; b) properly man, equip and supply the ship; and c) make holds, etc. fit and safe for reception, carriage and preservation of cargo. Moreover the carrier must properly and carefully load, handle, stow, carry, keep, care for the discharge goods.

The Bill of Lading, according to Art. 168 CPML is issued after the lading. On the Bill of Lading, the following shall be mentioned: a) name of charterer, shipper, receiver and captain; b) ports of berth and departure; c) flag and freight rate; d) leading marks of freight; e) number of bales or pieces or weight, as stated by the shipper in written; f) condition of cargo; and g) date of issue. Furthermore, according to Art. III Rule 4 of the Hague-Visby Rules, statements in the bill are *prima facie* evidence in hands of shipper, conclusive in hands of third party, ex. Consignee to whom the B/L is transferred in good faith. Particularly, regarding the arbitration clause, Hague-Visby Rules are silent.

Provisions under Art. IV *bis* of Hague-Visby Rules apply to both contract and tort claims. Under Greek Law, it is also possible to cumulate contract and tort claims in the case of loss or damage of cargo (Art. 914 Civil Code).

2.3 In what circumstances may the carrier establish claims against the shipper relating to misdeclaration of cargo.

Pursuant to Art. III Rule 5 of Hague-Visby Rules, the shipper is deemed to guarantee accuracy of statement as to weight and quantity of cargo. In addition the shipper shall indemnify the carrier from any loss resulting from errors.

Moreover, in the specific case when dangerous cargo, i.e. inflammable, explosive or dangerous goods, is loaded without knowledge of the master (or carrier's agent), it may be discharged, rendered harmless or destroyed at the shipper's expense. If the carrier knows of their nature, but they prove dangerous they may still be discharged, rendered harmless or destroyed without liability on the part of the carrier, save in general average (Art. IV Rule 6 of Hague-Visby Rules).

The national provision of Art. 137 of CPML follows the one included in Hague-Visby Rules, stating that the carrier is not responsible, in case of a misdeclaration of cargo through the charter agreement or the bill of lading concerning the type, weight or value of the cargo.

3 Passenger Claims

3.1 What are the key provisions applicable to the resolution of maritime passenger claims?

Art. 13 of the Convention of Athens (1974) provides for a time limit of 2 years for any action for damages arising out of the death of or

personal injury to a passenger or for the loss of or damage to luggage. Regarding the limits of liability, Art. 16 of the aforementioned Convention is applicable, which excludes the carrier from the benefit of limitation of liability, prescribed in Arts. 7 and 8, par. 1 of Art. 10, if it is proven that the damage resulted from an act or omission of the carrier done with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

Also, the Regulation (EC) No 392/2009 of the European Parliament and of the Council of 23 April 2009 on the liability of carriers of passengers by sea in the event of accidents is applicable as well.

The national CPML does not regulate the liability in case of a sea accident.

4 Arrest and Security

4.1 What are the options available to a party seeking to obtain security for a maritime claim against a vessel owner and the applicable procedure?

The Arrest Convention of 1952 (International Convention for the Unification of Certain Rules relating to the arrest of sea-going ships - ratified by Greece) entitles the claimant, i.e. the person who alleges that a maritime claim exists in his favour, to proceed to an arrest. By virtue of said Convention, a ship flying the flag of one of the Contracting States may be arrested in the jurisdiction of any of the Contracting States in respect of any maritime claim, but in respect of no other claim.

There are certain types of claims in order for the arrest to take place. There shall be a maritime claim, as defined under Art. 1 of the aforementioned convention. Concerning the demised chartered vessels, it shall be noted that arrest is possible (Art. 3 par. 4) provided that the vessel arrested is that in connection with which the claim arose (or other vessel owned by the demise charterer).

The entire procedure of the arrest is prescribed under Art. 5 of the Convention. As far as sister ships are concerned, they fall under the definition of vessels deemed to be in the same ownership, when shares are all owned by the same person or persons (Art. 3 par. 2).

It shall be noted that the Convention does not make any reference to specific forms of security but accepts "bail or other security" (Art. 5), as long as it is a sole arrest, since it is not permitted to re-arrest for the same claim against the Party (Art. 3 par. 3).

Apart from the above Convention, Greek Code of Civil Procedure (GCCP) provides for the temporary attachment of any kind of property of the debtor, movable and immovable property, including vessels of its own property, in order for any kind of claim to be secured. GCCP provides also the registration of pre-notation of mortgage upon real property of the debtor either with the consent of both parties either following a Court Decision. The claimant files a petition of interim measures before the competent Court requesting security (temporary attachment of ship/temporary attachment of assets/pre-notation of mortgage) to be granted for its claim until an enforceable title is issued.

Arts. 195, etc. of Greek CPML provide for the registration of mortgage upon a vessel; however, this procedure can be followed only with mutual consent of the parties.

4.2 Where security is sought from a party other than the vessel owner (or demise charterer) for a maritime claim, including exercise of liens over cargo, what options are available?

a. As far as bunkers are concerned, there are no provisions included in the abovementioned Convention. Consequently,

it is a matter of local courts to deal with this kind of arrest. However, the Greek CPML does not provide specifically for the arrest of bunkers.

- b. It is also possible for the vessel to be arrested for maritime lien. The International Convention on Maritime Liens and Mortgages of 1993 provides for a series of maritime liens under Art. 4. Additionally, Art. 9 of the aforementioned Convention states that the maritime liens set out in Art. 4 shall be extinguished after a period of 1 year unless, prior to the expiry of such period, the vessel has been arrested or seized, such arrest or seizure leading to a forced sale.

The Greek CPML, under Art. 152, states that the "lien" clause mentioned in charter agreements or bills of lading, according to which the carrier may seize the cargo until the other party pays.

- a. In commercial practice, bills of lading often prescribe "freight prepaid". Most of the time, this mark is included although the freight has not been paid. In case the shipper does not pay freight, the following question arises: could the carrier use the cargo as security for the freight in spite of the bill of lading being marked "freight prepaid"? The Arrest Convention of 1952 does not include any relevant provisions, meaning that national law shall apply.

5 Evidence

5.1 What steps can be taken (and when) to preserve or obtain access to evidence in relation to maritime claims including any available procedures for the preservation of physical evidence, examination of witnesses or pre-action disclosure?

Early discovery and other pre-trial procedures for evidence are not provided by Greek law. Evidence is confined solely within the limits of a formal lawsuit. Before Single-membered Courts, parties are required to produce their means of proof during the first hearing along with their pleadings. Before Multi-membered Courts, the pleadings and the means of proof are produced 20 days before the hearing.

Only in cases of mutual consent of the parties or imminent danger, for example, destruction of a means of proof or evaluation of the present status of the evidence, the Court, following an application by a party, may decide to proceed with gathering of evidence before the hearing even before the filing of the lawsuit (Arts. 348-351 of Greek Code of Civil Procedure).

5.2 What are the general disclosure obligations in court proceedings?

Greek Law does not provide for obligation of disclosure of evidence between the parties prior the hearing of the lawsuit. The Greek Code of Civil Procedure provides for a procedure, by which one party may seek from Court a disclosure order (art. 450, etc.); however, this procedure is rarely used by the parties, since only applications specifying the particular document sought in great detail are being granted by Court.

6 Procedure

6.1 Describe the typical procedure and time-scale applicable to maritime claims conducted through: i) national courts (including any specialised maritime or commercial courts); ii) arbitration (including specialist arbitral bodies); and iii) mediation / alternative dispute resolution.

According to Greek Law, the proceedings for pursuing a claim

through national courts start with the filing and the service to the defendant of the lawsuit before the proper Court. There is no requirement to attempt mediation or other alternative dispute resolution prior the filing of the lawsuit. Maritime claims are heard before a specialised Judge, the Maritime Judge. The Judge schedules the date of the hearing of the lawsuit within approximately 6 months. During the hearing (or 20 days before the hearing in case of a Multi-membered Court) the parties produce their pleadings and evidence. A Judgment is issued approximately 6 months after the hearing, which is served usually by the winner to the party who lost the case. An appeal may be filed within 30 days from the service of the Judgment, in case the appellant is Greek Resident or within 60 days from the service of the Judgment in case the appellant is resident abroad. Court costs are borne in advance by each party with respect to his own expenses. It should be noted that the plaintiff is obliged to pay a judicial stamp for his action, calculated upon the amount he requests to be awarded. The judicial stamp amounts at approximately 11/1000 of the amount requested to be awarded by the Court. *Ex post*, they are allocated by the judgment in principle to the losing party. However, the Court may allow no recovery of expenses if it deems that the losing party had justified doubts as to the outcome of the case or in case of partial victory and partial defeat by both parties. In practice, the amount of costs recovered by the losing party is significantly lower than the costs actually paid by the winning party.

Furthermore, arbitration and recently mediation (Law 3898/2010) were introduced into the Greek legal system to resolve maritime and commercial disputes. The primal arbitration body for maritime claims is the Hellenic Chamber of Shipping (specialising in shipping disputes) or the *ad hoc* tribunals which may be set up under the default regime of the Code of Civil Procedure. Recently, another institution, the Piraeus Association for Maritime Arbitration (PAMA), specialising in maritime arbitrations has been founded. The Greek Code of Civil Procedure provides rules governing arbitration, while the Royal Decree 447/1969 provides for the rules of the Hellenic Chamber of Shipping arbitration. PAMA arbitration is conducted in accordance with the PAMA Rules for Maritime Arbitration 2007, which are governed in terms of procedure by Law 2735/1999 on International Commercial Arbitration.

Concerning mediation under Law 3898/2010, the interested parties instruct a Mediator who specifies the rules, which determine the whole process, with the consent of the parties. In the event of the mediation leading to a settlement, a mediation agreement is drafted by the Mediator and can be submitted by the Mediator unilaterally, upon the request of one of the parties, to the Secretariat of the Court of First Instance of the local jurisdiction where the mediation took place. Once submitted in this manner, the mediation agreement becomes enforceable.

Practically, the only alternative form of litigation is arbitration. Mediation is still not commonly practised in Greece.

6.2 Highlight any notable pros and cons related to Greece that any potential party should bear in mind?

Parties involved in litigation in Greece should know that the entire legal system is characterised by slow proceedings. Especially, as far as the issue of decisions is concerned, Greek Courts are extremely slow. However, we should note that the Courts of Piraeus, dealing with a huge number of maritime cases, is undoubtedly faster in the issue of its decisions.

A positive aspect is the considerably low judicial costs, both for the filing of applications and the performance of attorneys.

7 Foreign Judgments and Awards

7.1 Summarise the key provisions and applicable procedures affecting the recognition and enforcement of foreign judgments.

Pursuant to Regulation (EC) 44/2001, a judgment given in a Member State and enforceable in that State shall be enforced in another Member State when, on the application of any interested party, it has been declared enforceable there. The procedure includes two stages. At first the Court of First Instance shall receive a copy of the decision and a certificate of its enforceability. At a second stage, the decision on the application for a declaration of enforceability may be appealed against by either party (Art. 43). The court with which an appeal is lodged under Art. 43 or Art. 44 may, on the application of the party against whom enforcement is sought, stay the proceedings if an ordinary appeal has been lodged against the judgment in the Member State of origin or if the time for such an appeal has not yet expired. In the latter case, the court may specify the time within which such an appeal is to be lodged.

7.2 Summarise the key provisions and applicable procedures affecting the recognition and enforcement of arbitration awards.

The recognition and enforcement of the foreign arbitration awards is governed by the New York Convention of 1958. The entire procedure is regulated under Arts. III - V of the Convention.

The provisions of 903 and 906 of Greek Code of Civil Procedure require for the recognition and enforcement of the foreign

arbitration award the following: a) a valid arbitration agreement; b) the objective of the arbitration shall be an objective under the Greek law; c) the award may not be appealed; d) the defeated party should have the right of defence; e) the award shall not be opposed to a Greek decision; and f) the decision shall not be opposed to public and moral rules.

8 Updates and Developments

8.1 Describe any other issues not considered above that may be worthy of note, together with any current trends or likely future developments that may be of interest.

It is of great concern, especially in Greece, a country traditionally involved in the shipping industry, what shall take place to recover the recession expanding to every aspect of economy. A suggestion may be to reform rules of payment or insurance policy in order to make transactions much more flexible and quick. Another issue is the availability of funds for the shipping industry which may be raised both from the private and public sector, subject to terms and conditions. It is also of a great interest whether the use alternative types of litigation i.e. arbitration and mediation, for the resolution of disputes, will expand in Greece, or if litigation through national courts will remain the most commonly type of dispute resolution.



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Konstantinos is specialised in the area of Dispute Resolution. He has represented clients in a wide variety of commercial and civil disputes, including those arising from breach of the regulations governing a range of industries, including banking, pharmaceutical, medicinal products and transport. Konstantinos has a particular expertise in advising on agency and distribution agreements, with a focus on the automobile industry which is subject to a specific regulatory framework. He acts in disputes arising from the governance of corporations and the relationship between shareholders, as well as litigation resulting from internal restructurings, liquidations and insolvency. Konstantinos advises on the violation of intellectual and industrial property rights and has also represented clients before the Competition Commission. He has extensive experience in labour related disputes and credit recovery and has acted in a number of arbitrations, mainly resulting from breach of commercial transactions, and participated in the one of the first arbitrations to be run under the rules of the Greek Association for Maritime Arbitration.

Konstantinos also has a significant administrative law practice, representing clients in disputes emanating from public procurement. He also has extensive experience in advising on white-collar crime, in particular, acting on behalf of companies and individuals in the field of breach of banking and stock exchange regulations.

Konstantinos served as an independent non-executive director of Emporiki Bank - Credit Agricole Group from September 2008 to January 2013.



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Catherine's focus is in the area of civil and commercial litigation, representing clients in civil and commercial disputes, enforcement and insolvency proceedings. She specialises in debt recovery and breach of contract, as well as tort. Catherine has experience in representing clients in extrajudicial proceedings and settlements.

POTAMITISVEKRIS

POTAMITISVEKRIS is one of the largest law firms in Greece with a broad commercial law practice and combines an international outlook with in-depth local knowledge and legal learning and a commitment to problem solving. The firm, based on the twin pillars of advisory and dispute resolution work, is broadly recognised for its excellence in a number of practice areas and industries including shipping litigation, headed by Konstantinos Papadiamantis and ship finance, as well as the sale and purchase of vessels, headed by Vicky Psaltis. POTAMITISVEKRIS's shipping client base is mainly owner-oriented including some listed on the NYSE.

POTAMITISVEKRIS, is a unique example in its jurisdiction of a true law partnership with a long term investment in its people and tools. Our reinvigorated team build on their well established reputation for quality, innovation, commitment, enthusiasm and eagerness to provide the best possible level of service to our clients.