

# Oleg Drobitko\*. Legal framework peculiarities for arresting of seagoing ships in Lithuania

### Suggested citation:

Drobitko, O. (2018). Legal framework peculiarities for arresting of seagoing ships in Lithuania. *Lex Portus*, no. 2, 7-20. <https://doi.org/10.26886/2524-101X.2.2018.2>

**\*Oleg Drobitko. Doctor in Law, Attorney at Law / bankruptcy administrator Law firm InRight / Drobitko & partners, Lecturer in the Mykolas Romeris University (4A Taikos Ave., Klaipeda, Lithuania).**

### ABSTRACT

The present article aims at presenting the legal framework peculiarities for arresting of seagoing ships in Lithuania. Analysis on the ratified Maritime Law Convention and national legislation within the said field. Comparison of the definitions of maritime claim, privileged claims, maritime liens and their peculiarities in Lithuania. Analysis on the main legal relations between maritime claims of the participants taking part in civil and other procedures. Analysis on which courts in Lithuania may grant an arrest of seagoing ships as a security for claims. Analysis on the legal framework for release of arrested seagoing ships. The present article also presents a brief analysis on the measures for releasing arrested ships, i.e., payment of the security of the required amount or provision of other guarantee and provides a brief synopsis on the financial products offered by the members of the International Group of P&I Clubs. In conclusion, author states the following:

*Firstly:* Since the ratification of the 1952 Convention and 1993 Convention in Lithuania, a clear and transparent mechanism for regulating the arrest of seagoing ships has been formed. Essentially all of the ordinary courts within Lithuania may grant the arrest of seagoing ships as a security for claims in civil proceedings or commercial matters.

*Secondly:* No conflicts were distinguished between national legislation regulating the arrest of seagoing ships and international maritime conventions ratified in Lithuania. Denying of the status of the privileged claim for claims arising due to shipbuilding in accordance to LMSRL may be noted as a certain imperfection of the legal framework.

*Thirdly:* Clear and transparent legal framework for releasing arrested seagoing ships compliant with the requirements of the international maritime law and EU law is in place in Lithuania. The court releases the ship following the payment of the security of the required amount or provision of another guarantee. The use of the financial products of the

members of the International Group of P&I Clubs is the preferable method for the provision of guarantee.

**The key words:** ship arrest, maritime claim, privileged claims, maritime liens, security, guarantee, P&I Club.

## REFERENCES

Full list of Principal Clubs, Affiliated Associations and reinsured subsidiary. *Official site of International Group of Protection & Indemnity Clubs*. Retrieved from <https://www.igpandi.org/article/list-principal-clubs>.

Novickij, I.B., Pereterskij, I.S. (1999). *Rimskoe chastnoe pravo* [Roman private law]. Moscow: "Jurist".

Official Journal of the European Union, L 131/128. Retrieved from <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1522683486905&uri=CELEX:32009L0020>.

Port statistics. *Official site of Port of Klaipeda*. Retrieved from <http://www.portofklaipeda.lt/port-statistics>

Rares, Q.A. (2015). Can You Arrest Bunkers in Australia. *The Australian and New Zealand Maritime Law Journal*, 29, 111-121.

Ruling of the Supreme Court of Lithuania in the Civil Proceedings No. 3K-3-512/2007 of 16.11.2007. *Official site of Supreme Court of Lithuania*. Retrieved from [www.lat.lt](http://www.lat.lt).

Tetley, W. (1999). Arrest, Attachment, and Related Maritime Law Procedures. *Tulane Law Review*, 73, 1895-1985.

Valstybės žinios [State News], 02.05.1996, 39-961. [in Lithuanian].

Valstybės žinios [State News], 04.05.2002, 45-1712. [in Lithuanian].

Valstybės žinios [State News], 06.04.2002, 36-1340. [in Lithuanian].

Valstybės žinios [State News], 06.09.2000, 74-2262. [in Lithuanian].

Valstybės žinios [State News], 07.03.2004, 36-1185. [in Lithuanian].

Valstybės žinios [State News], 09.07.1999, 60-1948. [in Lithuanian].

Valstybės žinios [State News], 11.04.2001, 31-1010. [in Lithuanian].

Valstybės žinios [State News], 18.10.1996, 101-2300. [in Lithuanian].

Valstybės žinios [State News], 26.01.2008, 11-377. [in Lithuanian].

---

---

# МОРСЬКЕ ПРАВО ТА МЕНЕДЖМЕНТ: ЕВОЛЮЦІЯ ТА СУЧАСНІ ВИКЛИКИ

---

---



**Oleg Drobotko,**

Doctor in Law,

Attorney at Law / bankruptcy administrator

Law firm InRight / Drobotko & partners,

Lecturer in the Mykolas Romeris University  
(Vilnius, Klaipeda, Lithuania)

ORCID: <https://orcid.org/0000-0001-6551-5767>

UDC 347.791.6 (474.5)

DOI 10.26886/2524-101X.2.2018.2

## LEGAL FRAMEWORK PECULIARITIES FOR ARRESTING OF SEAGOING SHIPS IN LITHUANIA

The present article aims at presenting the legal framework peculiarities for arresting of seagoing ships in Lithuania. Analysis on the ratified Maritime Law Convention and national legislation within the said field. Comparison of the definitions of maritime claim, privileged claims, maritime liens and their peculiarities in Lithuania. Analysis on the main legal relations between maritime claims of the participants taking part in civil and other procedures. Analysis on which courts in Lithuania may grant an arrest of seagoing ships as a security for claims. Analysis on the legal framework for release of arrested seagoing ships. The present article also presents a brief analysis on the measures for releasing arrested ships, i.e., payment of the security of the required amount or provision of other guarantee and provides a brief synopsis on the financial products offered by the members of the International Group of P&I Clubs.

**Keywords:** ship arrest; maritime claim; privileged claims; maritime liens; security; guarantee; P&I Club.

*Дробитько О. Г. Особливості правової бази для арешту морських суден у Литві. – Стаття.*

Статтю присвячено короткому аналізу правового регулювання арешту морських суден у Литві. Аналізуються ратифіковані конвенції приватного мор-

ського права, національне законодавство в цій сфері. Порівнюються і аналізуються дефініції морської претензії, привілейованої претензії, морський застави та їх особливості в Литві. У статті аналізуються основні випадки правовідносин між учасниками цивільного та інших процесів на основі морських вимог. Аналізуються які суди Литви можуть застосовувати арешт морського судна як засіб забезпечення морської вимоги. Проаналізовано правове регулювання звільнення морського судна від арешту. Коротко аналізуються шляхи звільненого судна, такі як внесення необхідної суми застави або надання іншої гарантії, висвітлюються фінансові продукти членів Міжнародної групи клубів P&I.

**Ключові слова:** арешт судна, морська претензія, привілейована вимога, морська застава, заставний депозит, гарантія, P&I Club.

*Дробитько О. Г. Особенности правовой базы для ареста морских судов в Литве. – Стаття.*

Статья посвящена краткому анализу правового регулирования ареста морских судов в Литве. Анализируются ратифицированные конвенции частного морского права, национальное законодательство в этой сфере. Сравняются и анализируются дефиниции морской претензии, привилегированной претензии, морского залога и их особенности в Литве. В статье рассматриваются основные случаи правоотношений между участниками гражданского и других процессов на основании морских требований. Анализируется какие суды Литвы могут применять арест морского судна как средство обеспечения морского требования. Проанализировано правовое регулирование освобождения морского судна от ареста. Коротко анализируются способы освобожденного судна, такие как внесение необходимой суммы залога или предоставления другой гарантии, освещаются финансовые продукты членов Международной группы клубов P&I.

**Ключевые слова:** арест судна, морская претензия, привилегированное требование, морской залог, залоговый депозит, гарантия, P&I Club.

Even though, the common features of the global economy point to an emergence of the economy out of the recession that originated from the 2008-2009 global financial crisis, the problem of settlements within the maritime transportation sector still remains relevant. Currently, Lithuania is showing a stable freight processing dynamic. E.g., in 2013 33.42 million tons of cargo were transhipped within the Port of Klaipeda, in 2014 36.41 million tons, in 2015 38.51 million tons, in 2016 40.14 million tones and in 2017 43.17 million tons [1]. It is not out of the ordinary that more and more seagoing ships visit the Port of Klaipeda. On one hand, all of the participants operating within the transportation chain are vested in their own economic and legal interests which do not always coincide, therefore it is impossible to avoid conflicts within the present field of business. As for the

above, crediting establishments operating within the field of marine transportation, shipbuilding and provision of services for the supply of goods are forced to use arrests of seagoing ships as a security for claims or means to incentivise settlements.

On the other hand, the application of arrest of seagoing ship as a temporary safeguard for ensuring the enforcement of the future litigation claim has rather dire consequences both for the owner of the arrested ship, as well as the charterer or other person. Therefore, it is very important that the judicial authorities of various states would conform and adopt an unified procedure and good practices of international private maritime law for the application of the above-mentioned peculiar means for securing claims for the enforcement of the interests of the creditor which would allow to ensure the balance between the interests of the creditors, debtors, ship-owners and charterers.

The International Convention for the Unification of Certain Rules relating to the Arrest of Sea-Going Ships, done in 1952 was ratified in Lithuania on 06.03.2002 and came into effect on 29.10.2002 and from that point going forwards the said International Convention has become the main source of the positive law for the application of arrest of foreign ships within our state. On the other hand, following the coming into effect of the above-mentioned Convention, some problems for interpretation and application of national provisions within Lithuania arose. The present scientific article aims to identify the said problems and suggest their solutions.

We have to admit, that the present issue is not yet addressed in Lithuania, however it was broadly discussed and thoroughly analysed in the works of maritime law by legal experts. I would like to distinguish the works of the professors F. Berlingieri and W. Tetley. Also, I would like to mention D. Bektasoglu Sanli, D. Chong Gek Sian, Dong Hee Suh, B. Eder, P. Glover, R. W. Lynn, P. Myburgh, N. Raševa and other colleagues, whom I would like to apologise due to the inability to note all of them, who analysed the said issue.

Professor W. Tetley stated that “*Essential to the practice of maritime law in any country is acknowledgement of the procedures that provide pre-judgment security for claims, as well as post-judgment execution if a suit is allowed.*” [2, p. 1898]. In Lithuania – as well as other common-law and continental-law countries – a strong correlation exists between the arrest of the ship and credit claim of the persons concerned towards the ship-owner or charterer. Furthermore, it is possible to arrest the ship for the

outstanding debts of previous ship-owners or charterers. The above-mentioned circumstances allow for the notion that the arrest of a ship is a peculiar measure for securing claims.

Before continuing, it is important to make a brief synopsis of the legislative regulating the arrest of ships or which are related with the said legal institution. These can be summarised as follows:

1. Code of Civil Procedure of RL [3] (hereinafter referred to as – CCPRL). The Code was adopted on 28.02.2002, and came into effect on 01.01.2003;

2. Law on Merchant Shipping of RL [4] (hereinafter referred to as LMSRL). The Law came into effect on 18.10.1996;

3. Law on International Agreements of RL [5]. The Law came into effect on 09.07.1999.

4. 1993 International Convention on Maritime Liens and Mortgages [6] (hereinafter referred to as 1993 Convention). The Convention came into effect within Lithuania on 29.10.2002;

5. 1952 International Convention for the Unification of Certain Rules relating to the Arrest of Sea-Going Ships [7] (hereinafter referred to as 1952 Convention). The Convention came into effect within Lithuania on 08.08.2008.

The present article focuses mainly on the analysis of *lex specialis* and the competition between these legislatives. Article 1 of the 1952 Convention introduces the conception of *maritime claim*. Articles 4 and 8 of the 1993 Convention defines the conception of *maritime liens*. Paragraph 1, Article 62 LMSRL introduces the conception of *privileged claims*.

Therefore, currently, there are 3 related legal institutions established within Lithuania, i.e., *privileged claims*, *maritime liens* and *maritime claims* all of which need to be noted during the analysis for the explanation and application of theoretical and practical aspects of arrests of ships in Lithuania.

First off, *privileged claims: claims related with merchant shipping that are satisfied as provided for in the following law* (Paragraph 1, Article 62 of LMSRL).

The national legislature of Lithuania did not provide the full description of the privileged claim; however, it did define the priority order for claims. In accordance with the Paragraph 2, Article 62 of LMSRL, claims secured by mortgage must have the first priority of satisfaction, and other claims as follows:

1) Claims of the staff of the manager of a ship in respect of labour relations, claims for compensation for mutilation or other injury to health, also for loss of life and claims for damage resulting from death or injury of a passenger;

2) Claims relating to port dues;

3) Claims for salvage remuneration and general average contributions;

4) Claims for compensation of losses arising from collision or other accident at sea, damage to port works and other property and aids to navigation;

5) Claims arising from the acts of the master of the ship, by the powers conferred on him by this Law, for the preservation of the ship and the continuation of the voyage;

6) Claims in respect of loss or damage to cargo or luggage;

7) Claims in respect of payment for freight and other charges due for the carriage of goods by sea.

As it is known, Paragraph 1, Article 1 of 1952 Convention clearly defines the maritime claim for which the court of the contracting party may arrest the ship. By comparing the list of privileged claims (Paragraph 2, Article 62 of LMSRL) against the list of maritime claims (Paragraph 1, Article 1 of 1952 Convention) it is clear that they are not equal. Because in accordance with Paragraph 2, Article 62 of LMSRL, the claims arising for shipbuilding are not regarded as privileged claims. In this instance, a problem for the application of law arises. The said problem will be explained below.

As it known, Article 2 of 1993 Convention relinquishes the regulation rights of priority between mortgages, “*hypothèques*” and charges towards national law. The present article does not intend to analyse the regulation of legal institutions of mortgages and “*hypothèques*” within Lithuania; and will rather identify the relation between *maritime liens* and other related legal institutions within Lithuania. Paragraph 1, Article 4 of the above-mentioned Convention provides for an incomplete list of maritime liens, while Article 6 identifies that other maritime liens may be determined by the law of the State of registration. For the explanation of the legal references of maritime liens, first we are required to identify the parts where *maritime liens* do not repeat *privileged claim* in accordance to LMSRL or *maritime claims* in accordance to 1952 Convention.

Maritime liens arising from social rights of seafarers and identified for in Item a, Paragraph 1, Article 4 of 1993 Convention are essentially *privileged claims* in accordance to Item 1, Paragraph 2, Article 62 of LMSRL, as

well as claims for compensation for mutilation or other injury to health, also for loss of life both on land and in the open sea whenever they are related to the use of a ship (Item b, Paragraph 1, Article 4 of 1993 Convention). Claims for compensation for salvage (Item b, Paragraph 1, Article 4 of 1993 Convention), regulated also by the Item 3, Paragraph 2, Article 62 LMSRL). Claims for port, canal dues, other navigator and pilot fees (Item d, Paragraph 1, Article 4 of 1993 Convention) in part also fall within the Item 2, Paragraph 2, Article 62 of MSARL. Other claims in tort arising due to physical harm and damages that were suffered during the use of the ship, with the exception to the requirements for the damages and loss of on-board cargo, containers and personal items of the passengers (Item e, Paragraph 1, Article 4 Of 1993 Convention) conforms with the provisions of the Paragraph 4, Article 2 of LMSRL.

By comparing the Paragraph 1, Article 4 of 1993 Convention, it can be stated that all of the maritime liens provided for in the said paragraph fall within the maritime claims defined for in the Paragraph 1, Article 1 of 1952 Convention. It is evident from the brief analysis, that *privileged claim*, defined by LMSRL, within Lithuania is essentially equal to *maritime lien* regulated by the 1993 Convention. On the other hand, not all maritime claims, for which an arrest of a ship may be granted (Paragraphs 1 and 2, Article 1 of 1952 Convention) are *privileged claims* in accordance to LMSRL or *maritime lien* in accordance to 1993 Convention.

In Lithuania, as well as other western countries, arrest of a ship, as a legal institution, is related with the possibility to satisfy the mentioned claims and settle the debts in the future from the received funds following the sale of the ship. On the other hand, as the international maritime labour practice shows, the above-mentioned institution became as an additional and very important measure for ensuring timely settlements between various participants of the maritime industry. A colleague from the Sidney University Quintin A. Rares notes: „...*problem arises during the arrest of ships. In Admiralty courts, or courts otherwise vested with Admiralty jurisdiction, a judge can order a ship be arrested, and if need be, sold after a maritime claim has been brought against the ship itself; an action in rem.*” [8, p. 111]. Without a doubt the action in rem doctrine within the common-law countries is related more closely to the classic civil law of the Roman empire due to the fact that only the Roman empire provided the fair value and completeness of a judicial protection to the said right [9, p. 56].

Even though continental-law states do not provide for *actio in rem* doctrine, the essence of the arrest of ships did not see a change. The economic goal of a creditor remains the same – to recover their money – therefore, the application of the arrest of ships without a further possibility to recover the money following the sale of said ship would become an instrument of fraudulent activities allowing for unjust removal of the competition.

In Lithuania, as well as in other continental-law countries, it is possible to distinguish the following cases for the arrest of a ship. One of them: the debtor is an entity based in Lithuania, while the ship in question belongs to the ownership of said person. The present legal situation does not differ from arrest of other items used as a temporary safeguard measures for creditor claims (for securing the claims of the claimant or applicant). In the present case, the temporary safeguard measures are applied in accordance with the rules of the Civil Procedure Code of RL. The present article does not aim to consider all of the temporary safeguard measures, therefore we will focus our attention towards those measures that are applicable to the arrest of a ship.

Temporary safeguard measures in Lithuania may be applied by the request of the participants taking part in the proceedings or other persons concerned, provided that the said persons are to be believed to be able to justify their claim and if the court would deny to enforce the measures the enforcement of the judgement would become really difficult or even impossible (Paragraph 1, Article 144 of CPCRL). Furthermore, the said measures may be applied both without lodging a claim and at any stage of the civil proceedings (Paragraph 2, Article 144 of CPCRL). The Civil Code of the Republic of Lithuania [10] (hereinafter referred to as CCRL) recognises ships, air carriers provided for in the law and that require to be legally registered as having an equal legal status as immovable property (Paragraph 3, Article 1.98 of CPCRL). Therefore, it is believed that ships, as well as other items, having a legal status of property, may be subject to the following temporary safeguard measures:

- arrest of a ship belonging to the defendant or future defendant (Item 1, Paragraph 1, Article 145 of CPCRL);
- entry into public registry for the restriction to transfer the right of property (Item 2, Paragraph 1, Article 145 of CPCRL);
- arrest of property rights to a ship, belonging to the defendant and currently held by the defendant or third parties (Item 3, Paragraph 1, Article 145 of CPCRL);

- Detention of a ship belonging to the defendant (Item 4, Paragraph 1, Article 145 of CPCRL);
- Appointing of a ship’s administrator (Item 5, Paragraph 1, Article 145 of CPCRL);
- Restriction towards the defendant to take part in the deals or take specific actions (Item 6, Paragraph 1, Article 145 of CPCRL);
- Cease of realisation of a ship, following an action for annulment for the arrest of the said ship (Item 9, Paragraph 1, Article 145 of CPCRL);
- Obligation to carry out actions relating to the ship and denying the possibility for the damages to occur or increase (Item 12, Paragraph 1, Article 145 of CPCRL);
- other measures provided for in the law or applied by the court and if the court would deny to enforce the measures the enforcement of the judgement would become really difficult or even impossible (Item 13, Paragraph 1, Article 145 of CPCRL).

In case the ship registered in Lithuania belongs to the debtor or the defendant – resident of Lithuania – enforcement of temporary safeguard measures is not subject to any peculiarities. On the other hand, regarding the nature of the international maritime shipping, it may be possible for instances to occur were an entity based in Lithuania is the owner of ship registered in a foreign state. The above-mentioned legal situation may be regulated quite easily by applying other above-mentioned temporary safeguard measures. Certain peculiarities arise due to territorial jurisdiction and we are able to name a few of them:

**Firstly**, the debtor – a person that falls within the jurisdiction of Lithuania – is insolvent and there are insolvency proceedings instituted against him. In the present case, the entire property of the debtor, including the seagoing ship, is arrested by the district court in accordance to the place of registration of the defendant (Item 5, Paragraph 2, Article 9 Law on Enterprise Bankruptcy of RL [11]).

**Secondly**, the debtor is not insolvent. Therefore in the present case, the ship may be arrested and the debtor may be subject to civil proceedings in accordance to the address of the head office of the debtor and the current location of the said ship, provided that the said ship is currently staying at the Port of Klaipeda in Lithuania.

**Thirdly**, the debtor and the creditor entered in to an arbitration agreement. In the present case the power to apply the temporary safeguard measures, including arresting of the ship, is relegated to the Vilnius district

court in accordance with the Paragraph 1, Article 27 of Law on commercial Arbitration of RL [12].

It is believed that the situation were all of the participants taking part in the dispute, i.e., the former and current ship-owner does not have any relations with Lithuania, except for the factual place of stay of the ship which is Lithuania do to certain reasons, requires a separate discussion. The above-mentioned circumstances may be related to loading/unloading of the ship, as well as repairs of said ship. In the above-mentioned situation it is possible to distinguish two legal situations: a) the parties have entered into an arbitration agreement; b) the parties have not entered into an arbitration agreement.

Article 2 of 1952 Convention defines that in order to ensure the enforcement of each and every maritime claim, 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. Therefore, in cases were the maritime claim is also an arbitration agreement, application of temporary safeguard measures, i.e., arresting of the ship on the request of the concerned party falls solely within the competency of Vilnius district court in accordance with the requirements of the Law on Commercial Arbitration of RL. Otherwise, it may be done by the forum of the place of the property, and that, objectively, may only be the Klaipeda district court and furthermore, provided that the claim has been brought to the forum of the state where the ship has been arrested, the court may examine the case as substantial matters, therefore the said court is granted jurisdiction to examine the dispute (Item b, Paragraph 1, Article 7 of 1952 Convention).

On the other hand, can a ship be arrested if the said ship is flying a flag of a state that is not a Registered state of the 1952 Convention? It is believed that in the above instance there is a possibility for a couple of different cases as well: a) Lithuania and the state of the creditor's jurisdiction have entered into an agreement for legal support in criminal, civil and commercial matters; b) Lithuania and the state of the creditor's jurisdiction have not entered into the said agreement.

As a rule, the above-mentioned agreements establish a rule that natural and legal person of the contracting parties are entitled identical civil rights and obligations as the residents of the contracting party within the territory of other states. Therefore, in the above-mentioned instance, it may be possible to initiate civil proceedings in accordance with the current office that the ship is staying at and accordingly request the court to enforce tempo-

rary safeguard measures, as well as arrest of the ship in accordance with the Paragraph 1, Article 30 of the Code of Civil Procedure of RL.

To answer whether it is possible to arrest the ship in Lithuania if the ship is flying a flag of a state that is not a Registered state of the 1952 Convention and have not entered into an agreement for legal support in civil and other matters with Lithuania is quite difficult. Unfortunately, we must admit that the courts of Lithuania did not manage to establish case law during analogous proceedings. This was due to the following reasons: a) Lithuania is a small state, therefore the number of disputes with maritime elements is considerably low as well; b) our state has gained independence not that long ago and, therefore not a lot of time has passed since for the formation of case law. However, based on the opinion of the author, the above-mentioned instance is not subject to any obstacles to arrest the ship flying a flag of a third party and to examine the dispute in Lithuania under foreign law or even Lithuanian law.

In Lithuania, claim towards a defendant that has no permanent place of residence within the Republic of Lithuania may be lodged in accordance to the current place of their property (Paragraph 2, Article 30 of CPCRL), And in accordance to Paragraph 8, Article 30 of CPCRL, a claim for settlement of damages, incurred due to collision of ships and for the settlement for recovery and support and rescue in the open sea, as well as all other cases, where the dispute arises due to legal relations of carriage by sea, may be lodged according to the current location of the ship of the defendant or according to the port of registration of the ship as well. Therefore, provided that the ship is currently staying in Lithuania, it is believed that the said ship may be arrested, and the dispute may be examined as well.

In Lithuania, rights of property and other rights in rem towards immovable and movable property are defined in accordance with the law of the state where the property was placed at the moment of the change of its legal status. The property is defined as an immovable or movable property in accordance with the law of state where the property is currently situated in (Paragraph 1, Article 1.48 of CCRL). On the other hand, Paragraph 1, Article 808 of CPCRL obliges the courts of Lithuanian jurisdiction to apply, interpret and define the contents of foreign law by their own initiative (*ex officio*). Paragraph 3 of the same article also states that if the court or state acting in accordance with the foreign law is unable to comply with the obligation provided for in the said article to gather all of the evidence related to the contents of the legislative of the applied foreign law in

accordance to the official interpretation, application practice and doctrine within the appropriate foreign country. In other words, provided that it is impossible to explain the contents of the foreign law, Law of the Republic of Lithuania is applied instead.

The Supreme Court of Lithuania has explained, that in the case where the application of the foreign law is required by law, the court must adopt procedural measures in order to obtain official information on the contents of the legal provisions of the applied foreign law in accordance to the official interpretation, case law and doctrine within the foreign state of the said law. Additionally, the court has explained in the same case that procedural measures for the collection of said evidence are established in the Council Regulation (EC) No. 1206/2001 on cooperation between the courts of the Member States in the taking of evidence in civil and commercial matters [13]. Appropriately, provided that the foreign law is applied on the agreement of parties, the obligation to identify the contents of the law is passed towards the participants taking part in the dispute.

It is evident that it is very important for every ship-owner or charterer that had their ship arrested due to maritime lien for certain reasons to have their ship released in the shortest amount of time possible. We may again distinguish two main cases in the present instance: a) the courts arrested the ship in accordance with the legal provisions of CPCRL; b) the courts arrested the ship in accordance with the rules of 1952 Convention.

Paragraph 1, Article 148 of CPCRL establishes a provision that the court may exchange one temporary safeguard measure with another on the justified request of the participants of the matters. In accordance with the Paragraph 2 of the same article, the court may refuse to apply temporary safeguard measure in case the defendant obliges to transfer the requested amount by the court to the bank account of the court or if the defendant provides a guarantee. On the other hand, Article 5 of the 1952 Convention allows the court – on which jurisdiction the ship was arrested – to free the ship once the collateral of the right amount is paid or a different guarantee is provided for, except in cases where the ship is being arrested in order to secure the claims towards the disputes of the right of ownership of the ship or its management and disputes towards the right of ownership, use and management and received funds of the co-owners.

Therefore, it is quite clear that the provisions provided for in Paragraph 2, Article 148 of CPCRL and Article 5 of 1952 Convention are essentially quite similar, if not analogous. “Other guarantees” in the context of the

issue of securing claims requires additional discussion. It is believed that a guarantee of one of the EU banks is to be considered to be an eligible collateral for the claim.

On the other hand, in accordance with the traditions of the maritime sector, usually guarantees provided for by P&I Clubs take place. It is important to briefly discuss the legal basis for the application of the above-mentioned measure.

Item a, Article 3 of the European Parliament and Council Directive 2009/20/EC of 23.04.2009 on the insurance of ship-owners for maritime claims [14] “Definitions” states that a ship-owner is a registered owner or another person, e. g., bareboat charterer who is responsible for the operation of the seagoing ship, additionally, Item b of the same article states that insurance, i.e., insurance with deducted amount or without it, covering the type of insurance and damages that is provided towards insurance against responsibility for ship managers for the members of the International Group of P&I Clubs) and other eligible types of insurance (including approved mutual insurance) as well as financial security ensuring the same insurance conditions. Item b, Article 3 of the above-mentioned directive states that currently the following members are a part of the international group of P&I Clubs:

American Steamship Owners Mutual Protection and Indemnity Association, Inc;

Assuranceforeningen Skuld;

Gard P&I (Bermuda) Ltd.;

The Britannia Steam Ship Insurance Association Limited;

The Japan Ship Owners’ Mutual Protection & Indemnity Association;

The London Steam-Ship Owners’ Mutual Insurance Association Limited;

The North of England Protecting & Indemnity Association Limited;

The Shipowners’ Mutual Protection & Indemnity Association (Luxembourg);

The Standard Club Ltd;

The Steamship Mutual Underwriting Association (Bermuda) Limited;

Sveriges Ångfartygs Assurans Förening / The Swedish Club;

United Kingdom Mutual Steam Ship Assurance Association (Bermuda) Limited;

The West of England Ship Owners Mutual Insurance Association (Luxembourg) [15].

Paragraph 2, Article 4 of the above-mentioned directed states that EU Member state must require owners of ships flying a flag of a foreign country to have insurance whenever said ships comes into a port within the jurisdiction of a member state. Additionally, the above does not obstruct member states to require conformity with the said obligation in instances where the said ships are sailing within their territorial waters. Therefore, it is not out of the ordinary, where the EU law states, that the guarantee of one of the member's of the P&I Clubs, i.e., P&I Club guarantee letter towards the amount of the claim, is eligible towards the official authority as a potential guarantee towards the compensation of potential damages in order to release the ship.

It should be noted that the provisions of the above-mentioned directive are transposed to the LMSRL. Paragraphs 1 and 2, Article 58<sup>1</sup> of the above-mentioned law state that the obligation for claims of the managers of the ships that are flying the Lithuanian flag or foreign ships entering the sea ports of the Republic of Lithuania and who are subject to a disclaimer in accordance with the Convention on the liability to maritime claims, the enforcement of said claims must be secured by efficient measures for the enforcement of said obligations (insurance, guarantee or other measures). The amount for the guarantee regarding the enforcement of obligations performance guarantee of the ship manager for a single accident of the ship must be no less than the agreed appropriate maximum sum for liability insurance as established within the Convention on the requirements for insurance of liability for insurance claims [16]. LMSRL requires to provide an appropriate document attesting the existence of the obligation enforcement guarantee measure that may be issued by the entity providing the guarantee for obligation enforcement (entity operating insurance or self-insurance business, members of the International Group of P&I Clubs, banks or other entities entitled the right to operate the appropriate business for insurance against responsibility). Documents attesting the existence of the obligation performance guarantee must be present aboard the ship at all times. In cases where the documents attesting the existence of the obligation performance guarantee are written in a different language than English, French or Spanish languages, a translation to the said languages must be present alongside the said documents.

In conclusion, we may state the following:

*Firstly:* Since the ratification of the 1952 Convention and 1993 Convention in Lithuania, a clear and transparent mechanism for regulating

the arrest of seagoing ships has been formed. Essentially all of the ordinary courts within Lithuania may grant the arrest of seagoing ships as a security for claims in civil proceedings or commercial matters.

*Secondly:* No conflicts were distinguished between national legislation regulating the arrest of seagoing ships and international maritime conventions ratified in Lithuania. Denying of the status of the privileged claim for claims arising due to shipbuilding in accordance to LMSRL may be noted as a certain imperfection of the legal framework.

*Thirdly:* Clear and transparent legal framework for releasing arrested seagoing ships compliant with the requirements of the international maritime law and EU law is in place in Lithuania. The court releases the ship following the payment of the security of the required amount or provision of another guarantee. The use of the financial products of the members of the International Group of P&I Clubs is the preferable method for the provision of guarantee.

#### BIBLIOGRAPHY

1. URL: <http://www.portofklaipeda.lt/port-statistics>
2. Tetley William, Arrest, Attachment, and Related Maritime Law Procedures// (1999) 73 Tulane Law Review, p. 1895-1985.
3. Valstybės žinios, 2002.04.06, No. 36-1340.
4. Valstybės žinios, 18.10.1996, No. 101-2300.
5. Valstybės žinios, 09.07.1999, No. 60-1948.
6. Valstybės žinios, 26.01.2008, No. 11-377.
7. Valstybės žinios, 04.05.2002, No. 45-1712.
8. Quintin A. Rares, Can You Arrest Bunkers in Australia// The Australian and New Zealand Maritime Law Journal. (2015) 29. P. 111 – 121.
9. Новицкий И. Б., Перетерский И. С. Римское частное право: учебник. – Москва: «Юрист», 1999, с. 543.
10. Valstybės žinios, 06.09.2000, No. 74-2262.
11. Valstybės žinios, 11.04.2001, No. 31-1010.
12. Valstybės žinios, 02.05.1996, No. 39-961.
13. Ruling of the Supreme Court of Lithuania in the Civil Proceedings No. 3K-3-512/2007 of 16.11.2007 ([www.lat.lt](http://www.lat.lt)).
14. Official Journal of the European Union, L 131/128 (<http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1522683486905&uri=CELEX:32009L0020>).
15. <https://www.igpandi.org/article/list-principal-clubs>; visited on 02.04.2018 d.
16. Valstybės žinios, 07.03.2004, No. 36-1185.

