

# Untying the knot of Italian ship arrest law

Michele Mordiglia shines a light on the grey area of competing laws on vessel seizures.

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Parties trying to arrest ships as security in Italy are entering a legal grey area where the Brussels Convention runs up against domestic precedent, according to a leading lawyer.

Michele Mordiglia, a partner at law firm Studio Legale Mordiglia, told TradeWinds: "In my experience as maritime lawyer for almost 40 years, one of the most frequent issues in dispute is ship's arrest as security for unpaid claims."

He added: "I was recently involved in a case where a ship had been arrested for a claim against a debtor, who was not the registered owner of the vessel. The main issue in dispute was whether the vessel could be arrested, since the claim was not assisted by a maritime lien."

Some Italian courts ruled in favour of the arrest, on the basis that article 3.4 of the Brussels Convention allows vessel arrests for a claim against the demise charterer without requiring a maritime lien.

Time-charterers, managers and operators have also been considered as being in the same position of the demise charterer.

But the arrest was ultimately lifted, in line with some other legal precedents now prevailing in Italy, according to which the maritime lien is required if the debtor is not the shipowner.

Mordiglia said Italy has not yet ratified 1999 Geneva International Convention on the arrest of ships, which clarifies that an arrest for a claim not assisted by maritime lien is permissible not only against the shipowner, but also against the demise charterer.

By contrast, the detention is not permissible for claims against time-charterers, managers or operators, in the absence of a maritime lien.

The process of arresting a ship in Italy is governed by the Civil Code of Procedure, "which is peculiar on this subject, as it provides for three different steps before the same court," Mordiglia added.

## Three steps to legal heaven?

Firstly, a single judge may grant a provisional decree of arrest, without giving the opposite party the chance of replying, in order to prevent the ship from sailing.

The second step is for the same single judge to confirm, amend or revoke the arrest by order, after examining the parties' pleadings and discussing the case at a hearing.

Thirdly, the losing party can lodge an appeal within 15 days to the same court.

This will be heard by three new judges and cannot be appealed.

"The above procedure is peculiar, not only for the three steps which pass before the same court, but also for the time necessary to obtain a final decision, which can vary from one to three months," Mordiglia said.

"This differs from Italian ordinary proceedings, which may take years before a final decision is rendered."

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