

Shipping & Transport - Netherlands

Rotterdam Court Upholds Algerian Arrest Order

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The Rotterdam District Court has upheld the right of an Algerian court to order the arrest of a container vessel by a Dutch bunker supplier for the non-payment of bills. In so doing it dismissed an application by the owner and former owner of the vessel to lift the arrest on the grounds that the claim could not be enforced against the ship because, among other things, proper justice in the case was not achievable in Algeria.

The bunker supplier had arrested the ship in Algeria pursuant to a claim in respect of various bunkers supplied to the time-charterer of the vessel. Meanwhile, the time-charterer had been declared bankrupt, and the claim could not be recovered against the estate. The ship was under Belgian ownership when the bunkers were supplied, but was subsequently sold to Lithuanian interests for which it operated under the Lithuanian flag.

The Algerian court allowed the arrest on behalf of the bunker suppliers, applying the Arrest Convention 1952 and the provisions of local law, on the basis of which a particular ship can be arrested for a maritime claim. The owner and former owner applied to the Rotterdam court, in whose jurisdiction the bunker supplier was based, to have the arrest lifted. They alleged that the arrest was wrongful and maintained that the claim could not be enforced against the ship because it had been directed against the former time-charterer and the ship had been sold to new owners.

The original bunker supply contract was subject to Dutch law. The owner and former owner argued that under Dutch law, no recourse against the ship was possible, any more than it was under the law of Lithuania, the vessel's flag state. They also maintained that:

- the Algerian court had not been informed about the change of ownership;
- it was impossible for them to ask for a court order in Algeria; and
- the Algerian court system was basically corrupt.

The Rotterdam court considered that the Arrest Convention applied and that the claim in respect of which the arrest had been made was a maritime claim in the sense of the convention. The court further found that, materially speaking, the demand to order the lifting of the arrest in Algeria was tantamount to a demand to lift the arrest altogether. The Rotterdam court stated that since Article 5 of the Arrest Convention channels claims for the lifting of an arrest to the court which allowed the arrest, that court was the one which should be addressed in respect of questions concerning the rights and wrongs of the arrest and the lifting thereof.

The Rotterdam court added that the only possible exceptions might be where the decision of the arrest court could be considered contrary to public policy or based on evident factual or legal inaccuracies.

On the basis of the documents presented, the court was of the opinion that the arrest court had been sufficiently informed of the fact that the claim was directed against the bankrupt time-charterer and that the ship had meanwhile been sold to new owners. Thus, the arrest court had not been misinformed.

The court said the allegation that no proper justice could be administered in Algeria was not substantiated. There was no reason to assume that the Algerian court would not take into account the question of whether the claim was recoverable against the ship, and which law (ie, Dutch, Algerian or Lithuanian) covered such issues. Breach of public policy had not been established.

The court did make the point that a decision by the Dutch courts might have been justified if it had seemed likely that it would be impossible to obtain a summary decision in the arrest jurisdiction within a reasonable timeframe. However, the parties had presented contradictory opinions from local lawyers in this respect and the

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Rotterdam court could not accept the allegation of the owner and former owner that obtaining a timely summary decision was impossible.

In conclusion, the court found that there were no grounds to question the competency of the Algerian court to judge the rights and wrongs of the arrest in this case.

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