



The Foreign Nature of Maritime Liens: A Comparative Approach to National and International Law

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ABSTRACT

This article analyzes the effectiveness of maritime liens and highlights the substantial divergences in their treatment across national legal systems. Maritime liens, as recognized under domestic law, vary significantly in their types, scope, and enforcement mechanisms compared to those established in foreign jurisdictions. Because these liens attach to vessels irrespective of their location, inconsistencies in local and geographical relations emerge: the existence of a lien in one jurisdiction does not guarantee its recognition elsewhere. The study addresses the “foreignness” of maritime liens and explores its consequences for determining the applicable law in international maritime transactions.

Employing a comparative analysis of Greek law (Code of Private Maritime Law), international conventions (1926 and 1967 Brussels Conventions, 1993 Geneva Convention), and European legal frameworks, the article demonstrates the absence of a harmonized regime for maritime liens at the European or global level. It critically examines various theoretical approaches to choice of law—including *lex navis* (law of the flag), *lex fori* (law of the forum), and *lex executionis* (law of enforcement)—and scrutinizes Greek case law, which reveals the prevailing application of *lex fori* in judicial practice.

The analysis identifies persistent legal uncertainty for maritime creditors, primarily due to the lack of harmonized international regulations and the absence of a unified maritime lien registry. The article concludes by advocating for the establishment of a comprehensive international framework—including a centralized register of maritime liens—to mitigate inter-jurisdictional conflicts and promote greater transparency and legal certainty in global shipping transactions.

KEYWORDS: Maritime liens, Applicable law in maritime transactions, Conflict of laws, *Lex navis* (law of the flag), *Lex fori* (law of the forum), International maritime conventions, Greek, maritime law (Code of Private Maritime Law), Creditor protection, Ship mortgages, Harmonization of maritime law

THE CRITICAL ISSUE

This study aims to illuminate the thorny issue of the effectiveness of maritime liens and the divergence observed regarding them in legal theory. In particular, maritime liens recognised under national law differ notably in both type and number from those established in foreign jurisdictions. Additionally, since the latter follow the vessel throughout its voyage, inequalities in local and geographical relations arise, as the existence of a lien in one legal system does not necessarily entail its recognition in another. One of the key issues affecting legal orders and transactions involving ships is therefore the aspect of foreignness in the field of maritime liens, which makes the determination of the applicable law especially significant for this area.

MARITIME LIENS: DEFINITION AND ECONOMIC VALUE

The term “maritime lien” refers to claims arising from the economic exploitation or operation of a vessel, for which the law (Article 42, paragraph 1 of the Greek Code of Private Maritime Law - CPM) accords special protection by granting them privileged status. Such claims constitute a distinct category of debt, as they are

vested with a maritime lien from their inception¹. Since the CPM contains no explicit definition of maritime liens, the Piraeus Court of Appeal, in its ruling 248/2020, offered a thorough analysis of their nature and function, clarifying that a maritime lien is a proprietary right designed to secure specific claims arising from the operation or economic exploitation of a vessel².

Maritime liens are instituted to address the need for immediate financing within the context of maritime law, as defined by the provisions of the operative CPM, and are strictly enumerated by law (Article 42 CPM). Indeed, they represent a critical legal framework that impacts both creditors and shipowners. The interests of these two parties often conflict, with creditors seeking security and priority of their claims, while shipowners strive to maintain commercial flexibility and financial viability.

INTERESTS OF CREDITORS AND SHIPOWNERS

In particular, creditors pursue security for repayment of their claims, which they seek through the legal institutions provided

¹ See especially: Bechlivanis, A., *Maritime Law Handbook*, 2023, p. 87 with further references; Antapasis, A. / Athanasiou, L., *Maritime Law*, 2020, p. 272; Mataragas, A., *Maritime Law Handbook*, 1960, p. 161.

² See Court of Appeal of Piraeus 248/2020, pp. 3–4, available in *Nomos*, Piraeus Legislation 2020/251.



by the CPM, especially maritime liens and ship mortgages. Maritime liens are thus a principal mechanism for creditors, as they confer a "direct power over the vessel," thereby enabling satisfaction from the vessel's value and strengthening maritime credit³.

A further essential objective for creditors is their privileged ranking in enforcement proceedings, ensuring their claims have priority over those of other creditors⁴. This, in turn, diminishes the value of ship mortgages, since the latter rank below maritime liens, potentially deterring mortgage-financed lenders, as their secured claims—regardless of whether simple or preferred—are always satisfied only after maritime liens, provided adequate proceeds remain from the sale.

Creditors are also concerned with the issue of international recognition and enforcement of maritime liens. This is problematic, given differences in national legal systems and the absence of harmonised rules, which may create legal uncertainty and instability, negatively affecting shipping finance⁵.

Conversely, shipowners are primarily interested in retaining economic and operational flexibility, which compels them to seek avoidance of excessive restrictions imposed by creditors on the management of their vessels. Although maritime liens improve creditor security, they may complicate ship financing, since creditors with privileged priority may deter new investments from third parties⁶.

Shipowners also seek to preserve, or even enhance, the commercial value of their vessels, since, typically in forced sales, ships may be sold below true market value, resulting in significant financial losses⁷. Furthermore, the lack of publicity regarding maritime liens is a decisive factor for shipowners, who are often exposed to continuous uncertainty, especially during transfers of ownership, as the presence of "concealed" encumbrances may create obstacles to transactions, affecting market liquidity⁸.

LEGAL NATURE OF MARITIME LIENS

Maritime liens are of statutory origin, excluding the possibility of their creation by contract or any other private act, unlike ship mortgages, which may be created by unilateral act or contract. Pursuant to the CPM, the statutory origin is a fundamental attribute, as maritime liens arise automatically upon the emergence of the relevant claim, without the need for further formalities. Owing to their special character, Article 42 CPM restrictively enumerates claims vested ex lege with maritime lien, under the principle of *numerus clausus*⁹.

Another feature is the absence of publicity rules, in contrast with mortgages, which are registered. Consequently, third-party creditors may be unaware of existing maritime liens, fostering a state of legal uncertainty in transactions. Moreover, maritime liens are accessory in nature, inseparable from the underlying claim, and non-personal, meaning they follow the vessel even upon transfer of ownership. They are also specific, securing only the claims expressly mentioned in CPM Article 42 and do not extend to all owner liabilities. Finally, maritime liens attach to the whole vessel, regardless of the amount or nature of the secured claim.

Although both mortgages and maritime liens aim to secure the creditors' claims, they differ substantially: maritime liens confer immediate security ex lege without the need for any constitutive act or registration, in contrast with mortgages, which require a unilateral or contractual act and registration¹⁰.

MARITIME LIENS IN THE NATIONAL LEGAL SYSTEM

Under domestic law, maritime liens serving as proprietary security for discrete classes of maritime claims and creditors are governed by CPM, specifically Article 42¹¹. That article classifies maritime liens into four distinct ranks:

1. Taxes and dues related to navigation, including charges and fees incurred within six months prior to attachment, and maintenance expenses at the port of seizure.
2. Crew and master claims arising from service, together with social security claims.
3. Salvage claims, relating to the aid or rescue of vessels.
4. Claims for compensation due to collision or contact between vessels¹².

Greek legislation has adopted a restricted number of maritime liens to safeguard the ship mortgage institution, a driving force in the national economy, especially in financing vessel construction. To avoid unduly favouring creditors, the legislator has limited the categories of maritime liens; accordingly, in cases of doubt, the negative opinion is accepted: if a claim is not explicitly categorised, it is not privileged¹³.

MARITIME LIENS UNDER INTERNATIONAL CONVENTIONS

Various international conventions have sought to harmonise the regime of maritime liens globally. Greece, however, has not ratified any of these conventions, motivated by the need to protect the ship mortgage framework and the national economy. These conventions, which enumerate categories differing from Greek law, include the Brussels International Convention of 1926 (establishing five categories, such as crew claims, workers' compensation, and port dues¹⁴); the Brussels Convention of 1967—which was never implemented due to a lack of satisfactory

³ See: Potamianos, F., *Elements of Maritime Law*, Vol. A, 1963, p. 77 ff.; Argyriadis, A., *Maritime Liens*, Offprint from the Scientific Yearbook of the Athens Law School, in honour of G. Rammos, 1979, p. 5.

⁴ For more information see: Vathrakokilis, A., *Applicable Law on Maritime Liens*, Lex & Forum, 1/2022, pp. 85–97; Rokas, I. / Theocharidis, G., *Maritime Law*, 4th Edition, 2021.

⁵ See: Vrellis, Sp. / Antapasis, A., *Protection of Maritime Creditors and Private International Law*, in: "Protection of Maritime Creditors" - Proceedings and Presentations of the 1st International Conference on Maritime Law, 1992, pp. 106–130; Private Maritime Law, University Lectures, 2016.

⁶ See especially: Potamianos, F., *Elements of Maritime Law*, Vol. A, 1963; Rantos, *Maritime Liens and Mortgage in Ship Auction*, *EuempD* 1980, p. 647 ff.

⁷ See: Rokas, K., *Maritime Law*, Vol. A, 1968; Stamatoopoulos, V., *Ship Auction and Creditor Ranking*, *Diki*, 2009, pp. 515–528.

⁸ See: Argyriadis, A., *Maritime Liens*, Offprint from the Scientific Yearbook of the Athens Law School, in honour of G. Rammos, 1979; Theocharidis, G., *Issues Deriving from the Choice of Applicable Law*, 2021.

⁹ See especially: Potamianos, F., *Elements of Maritime Law*, Vol. A, 1963, p. 77 ff., analysing the concept of maritime liens as rights in rem, emphasising their difference from ship mortgages and their special legal formation for the protection of ship creditors; also see Georgakopoulos, L., *Maritime Law*, 2006, p. 427 ff., on the fundamental legal characteristics of maritime liens, such as ex lege creation, in rem nature, maintenance regardless of ownership and priority over other maritime claims.

¹⁰ See: Rokas, I. / Theocharidis, G., *Maritime Law*, 4th Edition, 2021, p. 76, presenting the function of maritime liens in creditor protection, comparing liens and mortgages in the context of ship finance; also see Sourlos, K., *In Rem Security in Maritime Law*, 1939, p. 8, examining maritime liens as a form of security in rem, highlighting their distinction from pledge and mortgage.

¹¹ On the general concept of maritime liens and Article 42: Bechliyanis, A., *Maritime Law Handbook*, 2023, p. 87; Antapasis, A. / Athanasios, L., *Maritime Law*, 2020, p. 272; Mataragas, A., *Maritime Law Handbook*, 1960, p. 161.

¹² On the classification of maritime liens into four ranks: Rokas, I. / Theocharidis, G., *Maritime Law*, 4th Edition, 2021, p. 76; Georgakopoulos, L., *Maritime Law*, 2006, p. 427 ff.

¹³ On the selection of limited maritime liens and the preservation of the mortgage institution: Kampysis, D., *Private Maritime Law*, 1982, p. 569; Kalantzis, A., *Preferential Ship Mortgage under Greek Law*, 1981, p. 37; Explanatory Report of the Maritime Code.

¹⁴ For the Brussels International Convention of 1926 and its five categories of maritime liens: Antapasis, A., *Maritime Liens and Mortgages under the United Nations International Convention of 6 May 1993*, 2012, p. 42; Vathrakokilis, A. / Plagakos, G., *The Ranking List and the Objection Thereon*, 2020, p. 661.



limitation on privileged claims¹⁵ and the Geneva International Convention of 1993 (emphasising crew rights, port dues, and injury compensation)¹⁶.

Despite these harmonisation efforts, Greece applies solely CPM for ranking and satisfaction of claims secured by maritime lien.

MARITIME LIENS WITHIN THE EUROPEAN LEGAL ORDER

There is also no harmonising regime for maritime liens within the European Union. Each Member State follows its own law—national or international as adopted—resulting in considerable divergence in key characteristics, such as type, ranking order, and recognition of foreign maritime liens. Thus, the legal position regarding the protection of maritime creditors across Europe remains highly variable¹⁷.

THE ISSUE OF APPLICABLE LAW AND THE ASPECT OF FOREIGNNESS

The selection of applicable law in maritime liens in international transactions is paramount, since a vessel during its voyage is subject to multiple legal orders, depending on the place of arrest, its flag, and tax law. Several theoretical approaches established in international maritime law seek to determine the appropriate law in each case.

The chief theory in Greek law is the law of the flag (*lex navis*), justified by the concept of the vessel as the "floating territory" of the flag state¹⁸. Pursuant to CPM Article 16, the applicable law for maritime liens is that of the flag state, since maritime liens are proprietary rights directly attached to the vessel. Consequently, Article 47 CPM stipulates that the creation, scope, and exercise of maritime liens are governed by "the law of the state whose flag the vessel flies." This approach also underpins legal certainty in transactions, for creditors know in advance which law applies to their claims.

Another theory is that of the law of the place of execution (*lex fori* or *lex executionis*). Here, the law of the country where enforcement occurs (e.g. auction) prevails, with the competent court determining creditor ranking according to that law. This theory is premised on the idea that creditor ranking is a procedural matter (enforcement law) and so should follow the law of the forum, while the creation of liens, as substantive law, depends on the law of the place of origin of the claim¹⁹. While *lex fori* promotes resolution of inter-system conflicts and streamlines enforcement, it may produce legal uncertainty for creditors as the applicable law and prospects for satisfaction are variable.

The theory of the place of origin of the claim (*lex loci actus* / *lex causae*) is also known. Here, the critical fact is the place where

the privileged claim arose²⁰. If it stems from a contract, *lex contractus* applies; from tort, *lex loci delicti*. This theory is practically problematic, as multiple claims from diverse jurisdictions may complicate uniform treatment.

Under the registry theory (*lex libri siti*), the applicable law is that of the country where the mortgage or other proprietary right is registered, premised on the publicity principle. Yet, this is potentially undermined by frequent vessel movements and registry changes²¹.

The theory of the law of the location of the vessel (*lex rei sitae*) dictates that the applicable law is where the vessel is at the time of the emergence of the privileged claim, following the general private international law principle for movables. Nevertheless, frequent movement of vessels could result in legal complexity and confusion²².

Lastly, the *lex causae* theory, where the law governing the system of maritime liens is the same as that governing the underlying claim²³. This approach is deemed inappropriate, given that various claims may be governed by different laws, thus confusing priorities among creditors.

CASE LAW

Greek case law predominantly follows the *lex fori* principle: the law of the forum applies. Thus, if an arrest occurs in Greece and the judiciary must decide on creditor ranking or enforcement, the provisions of the CPM and Civil Procedure Code prevail. Nevertheless, cases with foreign elements—such as a vessel's flag or contractual obligations—may be treated differently.

Supreme Court decisions such as No. 1556/2017²⁴ and No. 1762/1998²⁵ affirm *lex fori*, holding that in auction and creditor ranking procedures (procedural requirements under private international law), the law of the forum (Greek law) applies, irrespective of the flag or foreign claims.

Similar rulings by the Piraeus Court of Appeal (Nos. 270/2006²⁶ and 519/2009²⁷) accept the primacy of Greek law for creditor satisfaction ranking during enforcement.

However, ruling No. 51/2024²⁸ of the Higher Appeal Court of Piraeus places emphasis on *lex executionis*, focusing on the law of the place where enforcement occurs, restricting itself to enforcement rules, unlike *lex fori*, which may affect substantive issues. This principle, which constitutes a specialisation of the *lex fori*, focuses exclusively on the rules governing compulsory enforcement and relates strictly to the execution of claims, whereas the *lex fori* can also affect questions of substantive law.

The aforementioned decisions indicate a consistent attitude in Greek jurisprudence favouring the application of the *lex fori*, that is, the application of Greek legal rules where the seizure occurs within Greek territory. At the same time, by employing the *lex executionis*, these rulings elaborate on the issue and confirm that the

¹⁵ For the Brussels International Convention of 1967 and its failure to limit privileges: Antapasis, A. / Athanasiou, L., *Maritime Law*, 2020, pp. 220–222; Bechliyanis, A., *Maritime Law Handbook*, 2023, p. 87.

¹⁶ For the Geneva International Convention of 1993 and its five privileges: Antapasis, A. / Athanasiou, L., *Maritime Law*, 2020, pp. 223–224; Korotzis, I., *Maritime Law (Article-by-Article Commentary on the Maritime Code and Main International Conventions)*, 2007, p. 102; Antapasis, A., Nik. K. Rokas Honorary Volume, 2012, pp. 42–43.

¹⁷ On the absence of a unified European legal framework and the application of national/international law: Antapasis, A. / Athanasiou, L., *Maritime Law*, 2020, p. 224; Bechliyanis, A., *Maritime Law Handbook*, 2023, p. 87; Kiouptsidou–Stratoudaki in Kerameus K. / Kondylis D. / Nikas N., *Civil Procedure Code Commentary*, 2nd Edition, 2020, Article 975, p. 500.

¹⁸ On the law of the flag theory (*Lex Navis*): Theocharidis, G., *Issues Arising from the Choice of Applicable Law on Maritime Liens*, p. 369.

¹⁹ On the *lex fori/lex executionis* theory: Korotzis, I., *Applicable Law and Conflict of Rules in the Ranking of Maritime Claims*, p. 136.

²⁰ On the *lex loci actus* / *lex causae* theory: Antapasis, A., *The Applicable Law*, pp. 17–29.

²¹ On the registry theory (*Lex Libri Siti*): Vathrakokolis, A., *Applicable Law on Maritime Liens*, *Lex & Forum*, 1/2022, pp. 86–87.

²² On the *lex rei sitae* theory: Antapasis, A., *The Applicable Law*, pp. 30–33.

²³ On the *lex causae* theory: Theocharidis, G., *Relationship between "forum shopping" and applicable law*, p. 301.

²⁴ See *Nomos A' Publication*, Vol. E7, 2018, p. 140; Armenopoulos, 2018, p. 245.

²⁵ Published in *Commercial and Maritime Law Journal (EEN)*, 2000, p. 307; *Maritime and Transport Law Review*, 1999, p. 83.

²⁶ Published in *Piraeus Legislation*, 2006, p. 242.

²⁷ Published in *Maritime Law Review*, 2009, p. 439.

²⁸ *MonEf Peir* 51/2021, §IV(A), *NOMOS*: "However, the order of ranking of these privileges will be determined according to the law of the place of execution (*lex fori*)..."



rules of Greek compulsory enforcement prevail over any foreign law.

POSITION OF THE GREEK LEGAL ORDER

Maritime liens constitute a powerful means of securing shipping-related claims, and the legal framework should aim to preserve financial stability in the sector whilst also protecting creditors against possible insolvency of shipowners. Numerous challenges arise, however, from the lack of harmonised international legislation, since neither maritime liens nor creditor ranking are handled uniformly across jurisdictions-leading to difficulties during enforcement.

With respect to applicable law, Greek courts predominantly favour the *lex fori* principle, while *lex executionis* applies to procedural aspects of enforcement. The law of the flag (*lex navis*) may strongly influence recognition of maritime liens, but does not

always prevail over *lex fori*. The principal trend traced in Supreme Court rulings is a steadfast preference for forum law, and recent judgments highlight the need for clear rules on creditor priority.

While there is a general tendency for Greek case law to align with basic principles of international maritime law, significant divergences remain. In our view, optimising the institutional framework for maritime liens calls for harmonisation of maritime law globally, in order to reduce-or ideally eliminate-inter-jurisdictional conflicts and reinforce legal clarity regarding creditor priorities. The CPM does not resolve the issue of creditor legal uncertainty, since creditors may be unaware whether their claims will be satisfied in a forced sale. We therefore consider that the establishment of a unified register of maritime liens, valid in all countries, would play an essential role in advancing transparency and legal certainty in transactions.

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