

ΕΛΛΗΝΙΚΗ ΕΝΩΣΗ ΝΑΥΤΙΚΟΥ ΔΙΚΑΙΟΥ

ASSOCIATION HELLENIQUE DE
DROIT MARITIME



HELLENIC
MARITIME LAW ASSOCIATION

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REPLY OF THE HELLENIC MARITIME LAW ASSOCIATION TO THE
CMI QUESTIONNAIRE
STUDY RELATING TO LIABILITY FOR WRONGFUL ARREST

I. INTERNATIONAL CONVENTIONS

(a) Please advise which, if any, of the following Conventions your jurisdiction is a party to and has given effect to in its legislation:

- (i) Arrest Convention 1952
- (ii) Arrest Convention 1999
- (iii) Maritime Liens & Mortgages Convention 1926
- (iv) Maritime Liens & Mortgages Convention 1993

Greece is a party to the Arrest Convention 1952, which was ratified and was incorporated in its legislation via the Legislative Decree no. 4570/1966. Greece has not ratified any of the other conventions.

(b) If none of the above is made part of your national law, or in any event, what are the grounds on which a vessel can be arrested in your country?

In cases where the Arrest Convention 1952 is not applicable, any party having a claim against the Owner of a vessel (whether maritime or not) may apply to the Court for its arrest according to the provisions of Articles 682 seq. and 707 seq. (with specific reference to Vessels in Articles 709, 713 and 720) GCCP provided that it can show on a prima facie basis that (a) it has a good claim and (b) there is risk that the claim will not be possible to be satisfied unless security is granted or urgent circumstances exist making necessary the arrest of the vessel as security for the claim.

II. THE QUESTIONS RELATING TO WRONGFUL ARREST

1. To what extent is a claimant required under your national law to provide security in order to obtain an order for arrest or, subsequently, to maintain an arrest?

Under Greek national law, a claimant is not required to provide security in order to obtain an order for arrest of a vessel unless the Court requires him to do so either ex officio or at the request of the owner of the vessel under arrest and at its discretion (Article 694 GCCP).

2. Under your national law, if the claim for which a vessel has been arrested has subsequently been rejected by the court hearing the case on its merits, would the arrestor be liable in damages by reason of:

(a) The mere rejection of the claim?

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(b) Or would proof be required about the arrestor's:

- (i) awareness/knowledge that this claim had no foundation, or
- (ii) negligence in bringing such a claim, or
- (iii) bad faith or gross negligence or, otherwise, malicious bringing of such a claim?

According to Article 703 GCCP, if the claim for which a vessel was arrested is subsequently rejected by the Court hearing the case on its merits by final and unappealable judgment, the arrestor could only be held liable to pay damages in respect of any loss or damage caused as a result of the enforcement of the judgment ordering the arrest or the other security/guarantee that was given as a substitute, only if he was aware or due to gross negligence ignored that the claim for which he had pursued the vessel's arrest did not exist. This means in effect that a claim for wrongful arrest may arise in particular in cases that the claimant used false evidence (documents or witness statements proved to be untrue).

It should be added that in practice there are very few precedents dealing with damages for wrongful arrest. The main reason for this is that in order to arrest a vessel a (summary) judgment is required, which is issued after the defendant is summoned to the hearing and he is given the chance to present his defence in an effort to persuade the judge that there is no good claim or risk/need for arrest or security. If the judge is persuaded (following consideration of the arguments and evidence of both sides) that on a prima facie basis there is a good claim and a need for arrest or security, it is very difficult for the defendant to argue subsequently that the claimant knew that he did not have a good case (unless of course he has used false evidence). Thus the intervention of the Court for the arrest and the summoning of the defendant is a protection of the Claimant from potential claims on the grounds of wrongful arrest.

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3. Under your national law, if a vessel is arrested pursuant to a decision by a court of first instance, but the arrest is subsequently repealed by an appeal court (without deciding on the merits of the claim):

(a) Would the arrestor be liable in damages for the consequences of the arrest, and, if Yes, in what circumstances?

(b) For liability under (a), if any, would proof of negligence, bad faith or gross negligence on the part of the arrestor be required?

The provisions of Article 703 GCCP, as mentioned above, would apply. It should be noted that Article 703 GCCP requires that the claim is dismissed on the merits and not without entering the merits. The main reason is that if a claim is dismissed on formalities, it may be resubmitted to the Court. If the claim is dismissed for lack of jurisdiction, it may be filed before the competent Court of another jurisdiction and be successful on the merits (subject to time limit/time bar).

4. If the arrest claim was not against the owner of the ship and could not be enforced against that ship under the law of the state where the vessel was arrested:

(a) Would, under your national law, the arrestor be liable in damages?

(b) For liability under (a), if any, would proof of negligence, bad faith or gross negligence on the part of the arrestor be required?

As noted above, under Greek law, the arrestor would be liable in damages only under the circumstances of Article 703 GCCP.

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More specifically, both the Arrest Convention 1952 and the GCCP do not require the claim to be enforceable against the owner only under the law of the state where the vessel was arrested. A judgment on the merits or enforceable against the owner or the vessel may be issued by the Courts of any other state which have jurisdiction and under any other law which is applicable on this matter. If such a judgment cannot be issued by any Court having jurisdiction and under any applicable law and as a result the claim is dismissed finally on the merits then article 703 of GCCP applies (of course) as long as the other requirements are also satisfied.

5. If the amount of the arrest claim was grossly exaggerated:

(a) Would, under your national law, the arrestor be liable in damages to the owner of the ship for any of the following losses caused by reason of the grossly exaggerated claim:

- (i) for the extra cost of the security required,**
- (ii) for losses incurred by the owner of the ship by reason of the delay caused by the greater time required to procure the security, or**
- (iii) for losses incurred as a result of the owner being unable to provide the excessive security?**

(b) For liability under (a), if any, would proof of negligence, bad faith or gross negligence on the part of the arrestor be required?

Although Article 703 of GCCP requires that the Claimant should have known (or by gross negligence ignored) that his claim does not exist, Article 703 of GCCP may apply (either directly or by analogy) also for exaggerated claims

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(since the excess is in effect non-existent). Alternatively Article 914 of the Greek Civil Code (GCC) regulating liability in tort might apply which requires at least negligence on the part of the arrestor. Article 914 of GCC has been used as a ground for damages for an alleged wrongful arrest out of Greece; Article 703 of GCCP seems to apply in principle for arrests effected in Greece, although it may also apply for arrests effected out of Greece, if the parties agree that Greek law is applicable. Regarding the law governing generally the wrongful arrest see the reply to question no.9 below.

In case of liability of the arrestor in damages, such damages may cover any loss or damage causally connected with the wrongful arrest (i.e. reasonably foreseeable by the arrestor or in fact by any reasonable person in his position).

6. If the person allegedly liable for the arrest claim is largely solvent and it is possible to enforce judgments or arbitration awards against him e.g. he owns many ships (not under separate corporate veils), which call regularly at ports where enforcement can take place:

(a) Can the arrest be considered wrongful as a result, so as to attribute liability to him under your national law?

(b) For liability under (a), if any, would proof of negligence, bad faith or gross negligence on the part of the arrestor be required?

To the best of our knowledge and understanding of the 1952 Convention, the matter of solvency or insolvency of the owner of the vessel the arrest of which is being attempted is not a condition for the arrest (or at least is not expressly provided in the Arrest Convention 1952, which seems to assume that a risk exists by the mere fact that the vessel is moving around the world). Therefore, the

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arrest of a vessel, notwithstanding that her owner is solvent and/or owns directly other property/vessels would not on its own render such arrest wrongful.

However, even if the risk and the need for security plays a role (as in the cases of arrest under the GCCP where the Arrest Convention 1952 does not apply or if it is held that such risk is also required under the Arrest Convention 1952) the defendant (owner) has the chance to appear before the Court (at the hearing for the arrest) and present his defenses relating to his solvency.

Any liability for wrongful arrest would in principle be decided according to the aforementioned Article 703 of the GCCP.

7. Are there other circumstances in which, under your national law, an arrestor can be held liable for the arrest of a ship?

Except for Article 703 GCCP referred to above (or possibly Article 914 Civil Code regulating tortious liability, under certain circumstances), there are no other circumstances in which, under Greek law, an arrestor can be held liable in damages for the arrest of a ship.

8. Does your national law provide for a penalty or other sanction to be levied upon the arrestor, separate and distinct from any damages, if he is held liable for the arrest?

Besides the provision of Article 703 GCCP, Greek law does not provide for any other civil penalty or other sanction to be levied upon the arrestor, separate and distinct from any damages, in the case that he is held liable for wrongful arrest. However, criminal penalties cannot be ruled out in case that the arrestor (knowingly) used false evidence.

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9. Would a court in your country, seized with a claim for damages for the arrest of a ship in another country, apply the law of the country of arrest (*lex forum arresti*) in that regard, or would it apply its own substantive national law (*lex fori*), or would it apply the substantive law applicable pursuant to the general law applicable pursuant to the general international private law rules of its country?

In case of arrest of a vessel within a member state of the 1952 Convention, a Greek court would apply the law of that member state, pursuant to article 6 of the Convention.

In case of arrest in a country not member to the Convention, a Greek Court seized of a claim for damages would apply again the substantive law applicable pursuant to the provisions of Regulation (EC) No. 864/2007 of the European Parliament and of the Council on the law applicable to non-contractual obligations (Rome II).

Piraeus, 6 October 2015



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President of the HMLA