

**REPLY BY THE FINNISH MARITIME LAW ASSOCIATION
TO THE CMI QUESTIONNAIRE OF 27 MAY 2015
ON THE STUDY RELATING TO LIABILITY FOR WRONGFUL ARREST**

CMI Study relating to Liability for Wrongful Arrest

Finland

I. International conventions

(a) Finland has given effect to the Arrest Convention 1952 by incorporating most of its provisions into its Maritime Code (FMC) Chapter 4 by means of Act 234/1995. The Convention entered into force in Finland on 21 June 1996 (Decree 312/1996).

II. Questions relating to wrongful arrest

1. In Finland the arrest is enforced only after the arrestor has provided satisfactory security. The security, usually a bank guarantee, should cover all the costs and economic losses caused to the opposing party if it is later proved that the arrest was unnecessary. The bailiff (executory officer) decides the amount of the guarantee, which is usually considerable. Furthermore, in addition to the bank guarantee, he usually demands a supplemental guarantee from one or two persons. The state and its institutions are free from the obligation to deliver security.

2. According to Chapter 7 § 11 of the Finnish Code of Judicial Procedure (CJP) strict liability is laid on the arrestor for the loss or damage if it is later proved that the arrest was unnecessary. This has been confirmed also by the Finnish Supreme Court (Decision 1998:59). Thus, the arrestor would be liable in damages by reason of the mere rejection of the claim (a).

3. The final court decision is decisive. If an appeal court repeals an arrest decision by a court of first instance, the arrestor will be liable in damages for the consequences of the arrest as mentioned *supra* under 2.

4. Chapter 7 § 11 of the CJP covers arrests of vessels in Finland. An arrest may be imposed on a vessel only for claims against the owner. However, if the claim is secured by a maritime lien, an arrest may be laid on the vessel even if the debtor is an operator or a charterer or other person who manages the vessel for her owner (FMC Chapter 3 § 2). A mortgaged vessel may also be arrested.

5. In Finland, the bailiff decides how much and which type of security is required in order to obtain the release of the vessel. A cash deposit or a bank guarantee is usually approved as security. *In casu* also a letter of undertaking of a P&I Club may be approved. In addition to the strict liability for unnecessary arrest measures mentioned before, the arrestor may also be liable in accordance with the Finnish Tort Act (412/1974). The Tort Act is the general law regulating non-contractual liability for damage or injury. It does not cover liability governed by *special* rules of law (Chapter 1 § 1). In the Tort Act, liability is based on fault and includes vicarious liability, such as employer's liability (including state liability for civil servants' fault and neglect). Further requirements for liability are the presence of loss or damage suffered by the victim and a causative link between the tortfeasor's wrongful conduct and the damage. Consequently, these rules may be applicable if the amount of the arrest claim is grossly exaggerated.

6. In Finland, the courts of first instance (“käräjäoikeus”) deal with applications for the arrest of vessels. It is in the court’s discretion to accept or reject an application for arrest of a vessel. A vessel may be arrested only for a *maritime claim* mentioned in Chapter 4 § 4 of the FMC (“closed list”). The arrestor must show both probable reasons for his maritime claim, which the defendant can be ordered to pay by a court decision or arbitral award enforceable in Finland, and that there is a risk that the defendant will hide, destroy or take away the vessel or otherwise jeopardise the right of the arrestor (CJP Chapter 7 § 1). The Finnish Supreme Court has in two decisions, 1994:132 and 133, placed considerably low demands on the arrestor’s burden to show probable reasons for his claim. As regards the other condition for arrest, that is, the risk that the defendant will jeopardise the right of the arrestor, the movability of vessels usually constitutes such a risk. Consequently, if the court accepts an application for the arrest of a vessel, there is no liability for the arrestor.

7. No

8. No, but for criminal conduct there is of course sanctions in the Penal Code.

9. A Finnish court would apply the substantive law applicable pursuant to the general international private law rules of Finland, that is, the Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II). Thus, the general rule would be *lex loci damni* (Article 4.1).