



REPLY OF THE CHILEAN MARITIME LAW ASSOCIATION TO THE QUESTIONNAIRE ON THE MATTER RELATING TO LIABILITY FOR WRONGFUL ARREST

In order to reply the Questionnaire, we shall follow the same order of each question raised by the IWG in charge of the study the areas of the Law concerning the arrest of ships, with the particular emphasis on the Law in relation to wrongful arrest.

I. (a) Chile is not party to any of the Conventions mentioned in the Questionnaire.

(b) The grounds on which a vessel can be arrested in Chile are:

(i) There must be a privileged credit on the vessel (Arts. 844 and 846 of the Code of Commerce.)

(ii) That this privilege must be in force (Art. 855 C. Com.), because, as a general rule, the privileges expires within one year from the date on which the privileged credit was originated, but this period may be shorter if the ship has been forced or voluntarily sold, in which case that period is reduced to 30 or 90 days, respectively.

(iii) The arrestor must produce evidences that may be qualified by the Judge as a presumption of the right claimed, and if they are considered insufficient, the Court may require that a guarantee must be produce. (Art. 1231 C. Com.)

(iv) If the arrest has been requested as a prejudicial precautionary measure, the applicant's arrestor must mention in the relevant writ the proposed action and summarize his basis, also indicating the amount and kind of security that he considers sufficient to ensure the result of the action.

II. 1. If the Court considers that the attached antecedents do not constitute presumption of the right claimed, it may be required from the applicant's arrestor a security to respond for the eventual damages that might be caused by the arrest if subsequently the Judge reaches to the conclusion that it was wrongful or illegal.

2. (a) No.

b) Considering the previous answer, what the injured party with a wrongful arrest should do, is to initiate an action for damages against the arrestor based on the extra-contractual liability rules (*in tort*), which implies that the affected or injured party must produce proof on damages and that they were caused by an arrest obtained with bad faith or with negligence of any kind (gross or not).



3. (a) The fact that an appeal court repeals an arrest, it does not automatically mean that the arrestor is liable in damages for the consequences of the arrest. If the affected party wants to obtain compensation for any loss or damage suffered by the arrest, he must initiate an action in tort by separate proceeding (similar to the case 2.b above).

(b) In the event the above procedure has been started, the answer is yes, but the affected party has always the burden of proof of fault or bad faith, except in cases where the arrest is requested as a prejudicial precautionary measure, in which case the arrestor is bound to present his writ containing the claim on the merits within the time fixed by the Court will (which may be extended up to 30 days), requesting for the confirmation of the arrest in the same writ.

If the arrestor does not present the writ of claim timely, or if he does not ask for the confirmation of the arrest to be maintained in force, or in case this last request is not confirmed or admitted by the Court, the law establishes a presumption of liability for damages against the arrestor.

4. On the understanding that the question refers to the arrest of ship for which there is no privileged credit, in order to pursue liability for damages arising from the arrest, it should be initiated a proceeding in tort, producing proof as indicated in paragraph 3.b above.

5. (a) (b) Like the previous answer, the affected party should initiate a civil action with the burden of proof on the damages. In such case, it could be considered as part of damages caused by reason of the grossly exaggerated claim those listed in subparagraphs a. (i), (ii) and (iii). But we must remark that the claimant in damages always has the burden of proof (with the exception mentioned in the last phrase of N°3.b above).

6. (a) (b) In Chile the arrest is also admissible because its request must be based on the existence of a privileged credit on the ship, regardless of the solvency of the allegedly person liable.

7. We refer to the answer of question 3.b above.

8. Yes, the condemnation to pay costs.

9. It will depend on the rules in the action for damages will be based.

December 2015

Eugenio Cornejo L.

President

CHILEAN MARITIME LAW ASSOCIATION