



Wrongful Arrest Questionnaire

Background: The Questionnaire on Wrongful Arrest of Ships – CMI Project is a pilot exercise to assist the IWG and CMI to determine what the next steps, if any, should be regarding this project.

We would be grateful if you could e- mail your answers (as much as you can) to the Rapporteurs, Edmund Sweetman (esweetman@icasf.net) and Dr George Theocharidis (gt@wmu.se), who will collate and analyse the answers.

Your Name

A/ Elizabeth Salas Jiménez

(1.2) How many years have you been practising?

A/ 25 years

(1.3) How many arrests of ships take place annually, more or less, in your jurisdiction?

A/ A very few arrests

(2) Have you or your colleagues dealt with a wrongful arrest case, or one that was considered to be close to wrongful?

A/ I haven't dealt with a wrongful arrest case

(3) Did it take place within your jurisdiction – or in another- and which?

A/ N/A

(4) If yes, provide details of the case.

(5) Was there a procedural mistake or defect?

A/ N/A

(6) Were any tactics used by the arrestor to put pressure on the shipowner?

A/ N/A

(7) Was the arrest aiming to challenge:

7.1) the inherent jurisdiction of another state; or

7.2) the jurisdiction agreed by the parties to the dispute in an arbitration agreement; or

7.3) was the arrest made for the sole purpose of obtaining security for the claim?

A/ N/A

(8) Was security for the claim readily available?

(9) What was the outcome in your example?

(10) Do you want CMI to make proposals for some degree of uniformity in the law on wrongful arrest of ships, or not?

A/No

(11) Instead of unification, would you support the provision of: 11.1) counter security (i.e. a requirement to lodge funds or equivalent security in Court);

A/Yes

or

11.2) cross undertaking to be provided as a condition of the arrest?

A/No

(12) What exemptions should there be in such a provision and for whose protection?

A/ No exemptions

(13) What should the test for wrongful arrest be (i.e. negligence, gross negligence or other)?

A/ In accordance with Decision 487,2000 of the Andean Community of Nations, with which I agree:

1) The courts of the Member Country in which the arrest has been practiced will be competent to determine the claimant's responsibility, when incurred, for the loss or damages caused by the arrest, in particular, but not exclusively, i) when the arrest has been illegal or unjustified; ii) for having asked for, and provided an excessive guarantee.

2) The liability in which, if applicable, the claimant may have incurred in accordance with the provisions above mentioned, shall be determined by the application of the law of the Member Country in which the arrest has been practiced.

Although our Colombian Courts have not dealt with these issues, I believe, taking into account that Decision 487 refers to "illegal arrest", that the test should be bad faith of the claimant.

(14) In the event of a finding of wrongful arrest, what remedy do you consider would be appropriate/fair?

14.1) an award of the legal costs incurred by the S/O to bring the W/A claim?;

A/ No

or

14.2) damages for all losses suffered by the S/O, if he proves that they were caused solely by reason of the wrongful arrest?

A/No

(15.1) Would you opt for an alternative remedy to damages?

A/ Yes

15.2) if yes, what would you suggest?

A/ I suggest that it should only be liable for the loss or damages suffered as the result of the wrongful arrest.

Please provide any further comments or observations which you believe would assist CMI in the furtherance of this project.