

Arrest of ships Croatian and Slovenian Codes.,
2007.

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ARREST OF SHIPS

PARTIAL FREE TRANSLATION OF

CROATIA

Maritime Act, 2004, Art. 951-965; 966-969

SLOVENIA

Maritime Code, 2001, Art. 945-959+841; 960-962



PREDGOVOR

Svrha je ovog slobodnog prijevoda da olakša eventualnu potrebu upoznavanja ili obavještanja stranaca sa odredbama o zaustavljanju brodova u Hrvatskoj i Sloveniji, u kojima se nalazi većina luka na ovoj obali Jadranskog mora., u onim slučajevima kada bi to bilo potrebno.

S druge strane, a obzirom da se na toj obali nalaze još i druge države (BiH, Crna Gora, Albanija, Grčka, pa donekle i sjeverni dio Italije), a da je uslijed putničkih linija, da se ne govori o jahtama, marinama i sl., promet vrlo mnogobrojan, a također i razlike u odredbama o privilegijama, zaustavljanju i sl., mogao bi ovaj prijevod koristiti a i biti početak jednog skupnog rada u svrhu upoznavanja, a jednom možda i usaglašavanja odredaba, pogotovo sada kada se mnogo govori o regijama i kada se već formira i oživljava Regija koja obuhvaća dijelove baš gore spomenutih država.

Dorđe Ivković

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(FREE TRANSLATION)

REPUBLIC OF CROATIA

THE MARITIME ACT

2004

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Part nine

TITLE IV

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NO. 4. TEMPORARY MEASURES (ARREST)

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NB. 1.-: Maritime Act does not contain all the necessary rules and regulations regarding the merits, procedure etc. and accordingly it contains provisions in Art. 841. for the application of additional rules and regulations from the Enforcement Act which in turn contains provisions in Art. 19. for the use of Civil Procedure Act, etc.

NB. 2.-: However, additionally see Art.8. of the International Arrest Convention 1952, of which Republic Croatia is a member.

NB. 3.-: Maritime Act does not use the expression "order of the arrest" but "Decision for temporary measure".

ARTICLE 951

(1) Before the institution or in the course of a civil, enforcement or administrative proceedings the

Court may, on the proposal of the petitioner permit any temporary arrest, especially prohibition of the alienation or disposal of the ship or surveillance and arrest of the ship, for the purpose of securing the petitioner's monetary claim, under the conditions requested by general rules on enforcement proceedings and if the present Act does not provide otherwise.

(2) In the case of non-monetary claims proposed by petitioner the Court may issue a temporary arrest under the conditions requested by the Enforcement Act if the present Act does not provide otherwise.

ARTICLE 952

The Decision for temporary arrest of the ship consists of the prohibition to the ship to depart from the port.

ARTICLE 953

The Decision for temporary arrest of the ship may be ordered only for claims arising out from :

1. damages caused by collision of the ship for which the temporary arrest is petitioned, or damage caused by this ship in some other manner,
2. loss of life or personal injury caused by the ship for which the arrest is petitioned or arising from the use of this ship,
3. salvage,
4. agreements relating to the use of a ship, for which the arrest is petitioned
5. general average,
6. towage
7. pilotage,
8. goods or materials supplied to a ship for her maintenance or operation,
9. construction, reconstruction, repair, equipment or docking of the ship for which the arrest is petitioned.
10. rights of the crew in connection with their employment
11. expenses incurred by a master, shipper, contracting party, or agent on behalf of the ship, her owner or the operator, in connection with a ship.
12. brokerages or agency commissions owed in connection with the ship.

(2) In addition to the cases stated in paragraph 1. of the present Article the temporary arrest of the ship may be ordered for the enforcement of a maritime lien or hypothèque or a charge similar to hypothèque

(3)The provisions regarding the limitation of the temporary arrest of the ships only for claims specified in paragraph 1. and 2. of the present Article apply to the foreign ships only in the case when there is reciprocity between the state of the ship's flag and the Republic of Croatia.

ARTICLE 954

(1). If the temporary arrest is requested for claims specified in Article 953., paragraph 1. of the present Act , any ship which at the time of filing of the petition is owned by the personal debtor, can be arrested.

(2). In the meaning of paragraph 1. of present Article, a personal debtor is a person, who, according to the law, is liable for the claim for which the temporary arrest is requested and at the time when the claim arose was the owner, operator, contracting party or bare boat charterer of the ship in connection with which the claim arose.

(3). In cases where the temporary arrest is requested for the realization of a maritime lien or hypothèque on the ship or a security similar to hypothèque arising out of foreign law, as well as in cases related to the ownership of the ship, it is possible to temporary arrest only the ship to which the mentioned maritime lien, hypothèque, or claim is connected.

(4). If the temporary arrest is requested based for the enforcement of the maritime lien or hypothèque on the ship or a similar security arising out of foreign law, such a ship can be temporary arrested as long as there is a valid maritime lien or hypothèque or similar security arising out of foreign law on the ship, regardless of whether at the time of filing the ship is still owned by the personal debtor.

ARTICLE 955

(1)If the temporary arrests are ordered as a security for monetary claims, the Court shall release the ship from the temporary arrest or custody if the offered security is accepted by petitioner, or in case the petitioner does not accept the security offered, then the security determined by the Court as of adequate quality for the

satisfaction of all claims for which the temporary arrest is sought, including the claims in connection with costs of procedure and interests.

(2)The security may be offered in the form of cash deposit, bank guarantee, guarantee by ship's liability insurer or other insurer, as well as other assets.

(3) The security mentioned in paragraph 1. of the present Article should not be higher than the overall amount of the limited liability in case of claims for which the opposite party (defendant) may limit his liability.

(4)When a Court on the territory of Republic of Croatia, on the basis of Paragraph 1. of the present Article, releases the ship from temporary arrest, no other Court on the territory of the Republic of Croatia shall order the temporary arrest neither of this ship nor of any other ship for the same claim and for the same petitioner, under the condition that the given securities are still available and transferable in favor of the petitioner.

ARTICLE 956

The Court shall not order the temporary arrest of the ship, and the temporary arrest already ordered will be revoked if the opposite party (defendant) proves that in another state adequate security for the same claim or for the same petitioner has been given, under the condition :

- 1). the security fulfils the requirements stated in Article 955. paragraph 1. of the present Act,
- 2). that the State on whose territory the security was given, applies the same procedure for securities given on the territory of Republic of Croatia.

ARTICLE 957.

Providing up security represents neither the acknowledgment of the claim for which the security has been given, nor a waiver of any defense to limit liability.

ARTICLE 958.

(1)In the Decision ordering the temporary arrest the Court shall decide its duration.

(2)If the Decision for the temporary arrest is issued prior to the proceedings by petitioner on the merits, or

enforcement proceedings, or administrative proceedings, he is obliged to prove, within 15 days, that he initiated the proceedings on the merits, or enforcement proceedings, or administrative proceedings.

(3) In case the petitioner does not prove that he initiated the proceedings on the merits or enforcement proceedings, or administrative proceedings the Court shall on motion of the opposite party revoke the temporary arrest.

(4) In case the time limit stated in paragraph 1, of the present Article expires before the conditions for enforcement proceedings or for registration or for pre-registration of the pledge have been met, the Court shall, on motion of the petitioner, extend the time of the duration on condition that the circumstances under which the for temporary arrest was issued, have not changed.

(5) In case the time limit stated in the paragraph 1, of the present Article expires and the conditions stated in paragraph 4. for the extension have not been met the Court shall on motion of the opposite party revoke the temporary arrest and annul the effected measures undertaken.

ARTICLE 959.

The temporary arrest shall be revoked and the issued Decision for temporary arrest annulled if any of the conditions specified in Article 949., paragraph .1., Nos. 1.-3. of the present Act are met.

ARTICLE 960.

(1). Maintenance costs of the ship and of the crew shall be paid by the ship-owner or operator.

(2) In case the fund's means for the maintenance of the crew are not sufficient, the Court shall order the petitioner to advance the necessary amount for the maintenance of the crew.

(3). The costs of the watching of the ship shall be advanced by petitioner.

(4). The provisions stated in paragraphs 1. and 3. of the present Article, shall not prejudice the final payment of these costs.

ARTICLE 961.

The Decision for the temporary arrest does not affect the rights and duties of the parties arising from the contract of transportation of goods and passengers.

ARTICLE 962.

As soon as the Court issues the Decision for temporary arrest the Court shall apply without delay and in the appropriate manner, the provisions of Article 860. of the present Act in accordance with the nature of the Decision of temporary arrest.

ARTICLE 963.

(1). As soon as the Court issues the Decision prohibiting the sale or other way of disposal of the ship, it shall decide at the same time that this Decision is duly entered in the ship's register where the ship is registered.

(2) When the Court finally rescinds the Decision for temporary arrest, stated in paragraph 1 of the present Article or when it ceases by force of Act, the Court shall order the deletion of the notation entry mentioned in the paragraph 1, of the present Article.

ARTICLE 964.

When the Court issues the Decision for temporary arrest of a ship which is flying a foreign flag, the Court shall, upon motion of the petitioner and at his costs, inform the competent foreign maritime authority of the issued Decision of temporary arrest and its revocation

ARTICLE 965.

(1) In case of monetary claims and non-monetary claims by the petitioner against the person entitled to dispose with the cargo on the ship, the Court may issue a Decision for temporary arrest consisting in an order to discharge the cargo from the ship and its storage in a

public warehouse or other suitable place, provided that the petitioner pays the total contracted freight to the operator, which has not been paid and all costs incurred, not included in freight.

(2) In the case that the delivery of the cargo, in accordance with provisions stated in the paragraph 1. of the present Article, is requested in a port not stated as port of delivery in the transportation contract, the Court shall issue the Decision for temporary arrest stated in the paragraph 1. of the present Article, only under the condition that the discharge from the ship does not result in a longer delay in the departure of the ship or disturbance in her schedule and that no damage results to other persons which are authorized to dispose with the cargo and that the discharge is not contrary to other important reasons.

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ART.. 966.

The rules of this section of the present Act, apply to all relationships in maritime navigation.

ART.. 967.

The rules of the present Chapter of the present Act apply to every maritime object which is according Croatian law a ship and to all maritime objects which are a ship according the law of the state's belonging.

ART. 968.

(1) When directing to the foreign law this directing means material law only, with the exclusion of its rules on private international law.

(2) When the collision rules of this part of the present Act direct to the application of the law of state's belonging and when that law permits the temporary flying of the flag of that second state in which the register of the bare boat charters is kept, for the matter of dispute, the law of the state the flag of which is temporarily flown is applied, provided that such application is permitted by the law of the ship's state's belonging.

ART. 969.

(1) It is the law of the state of ship's belonging which applies in cases of :

1). Master duties and rights in conducting the ship and in fulfilling the rights and taking obligations for the owner or operator;

2). real rights on the ship

3). legal effects of events on the ship for which it is obligatory to apply the law of the place where it happened.

(2) On the ships flaying foreign flag the rules mentioned in paragraph 1. under 3. of the present Article, apply to the events which took place in Republic of Croatia.

(FREE TRANSLATION)

REPUBLIC OF SLOVENIA

THE MARITIME CODE

2001

Official Gazette . RS, No. 26/2001, 21/2002, 110/2002-ZGO-1, 2/2004, 98/2005, 49/2006)

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PART EIGHT

TITLE IV

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NO. 4. TEMPORARY MEASURES

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NB 1.-: Maritime Act does not contain all the necessary rules and regulations regarding the merits,

procedure etc. and accordingly it contains provisions in Art. 838. for the application of additional rules and regulations from the Enforcement Act.

NB 2.-: However, additionally see Art.8. of the International Arrest Convention 1952, of which Republic Slovenia is a member.

ARTICLE 945

Before or in the course of civil, enforcement or administrative proceedings the Court may, on the proposal of the creditor permit a temporary measure consisting of prohibition of the alienation or encumbrance or disposal of the ship or watching and arrest of the ship, for the purpose of securing the creditor's monetary claim, if the creditor shows the probability of the existence of his claim and the danger that the debtor will dispose with the ship, hide the ship, take it away or in some other manner impede or make it later on very difficult to recover, the creditor's claim.

Temporary measures proposed by creditor, in the case of non-monetary claims, are allowed, if this is necessary, for preventing violence or to preclude irreplaceable damage.

ARTICLE 946

The order for the temporary arrest of the ship consists of the prohibition to the ship to depart from the Slovenian port.

If there is reciprocity between the state of the ship's flag and Republic of Slovenia the Court shall permit the temporary arrest of the ship only for the claims specified in the second and third paragraph of Article 841. of this Act.

In case there is no reciprocity between the state under whose flag the foreign ship is sailing and the Republic of Slovenia, the limitations specified in the previous paragraph do not apply.

(ARTICLE 947 DELETED)**ARTICLE 948**

Any ship may be arrested if owned by the same personal debtors or which is for the claim, for which arrest is sought, encumbered with maritime liens of hypothèque or other right of pledge of foreign law as well as for other claims listed in the third paragraph of Article 841 of the present Act, if the claim regards this ship.

If the debtor is bare boat charterer or contracting party, who according the law applicable to the contractual relationship between him and the ship-owner or operator, is liable to third parties, it is permitted to arrest this ship or any other ship, owned by debtor.

The provision stated in the previous paragraph is applicable also in all other cases when the operator or contractor, being personal debtor and not the ship-owner of the vessel, is personally liable for the claim for which the arrest is sought.

In case of the petition regarding the ownership, co-ownership and encumbrances, it is possible to arrest only that ship, which is connected with the claim.

NB: *see Article 841 in Addition at the end!*

ARTICLE 949

If the order for temporary arrests is issued by prohibition of departure or custody of the ship for the security of monetary claims, the Court may release the ship and permit her departure if the debtor gives an adequate security in the amount of the claim, interests and foreseen legal costs.

The security must be of such nature that the creditor can enforce his claim either in Slovenia or abroad.

In case of claims for which the debtor may limit his liability it is not necessary that the deposit or amount of other security specified in first paragraph of the present Article be higher than the amount of the limited liability.

When the Court releases the ship , the Court shall not permit arrest of any other ship for the same claim of the same creditor, if the debtor has already given adequate security in accordance with the first paragraph of the present Article.

ARTICLE 950

The Court will not permit arrest of the ship, and the permitted arrest shall be null, if the debtor proves that he has already given adequate security, in another state, for the same claim and for the same creditor.

ARTICLE 951.

Putting up security does not represent the acknowledgment of the claim for which the security has been given, nor a waiver of any defense to limit liability.

ARTICLE 952.

In the Decision ordering the temporary arrest the Court shall decide its duration.

In case the Decision ordering the temporary arrest is issued prior to the proceedings by creditor on the merits, or enforcement, or administrative proceedings, he is obliged to prove, within 15 days, that he commenced the proceedings on the merits, or enforcement , or administrative proceedings.

In case the creditor does not prove within 15 days that he initiated the proceedings on the merits or enforcement or administrative proceedings the Court shall on motion of the opposite party revoke the arrest.

In case the time limit stated in the paragraph 1, of the present Article expires before the conditions for enforcement or for registration or for pre-registration of the pledge have been met , the Court shall, on motion of the creditor, extend the time of the duration of the temporary measure on condition that the circumstances under which the temporary measure was issued, have not changed.

In case the time limit stated in the paragraph 1, of the present Article expires and the conditions stated in above paragraph for the extension have not been met the Court shall on motion of the debtor revoke the arrest and annul the effected provisions.

Article 953

Maintenance costs of the ship and of the crew shall be paid by the ship-owner or operator.

In case the fund's means for the maintenance of the crew are not sufficient, the Court shall order the creditor to advance the necessary amount for the maintenance of the crew.

The costs of the watch shall be advanced by creditor.

The provisions stated in paragraphs 1. and 3.of the present Article, shall not prejudice the final payment of these costs.

ARTICLE 954.

The issuance of a temporary order for arrest shall not affect the rights and duties of the parties arising from the contract of transportation of goods or passengers.

ARTICLE 955.

If the Court issues a temporary order for arrest of the ship it shall apply without delay the provisions of Article 852. of the present Act in accordance with the nature of the issued order.

ARTICLE 956.

If the Court issues the Decision for temporary measure prohibiting the sale, encumbrance or disposition of the ship it shall decide at the same time that this order is duly entered in the ship's register.

When the Court finally rescinds the Decision for temporary measure of arrest, stated in previous paragraph or when it ceases by force of Act, the Court shall order the deletion of the notation entry mentioned in previous paragraph.

ARTICLE 957.

In case of monetary claims and non-monetary claims by the creditor versus the person authorized to dispose with the cargo on the ship, the Court may issue a temporary measure of arrest consisting in an order to discharge the cargo from the ship and its storage in a public warehouse or other suitable place, provided that the creditor pays the total contracted freight to the

operator, which has not been paid and all costs incurred, not included in the freight.

In the case that the delivery of the cargo, in accordance with the provisions stated in previous paragraph is requested in the port not stated in the transportation contract as port of delivery, the Court shall permit the Decision for temporary measure stated in previous paragraph only under the condition that the cargo can be discharged without the danger for the security of the ship and remaining other cargo, that the discharge from the ship does not result a longer delay in the departure of the ship or disturbance in her schedule, that no damage results to other persons which are authorized to dispose with the cargo and that the discharge is not contrary to other important reasons.

Article 958

In the proceedings for the issuance of the temporary measure for arrest of the ship which is directly encumbered with maritime claims or claims arising from the pollution of the sea, the temporary decision shall be served to the Master of the ship. If the ship master refuses to accept it, the temporary measure shall be pasted on the plating of the ship against which it is issued and on the notice boards of the Maritime Authority and of the Court.

Article 959

When the Court receives the complaint of the debtor against the decision for temporary arrest of the ship, the Court must, without delay, order the hearing at which the facts and proofs, based on which the decision for temporary arrest was issued, are considered.

If the proofs filed, are in a foreign language, without a legalized translation, a sworn Court interpreter, obtained by the petitioner, must translate at the hearing, at the cost of the person submitting the proofs.

When the hearing is completed the Judge must, without delay, pronounce the relevant decision.

ADDITION

Article 841.

The ship owned by the debtor, which is used for economic activity, cannot be subject to enforcement if necessary for debtors economic activity.

The ship specified in the previous paragraph is not excluded from the forced execution if forced execution is conducted for the claim arising out from the loan with which the ship was acquired or for claim which is secured by a pledge on that ships.

The ship specified in the first paragraph of the present Article is not excluded from the forced execution if the latter is effected undertaken for the payment of the following claims :

1. for damages, resulting from the collision of the ship against which enforcement is being conducted or for damage resulting in another way;
2. for loss of life or personal injury occurring, whether on land or on water in connection with the operation of the ship, against which enforcement is sought.
3. from the salvage or contract of salvage, including the special compensation for salvage activities in case, when the ship or cargo threaten damage to the environment;
4. from the agreement regarding the use and charter of the ship and from the agreement regarding the transportation of the cargo or persons on the ship, regardless if such agreements are included in the contract for the exploitation of the ship against which the enforcement is sought;
5. from general average
6. from pilotage and towage;

7. goods or materials supplied to the ship, against which enforcement is sought, for her maintenance and operation
8. construction, reconstruction, repair, equipping or docking of the ship against which enforcement is sought
9. from the right of the crew to wages including costs for repatriation and social insurance contributions;
10. disbursement related to the ship made by the master, shipper, charterer or agent on behalf of the ship, ship owner or ship operator
11. insurance premiums in respect of the ship, payable by or on behalf of the ship-owner or demise charterer of the ship against which enforcement is sought
12. damage or threat of damage caused by the ship to the environment and coastline; measures taken to prevent, minimize or remove such damage, compensation for such damage; cost of reasonable measures of reinstatement of the environment actually undertaken or to be undertaken; loss incurred or likely to be incurred by third parties in connection with such damage; and damage, costs, or loss of a similar nature to those identified in this subparagraph .
13. costs and expenses relating to the raising, removal, recovery, destruction or the rendering harmless of a ship which is sunk, wrecked, stranded or abandoned, including anything that is or has been on board such ship; and costs or expenses relating to the preservation of an abandoned ship and maintenance of its crew
14. for loss or damage in connection with goods (including luggage) which are transported on the ship against which the forced execution is sought
15. port dues and charges
16. from disputes regarding the ownership or possession of the ship, disputes by co-owners regarding the use and income of the ship and disputes from the contracts of the sale of the ship against which the forced execution is effected
17. from the maritime liens hypothèque or similar encumbrances of the ship against which the forced execution is effected

The ship, which is the ownership of a legal entity which is not specified in the first paragraph of the present Article can be forcefully executed only in case if it is not necessary to the legal entity for carrying its activity.

LITERATURA NA ENGLESKOM

Ivkovic G., Maritime Law Handbook, Arrest of Vessels, Suppl. 26, (December 2005); Kluwer, 1955, CROATIA

Pavliha M., Grbec M.; Arrest of Ships in Slovenia, European Transport Law (ETL), Vol. 39, Issue 1, 2004, p. 3 - 15.