

SHIP ARREST IN SLOVENIA

By PATRICK VLACIC*
patrick.vlacic@fpp.uni-lj.si
patrick@lex-move.com
Ulica XXX. diviZije 16, 6320,
Portorož – Portorose, Slovenia
Tel: +38641718474



1. Please give an overview of ship arrest practice in your country.

There is exclusive jurisdiction of the District Court of Koper for all maritime cases. The eventual appeal should be filed before the Court of Appeal of Koper. Under certain circumstances it is possible to file an extraordinary appeal before the Supreme Court of the Republic of Slovenia.

It is essential for both parties to retain local lawyers as all the documents must be filed in Slovenian and the proceedings before the court are in Slovenian. The POA could be a fax or scanned document but during the procedure (before the court decision) the original has to be presented. For the defendant attorney the vessel's master signature of POA would suffice.

Article 8 of Constitution of the Republic of Slovenia provides: Laws and regulations must comply with generally accepted principles of international law and with treaties that are binding on Slovenia. Ratified and published treaties shall be applied directly.

There are two situations for the non-contracting states of International Convention for the Unification of Certain Rules Relating to the Arrest of Seagoing Ships, 1952 (the 1952 arrest convention). The first situation would be when there is reciprocity between the state whose flag the ship flies that could potentially be arrested in Slovenia. If a vessel flying a Slovenian flag could be arrested in that state only as a security for maritime claims also a ship flying the flag of that state could be arrested in Slovenia only for maritime claims as provided in Maritime Code 2001. The second situation is when there is no reciprocity. In that case the ship could be arrested in Slovenia for any kind of claim.

In order to achieve the arrest of ship the claimant should submit the following documents:

- An application (usually filed by a local attorney) and POA,
- A description of the claim, the amount and eventual claim for interest and costs,
- Documents that support the claim (translation in Slovenian by sworn translators).

Usually the court would issue the arrest order without hearing. In some cases a hearing could be possible (e.g. oral evidence is needed).

2. Which International Convention applies to arrest of ships in your country?

Slovenia is a party of the 1952 arrest convention since 1967 (at the time still as a part of ex Yugoslavia) and has adopted the 1952 arrest convention also after 1991 as a sovereign state, on 13 October 1993.

3. Is there any other way to arrest a ship in your jurisdiction?

In cases when the 1952 arrest convention is not applicable the Maritime Code 2001 would apply. In these cases Maritime Code 2001 is a *lex specialis* governing the type of claims, other maritime matters and procedure whereas the Enforcement and Security Act 1998 applies in all civil proceedings and is *lex generalis* for enforcement in Slovenia.

4. Are there alternatives e.g. saisie conservatoire or freezing order?

In certain circumstances (see the answer to question 1) there are some alternatives for arrest of ship through temporary injunctions under Enforcement and Security Act 1998.

5. For which types of claims can you arrest a ship?

For the parties (i.e. ships flying a flag of contracting state) of the 1952 arrest convention the types of claims are the ones from the original text - exclusively maritime claims listed in article 1 of the 1952 arrest convention. For non-contracting states of the 1952 arrest convention the list of claims from Maritime Code 2001 applies. Claims in Maritime Code 2001 are broader than the ones listed in article 1 of the 1952 arrest convention and are almost identical to the claims of International Convention on Arrest of Ships, 1999 (the 1999 arrest convention).

6. Can you arrest a ship irrespective of her flag?

Yes, taking into account the differences mentioned above.

7. Can you arrest a ship irrespective of the debtor?

The Article 948 of the Maritime Code 2001 provides:

Any ship may be arrested which is owned by the same personal debtors, or which is for the claim for which arrest is sought, encumbered by maritime lien of hypothec for another right of pledge based on the foreign law, and or another claims listed in Maritime Code 2001, which relate to the ship.

If the debtor is the bareboat or demise charterer of the ship or a charterer, who according to the law applicable to the contractual relation between him and the shipowner or ship operator is alone liable to the third persons - this ship may be arrested or any other ship which is owned by the debtor.

The provisions of the previous paragraph shall also apply in all other cases where an operator or employer who is a personal debtor, and who is not the owner of the ship is himself liable for the claims for which the arrest of the ship is sought.

In respect of a claim that relates to the ownership, co-ownership or a hypothec on the ship, only the ship to which this claim relates may be arrested. Slovenian law does not allow "actio in rem" therefore the personal liability is relevant.

8. What is the position as regards sister ships and ships in associated ownership?

The claimant must prove that at the time of arrest the sister ship(s) are in the ownership of the debtor.

9. What is the position as regards Bareboat and Time-Chartered vessels?

The ship can be arrested for claims against the Bareboat and Time-Chartered vessels.

10. Do your Courts require counter-security in order to arrest a ship?

Usually not but it might happen that the court demands the necessary funds for maintenance of the ship and of the crew and necessary funds for the watching of the ship. This happens when a ship owner or a carrier fails to perform his obligation to maintain the ship and the crew.

11. Is there any difference in respect to arresting a ship for a maritime claim and a maritime lien?

There is no difference.

12. Does your country recognise maritime liens? Under which International Convention, if any?

Yes, it does recognize the maritime liens. The provisions governing the maritime liens are in Maritime Code 2001 and are more or less the same as the one in International Convention for the Unification of Certain Rules Relating to Maritime Liens and Mortgages. Slovenia is not party of any international convention governing maritime liens, though.

13. What lapse of time is required in order to arrest a ship from the moment the file arrives to your law firm?

The arrest of ship would be usually obtained the same day when it is applied or the following day.

14. Do you need to provide a POA or any other documents of the claim to the Court?

The original POA is required but in the first phase the copy (e.g. fax or scan of original POA) would suffice. The proof of the claim is required (probability of existence of claim) and the claimant has also proof the danger that without the arrest there is a risk that the debtor will alienate the ship, conceal, take away the ship or in any other way prevent or make difficult enforcement of the claim.

15. What original documents are required, what documents can be filed electronically, what documents require notarisation and/or apostille, and when are they needed?

Copies of documents suffice at the stage of petition for arrest. Sworn translators should translate the documents that are not in the Slovenian language.

16. Will your Courts accept jurisdiction over the substantive claim once a vessel has been arrested?

The court in Slovenia will grant an arrest even if the contract contains a jurisdiction or arbitration clause. Anyway, any arrest has to be justified by commencement of proceedings of the merits. If the

parties do not agree on the jurisdiction or arbitration clause the court will in most cases also decide the case on the merits.

17. What is the procedure to release a ship from arrest?

There is no special procedure. When debtor presents an adequate security the temporary injunction is removed and the arrested ship is immediately released.

18. What type of security needs to be placed for the release?

Debtor has to provide an adequate security. If there is agreement between creditor and debtor on type of security the court will accept it. Usually if debtor would present the bank guaranty of reputable bank the court of law would accept it as suitable security. There is on going debate on this topic.

19. Does security need to cover interest and costs?

Yes.

20. Are P&I LOUs accepted as sufficient to lift the arrest?

Yes, if debtor and creditor agree with that kind of security.

21. How long does it take to release the ship?

The proceedings are fast as the decision is issued within duty judge of the court of law that has exclusive jurisdiction in maritime cases.

22. Is there a procedure to contest the arrest?

Debtor has a right to file objection against the temporary injunction by which a ship is arrested. Once the court receives the debtor's objection against the decision of arrest it shall without delay convene a hearing. At this hearing the court weigh the facts and evidence upon which the temporary injunction for arrest was issued.

23. What period of time will be granted by the Courts in order for the claimants to take legal action on the merits?

The claimant has to start the legal action on the merits within 15 days.

24. Do the Courts of your country acknowledge wrongful arrest?

Courts in Slovenia do acknowledge a wrongful arrest. The claimant is liable to pay damages to the debtor if the arrest subsequently turns out as not justified. There is no need for "mala fide" in order to prove a wrongful arrest. Damages are assessed in special proceedings on classic civil law ground (e.g. ordinary damages and loss of profit).

25. Do the Courts of your country acknowledge the piercing and lifting of the corporate veil?

There are provisions regarding the piercing and lifting of the corporate veil but in practice there have not been decisions like that in past in connection to arrest of ship.

26. Is it possible to have a ship sold pendente lite; if so how long does it take?

It is possible but in practice it does not happen. Procedures for a sale of ship are anyway quite long.

***Patrick Vlacic** got his bachelorship from Faculty of Law in University of Ljubljana, Slovenia, masters from Faculty of Law in University of Split, Croatia and Ph. D. from Faculty of Law in University of Ljubljana, Slovenia. Worked for two years as judicial trainee (1995–1997) and passed bar exam (1998). From 1998 to present time he was lecturing Maritime Law, Transport Law, Commercial Law, Civil Law and Air Law at University of Ljubljana, Faculty for Maritime Studies and Transport and Faculty of Mechanical Engineering. In between, he was CEO of Airport of Portoroz (2002-2004) and Minister of Transport of Republic of Slovenia (2008-2012). At present, besides lecturing, he is also practicing law.