

Part I. Arrest of Vessels

1. SOURCES OF NATIONAL LAW

The Maritime Act, 1994, (MA), has specific rules regarding arrest (Arts. 974–988) and MA makes reference to the Forced Execution Procedure Act (FEPA), as complementary law, and through FEPA to the Civil Procedure Act (CPA) and the Conflict of Laws Act (CLA).

MA applies when the vessel to be arrested is flying the flag of the Republic of Croatia or of a non-contracting state, provided that state applies reciprocity to vessels flying the Croatian flag.

If the state, whose flag the vessel to be arrested is flying, is not applying reciprocity to vessels flying the Croatian flag, then MA applies but without being limited to certain specified maritime claims (Art. 878 paras. 1 and 2 of MA) and the vessel may be arrested for practically any claim.

The place of precedents (decided cases) in Croatian law is discussed in Chapter 24, *below*.

2. APPLICABLE INTERNATIONAL CONVENTIONS

The Republic of Croatia is a contracting state of the 1952 Arrest convention and according to Art. 134 of the Constitution of the Republic of Croatia, international conventions which have been ratified and promulgated have stronger force than other laws and are applied, (according to the judgment of the Supreme Court of Croatia No. II-Rev-7/1989-2 dated 3 December 1991), in the wording which has been ratified and published.

Consequently, the 1952 Arrest convention is used whenever the vessel to be arrested is flying the flag of a contracting state. It can be said then, that there are three regimes applied in Croatia.

Croatia has officially stated that international agreements ratified and promulgated (put into force) by former Yugoslavia, will continue to be valid in Croatia. These include:

- a) The International convention Regarding the Arrest of Seagoing Ships, Brussels, of 10 May 1952, (Ratification, *Official Gazette No.*

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- 12/67 – dated 25 July 1967), and
b) The International convention Relating to the Registration of Rights in Respect of Vessels under Construction, of 27 May 1967 (Ratification, *Official Gazette No. 1/71*).

3. COMPETENCY OF COURTS OR OTHER AUTHORITIES

Orders of arrest (called 'Decisions for temporary measure') may be issued only by Commercial courts.

The court which has jurisdiction is specified in Art. 875 of MA as follows:

Para. 1. If the order must be entered into the Register of ships, or Register of ships under construction, it is the court which has territorial jurisdiction over the place where is situated the Register in which the ship, or the ship under construction, is entered.

Para. 2. If the order must be entered into the Register of ships, or Register of ships under construction, and if proceedings on the merits have been initiated, the jurisdiction is with the court before which the proceedings on the merits have been initiated.

Para. 3. If it is not necessary that the order be entered into the Register of ships or Register of ships under construction, the jurisdiction is with the court in whose territorial jurisdictional area, the ship is situated at the moment of the filing of the application for arrest. In case the arrest is petitioned against a Croatian ship which is not situated in the territorial sea or inland sea waters, the jurisdiction is with the court in whose territorial jurisdictional area is situated the Register in which the ship is entered.

Para. 4. If it is not necessary that the order be entered into the Register of ships, and proceedings on the merits have been initiated, that court may also issue the order.

Para. 5. In cases under Paras. 3 and 4, the court in whose territorial jurisdiction the ship is situated will carry out the order.

Para. 6. If it is not necessary that the order be entered into the Register of ships, and if it is not known whether the ship is situated in Croatian territorial waters or inland sea waters, at the time the application for arrest is filed, or if the ship is not entered into a Croatian Register of ships, the claimant may file the application with any court having jurisdiction in maritime matters. The claimant may then submit such order to any court having jurisdiction in maritime matters, where the ship may be found, with the request that such court carries out the order.

Paragraph 6 of Art. 875 gives the right of so called 'flying arrest', mean-

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ing that if it is not known whether the vessel is in territorial or inland sea waters, an arrest order may still be issued provided other conditions are met.

The order forbidding the sale or other disposal of a Croatian vessel must be entered into the Register (Art. 986). In the case of a foreign vessel, the claimant may request, at claimant's cost, that the court officially informs the competent foreign body of such order (Art. 987).

The courts will issue arrest orders in respect of contractual claims and claims based on tort provided other conditions, as stated in the law, are fulfilled and the courts will accept jurisdiction to make arrest orders irrespective of whether a contract contains an arbitration clause or a foreign jurisdiction clause and even if a contract contains an exclusive foreign jurisdiction clause. This is because Croatian law regards proceedings for the arrest of a vessel, as a special kind of proceedings named 'non-litigious proceedings' which are special separate proceedings, not directly connected with the merits of the claim. This is the reason why, for the parties engaged in arrest proceedings, the terms used are not 'plaintiff' and 'defendant' but 'claimant' or 'petitioner' or 'applicant' or 'arresting party' and 'opposite party'.

Within a prescribed period of time after the notification of the order of arrest, regular proceedings on the merits must be initiated in order to validate the arrest, (Art. 981 paras. 2 and 3). Every arrest must later be confirmed by a judgment or award on the merits and it is only on the basis of such final judgment or award that proceedings for the sale of the vessel are permitted.

Jurisdiction over the merits may also exist provided the provisions of the 1952 Arrest convention or CPA are fulfilled, (*see* Chapter 16, *below*).

In certain cases (e.g. pollution or contraband) some other authorities have the right to prevent the vessel sailing from a port or anchorage or may arrest the vessel '*ex officio*'.

4. IMMUNITY OF STATE-OWNED VESSELS

The 1926 Convention on Immunity of State-owned Ships has not been ratified, however the principles of this convention are adopted in MA, which applies the test of whether the vessel in question is used for commercial or non-commercial purposes. Thus, vessels owned by some foreign state-owned organisations have, for example, been arrested.

5. TYPES OF CLAIMS FOR WHICH AN ARREST MAY BE REQUESTED

If the vessel is flying the flag of a contracting state, the 1952 Arrest convention is directly applied by the Croatian courts as provided for in

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Art. 134 of the Constitution of Croatia. Consequently, only the maritime claims specified in Art. 1 of the convention may be the basis for the arrest of a vessel flying the flag of a contracting state.

When the 1952 Arrest convention is not applicable, MA applies. Art. 981 of MA specifies that a vessel may be arrested only for maritime claims specified in Art. 878 paras. 1 and 2 of MA. Art. 976 of MA provides that Art. 877 is applied to vessels flying the flag of a non-contracting state, provided that the country of the flag applies reciprocity to vessels flying the Croatian flag.

If there is no reciprocity, FEPA applies, which means in practice that the vessel may be arrested for any claim. The prevailing view is that it must be established that the flag state of the vessel to be arrested does not offer reciprocity.

Article 878 in para. 1, provides that a vessel may be arrested in respect of claims for maritime liens and mortgages (including *hypothec*), irrespective of the flag of the vessel. There are practical problems, in applying this principle, for example in proving that a maritime lien exists, as liens are not usually registered.

The 'maritime claims' defined in MA, are very similar to 'maritime claims' as defined in Art. 1 of the 1952 Arrest convention, but there are some differences. Article 878, para. 2, of MA defines 'maritime claims' as follows:

1. damage caused by collisions between vessels, whether directly or otherwise.
2. injury or loss of life caused by a vessel or arising from the use of a vessel,
3. salvage,
4. agreements relating to the use of a vessel,
5. general average,
6. pilotage,
7. goods or materials supplied to a vessel for her maintenance or operation,
8. construction, repair or equipment of a vessel,
9. wages of the crew,
10. expenses incurred by a master, shipper, contracting party, operator or owner in connection with a vessel.

For present purposes it is not necessary to analyse the differences between Art. 878 of MA and Art. 1 of the 1952 Arrest convention.

The procedural rules applied are those found in Croatian law.

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6. OTHER SPECIFIC PRECONDITIONS TO AN ARREST

MA, in conjunction with FEPA, requires that a claimant seeking an arrest order must establish firstly that he has a 'probable' claim and secondly that there is a reasonable possibility that the opposite party may try to avoid payment or that there is a risk that the claim may not be recovered. However if the payment must be collected abroad, then there is no need to establish that this risk exists.

7. DEFINITIONS OF 'SHIP' AND 'VESSEL'

There is no clear distinction between the expression 'vessel' and 'ship' in the Croatian language.

Article 5 para.1 no. 2 of MA defines a 'vessel' as a 'navigating craft' intended for sea traffic which is more than 12 metres in length and of more than 15 GRT. Article 867 para. 3 of MA provides that oil rigs, barges, floating cranes, docks, and other 'technical floating objects' as defined in Art. 5 para. 1 no. 7 are considered as a 'vessel', and are subject to the provisions of MA. So are tugs, yachts (under certain conditions), fishing vessels, vessels under construction *etc.*

As regards the arrest of a vessel under construction, MA specifies that the same qualifies as a vessel under construction, as from the moment of the laying of the keel. The 1967 convention regarding the registration of vessels under construction may apply, and if a vessel has been entered in the Register of vessels under construction, an arrest is possible according to MA, provided the opposite party is registered as owner of the vessel under construction. If the vessel has not been registered (registration is not obligatory – Art. 203 of MA), FEPA will apply but the proceedings will not involve the application of maritime law. In such cases, a thorough study of the building contract is necessary, as well as inspection of the Register of vessels under construction.

8. EVIDENCE NECESSARY TO SUPPORT AN ARREST APPLICATION

The law distinguishes between monetary and non-monetary claims. In the case of monetary claims, it is necessary to demonstrate the existence of a 'probable' claim and to show that on the facts of the case (e.g. the attitude of the opposite party), any eventual judgment is unlikely to be paid or to be enforceable. If payment for any subsequent judgment is to be made from abroad, or if payment must be enforced abroad, the likelihood of non-payment is assumed to exist.

Article 265 of FEPA provides that:

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'Interlocutory relief may be granted when the creditor shows the probability of the existence of the claim and a danger that without such interlocutory relief the debtor will make it impossible or very difficult to obtain payment by selling the assets or removing them or hiding them or using them in some other way. It is presumed that such danger exists if payment is to be collected from abroad.'

Article 974 para. 1 of MA states:

'Before the institution of, or in the course of civil law, executory, or administrative proceedings the court may, on the proposal of the creditor allow any temporary measure, especially prohibition of the alienation or disposal of the vessel or watching and arrest of the vessel, for the purpose of securing the proposer's monetary claim, under the conditions requested by general rules on enforcement and if the present Act does not provide otherwise.'

Article 974 para. 2 of MA provides that in the case of non-monetary claims, the court may issue an arrest order under the conditions requested by general rules on enforcement and if the present Act does not provide otherwise.

To establish these conditions a claimant may adduce evidence in any form permitted by the CPA, such as documents, witnesses *etc.* An application supported by documentary evidence can be dealt with more quickly than, for example, one supported by oral evidence. In the latter case it is necessary for a hearing to be fixed.

The CPA provides that all documents submitted as exhibits must be translated by a court interpreter into the Croatian language. This may take quite some time. Certain judges do, however, accept applications without translation, provided the documents are such that the nature of the claim is easily understood (for instance, invoices). But even in such cases a translation must be supplied as soon as possible afterwards.

Article 269 of FEPA provides that the claimant may state in the application that he will accept a deposit by the opposite party, instead of the arrest.

Article 270 of FEPA provides that an arrest may be permitted even if the claimant does not establish the 'probability' of his claim, provided the claimant deposits an amount fixed by the court for damages which the opposite party may suffer due to the arrest.

9. SISTER SHIPS

Slight differences exist between Art. 3 of the 1952 Arrest convention and Art. 977 of MA, although in many cases those differences will not manifest themselves. For most purposes, the provisions of the conven-

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tion and MA in relation to sister ships may be regarded as the same, although, in the case of vessels registered in a non-convention state, MA seems to be more flexible than the convention.

The courts will not 'pierce the corporate veil'. The claimant must demonstrate that the alleged sister ships are both in the same ownership and usually the only document proving this is an exact from the relevant register of vessels showing ownership.

10. DEMISECHARTERED OR TIMECHARTERED VESSELS

The definitions of 'demise, bare-boat and time charter' contained in MA do not correspond entirely with the definitions found in English or other laws. For this reason, it is not easy to compare the 1952 Arrest Convention, or other laws, and MA.

The legal system in Croatia provides that a court may apply either the 1952 Arrest convention (Art. 10) or MA or FEPA, depending on the circumstances of the case. Naturally, there might be differences.

Leaving aside the 1952 Arrest convention as an international law, which should in theory be identical everywhere, it is left to explain the situation under MA.

Article 977 of MA has the following provisions:

Para. 1. Any ship may be arrested which is owned or co-owned by the same personal debtors, or which is for the claim for which arrest is sought, encumbered by a maritime lien or *hypothec* or another foreign-law mortgage or lien and for other claims as referred to in Art. 878 para. 2, of this Act which relate to the ship.

Para. 2. If the debtor is the charterer by demise of the ship or the employer – who according to the law applicable to the contractual relation between him and the owner of the ship or the operator, is alone liable to third persons – this ship may be arrested or any other ship which is owned by the charterer by demise or employer.

Para. 3. The provisions of para. 2 of this Article shall also apply in all other cases where an operator or employer who is 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.

Para. 4. In respect of a claim which relates to the ownership, co-ownership or a *hypothec* or maritime lien on a ship, only the ship to which this claim relates may be arrested.'

MA provides that to establish maritime liens, the law of the flag applies (Art. 991 of MA), which means that the law of the flag will have to be proven. Often, this is a difficulty in urgent proceedings, (which arrest application usually are).

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It is possible to arrest assets belonging to a charterer (bunkers, stores *etc.*) but it is always difficult to prove the ownership of fuel or stores, as the proceedings are *in personam* (there are no proceedings *in rem*). As regards the problem of who is responsible for paying for bunkers, the Court in Rijeka and the Appellate Court in Zagreb, have decided that the owner of the vessel is also responsible regardless of the fact that the bunkers may have been ordered by a charterer and that the invoice was addressed to the charterer, (OPS Rijeka in file R-I-28/89 dated 31 July 1989 and PSH in file Pz-2202/89 dated 24 October 1989.)

11. FORM OF APPLICATION

The arrest application must be prepared in the Croatian language. For this reason it is customary to retain a lawyer. The application consists of the following:

1. Identity of the claimant, full style
2. Identity of the opposite party, full style
3. Short history and description of the claim, principal amount and the amount of any claims for interest and costs.
4. In the case of a charter by demise, or time charter *etc.*, besides the details of the opposite party, the identity of the shipowner(s) and their full style must be given. The shipowner must be the registered shipowner. It is not sufficient to give information about the 'disponent owner' or some other such party.
5. Copies of documents on which the claim is based, including documents proving the 'probable' existence of the claim and the risk that the claim might not be honoured. Such documents may consist of newspaper cuttings regarding the poor financial position of the opposite party, or the opposite party's instruction to his agent that the vessel must sail unexpectedly *etc.*, survey reports; calculations of lost profits; orders for goods and services signed by the master; documents of delivery of goods signed by the master; extracts from the claimant's book-keeping listing all invoices, payments and balances; reminders for payments; disbursement accounts; *etc.* In the case of crew members arresting the vessel: payroll sheets; receipts for money received, *etc.* An affidavit is not acceptable.
6. Contracts; charterparties; correspondence *etc.*, if they are useful.
7. Any other helpful information and/or documentation.
8. In cases where a lawyer is acting for the claimant, the power of attorney in favour of the lawyer.

The rules of court do permit the making of an oral application to arrest, but these are practically never used. Written applications are filed

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with the competent court and the arrest order is usually issued by the judge in chambers, without a hearing.

12. MUST THE ARRESTING PARTY PROVIDE SECURITY?

A claimant is practically never ordered to put up counter-security before an arrest is granted. But after an arrest has taken place, the opposite party may seek a court order requiring petitioner to put up counter-security to meet the opposite party's costs and damages if the petitioner fails in his claim on the merits. It is not clear, in law, whether the opposite party must make such application before he provides his own security in substitution for the vessel under arrest. The appellate court currently takes the view that the opposite party must apply for counter-security before putting up his own security.

13. REPRESENTATION BY COUNSEL; POWER OF ATTORNEY

It is customary for foreign litigants to retain a local lawyer, both because of language difficulties and because of the specialist knowledge required. The local lawyer must be supplied with a simple written power of attorney. It need not be legalised. The courts will accept a power of attorney sent by telex, telefax or cable addressed to the court, provided same is confirmed by registered letter sent within three days thereafter. As for the opposite party's lawyer, a power of attorney signed by the vessel's master will suffice.

14. COURT HEARING

Usually, arrest applications are decided upon by the court without a hearing if the judge is satisfied with the documentation submitted to him. If the claimant wishes to adduce oral evidence in support of the application, a hearing will be arranged.

The opposite party may file an opposition against the arrest order. The opposition is dealt with by the same judge as issued the arrest order. The judge may fix a hearing or arrive at his decision on the basis of the documentation filed by parties. Any decision reached may be the subject of an appeal.

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15. PROVISION OF BAIL BY DEFENDANTS

When issuing an order of arrest, the judge may specify therein the amount of security which must be provided by the opposite party in order to procure the release of the vessel. Usually the claimant refers in his arrest application to the amount he is seeking as security and the court will include this amount in the arrest order. The amount of security should include an allowance for interest and costs. When security is provided, the arrest must be terminated.

If the opposite party is entitled to limit her liability in respect of the claim in question, security need be put up only to the amount of the limit of liability. But often delay will arise in proving either that the opposite party is entitled to limit or, if so, the amount in monetary terms of such limit (the law of the flag applies to an overall limitation – Art. 994 para. 1, or MA, if MA is stricter than the law of the flag). If it is urgent to obtain the release of the vessel, it may be better to provide security for the full amount demanded and postpone the limitation question until later. A third interested party may also provide the security.

Article 978 and 979 of MA provide for those cases in which security for a claim has already been provided by the opposite party, either in Croatia or in a foreign jurisdiction. In principle, it is not permissible in such a case to re-arrest the vessel in respect of the same claim.

In general, the opposite party is required to provide cash security. Security in form of a letter of undertaking from a foreign bank or P & I Club is acceptable to the court if the claimant agrees to it. A letter of undertaking from a foreign bank which has been confirmed by a first-class local bank will be accepted irrespective of the claimant's views.

A vessel may be arrested in Croatia in circumstances where the action on the merits is to be dealt with abroad. In these cases the question of provision of security is much more complex and it is usually left to the parties to reach an appropriate agreement between themselves. The Croatian court will not become involved in questions relating to the validity of foreign judgments or arbitration awards and whether the same are or are not secured by the letter of undertaking.

The provision of security does not constitute an admission of liability for the claim, (Art. 980 of MA). If security is provided by way of a cash deposit, same will not earn any interest while lodged with the court.

16. PROCEEDINGS FOR MAINTAINING AN ARREST

Article 981 of MA provides that the claimant must commence proceedings on the merits and give formal notice thereof to the court, all within 15 days from the date of notification of arrest.

If the claim on the merits is subject to an arbitration clause, then the

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arbitration must be commenced and the court supplied with documents proving the appointment of the arbitrator or with other documents proving commencement, depending on the rules and regulations regarding the commencement of the arbitration, within the same period of 15 days.

The claim on the merits must be commenced within the correct jurisdiction. Croatian law recognises the validity of most contractual jurisdiction clauses. If there is no jurisdiction clause, jurisdiction may be established pursuant to the 1952 Arrest convention (if the same is applicable to the vessel in question), or pursuant to Croatian law, namely CLA. If Croatian law is applicable, it tends to provide that the court which carried out the arrest shall also have jurisdiction over the merits of the claim, (*see* Art. 875 of MA, Chapter 3, *above*). This is because the presence of the vessel, or of the cash deposit put up by way of security to obtain release of the vessel, is regarded as an 'asset' giving jurisdiction to the court within whose territory the asset is physically located. Procedurally, arrest proceedings and the action on the merits are quite separate proceedings, but they are inter-connected.

If the arresting party has not both commenced proceedings within 15 days and given formal notice to the court, or if no prolongation has been obtained in due course, the vessel or any security which has been provided may be released upon application by the opposite party.

A jurisdiction clause in a bill of lading is not regarded as binding upon cargo interests, as a bill of lading is not regarded as the contract, but merely as a proof of the contract, or simply as a document issued by one party. Similarly, jurisdiction clauses in charterparties which have been executed by brokers or agents are of doubtful validity because brokers and agents are not regarded as having special authority to agree to jurisdictional matters. Writers feel that such clauses in bills of lading should be valid.

As regards arbitration clauses, the situation is different, because the New York convention, 1958, has been ratified and Croatia is bound by it.

17. COSTS AND ADVANCES FOR COURT PROCEEDINGS AND CUSTODY

It is almost impossible to estimate costs in advance. The expenses of an arrest will include court fees and lawyers' fees (which both depend on the size of the claim) and other items such as translation and legalisation fees.

The costs relating to the vessel may also vary widely. If a vessel with a crew on board is arrested for a brief period of time, the costs will usually be minimal but prolonged arrests will usually be costly, especially if the owner abandons the vessel to its fate. In such cases the arresting party may have to advance funds for watching and berth charges,

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removal of garbage *etc.*, and perhaps even for a skeleton crew. If the arresting party fails to advance such funds, the port authority may do so, in which case the authority will have first charge on the sale proceeds of the vessel. Alternatively, the court might discharge the vessel from arrest.

18. ENFORCEMENT OF ORDER OF ARREST

A vessel is, in law, arrested when the order of arrest is served. An arrest does not involve any change in the possession of the vessel: it remains in the possession of its owner or demise charterer, or as the case may be.

19. SERVICE OF THE ORDER OF ARREST

When an arrest order is made, formal notice of it is given by the court to the appropriate harbourmaster. The harbourmaster, in turn, serves the order upon the vessel's master. The harbourmaster must take away the documents of the arrested vessel, (Art. 985 of MA in conjunction with Art. 887 of MA).

If a Croatian court is also exercising jurisdiction over the merits of the claim, separate steps must be taken to serve those proceedings. Procedure exists under which the proceedings on merits may also be served on the master of the vessel and for tactical reasons the writ is usually filed at the same time as filing the application for arrest, so as to avoid the need subsequently to serve the writ on the defendant outside the jurisdiction, a task which may be difficult or impossible.

In Croatia, all such proceedings are conducted *in personam*: the *in rem* procedure does not exist under Croatian law.

20. TIME ELEMENT

Usually, an arrest may be obtained and served within the space of a full working day. It is possible to obtain an arrest outside normal court hours, provided notice is given in advance to the President of the court. If the vessel is lying some distance from the nearest competent court, notice of the arrest will be conveyed by court to the appropriate harbourmaster by telephone, cable or telefax, with the written order being delivered on the following day.

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21. APPEAL BY OPPOSITE PARTY

As mentioned earlier in Chapter 14, the opposite party may file an opposition to the arrest order within eight days. An appeal may, in turn, be lodged against that decision, again within eight days. An opposition or appeal does not postpone the arrest.

The opposite party may also seek to have the arrest set aside if the claimant fails to commence proceedings on the merits within the required time limit; or on the grounds that security has already been provided, or that the claim has been paid or settled or adjudged non-existent.

22. FORCED SALE IN THE ARREST PROCEDURE; PRIORITY OF CLAIMS *IN REM*

As stated above, proceedings *in rem* do not exist in Croatia. It is possible for the vessel to be sold within the arrest procedure only if either the opposite party consents to the sale, or the court concludes that the cost of keeping the vessel under arrest will exceed the likely sale price if the sale is deferred until the end of the main action. The courts are reluctant to order sale within the arrest procedure. Usually, therefore, a forced sale takes place after a final judgment or arbitration award on the merits has been obtained and, if such judgment or award has been obtained abroad, only after recognition of the judgment or award by a competent Croatian court. The Maritime Act permits sale by way of enforcement under special provisions, (Art. 867 to 955 of MA).

As regards the priority of claims, detailed provisions are to be found in Art. 938 of MA and they are: firstly, maritime liens; secondly, 'retention' (a kind of possessory lien); thirdly, mortgagees (*hypothec*), and finally other claimants. In the case of maritime liens, the judge will apply the law of the flag, (Art. 991 of MA), as to which claims constitute maritime liens and their ranking and this may give unexpected results for lienors.

23. CLAIMS FOR DAMAGES BY THE OWNER OF THE ARRESTED VESSEL

Article 274 of FEPA provides that an arresting party is liable to pay damages to the opposite party if the arrest subsequently turns out not to have been justified. If the claimant's claim fails, then the arrest is deemed not to have been justified. It is not necessary to prove that the claimant was motivated by malice in arresting the vessel. A claim for damages for wrongful arrest must be commenced within three years from the date of the arrest. The claim will be heard and damages assessed, by the same judge as dealt with the arrest application. Both parties have the right to appeal.

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24. SPECIAL REMARKS

There is no system of legal precedent so far as court decisions are concerned. Lower courts are not bound by the decisions of higher courts, although the decisions of higher courts are regarded as giving valuable guidance.