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## Title: Procedures for the Arrest of Ships in Algerian Legislation

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### Abstract

Despite the Algerian legislator's failure to specify the measures that port authorities must take to prevent a ship from sailing—or at least to outline standard or typical forms of such measures—and despite the absence of provisions allowing the detention of foreign ships passing through Algeria's territorial waters in accordance with Article 28 of the Montego Bay Convention (United Nations Convention on the Law of the Sea, UNCLOS), as well as the lack of clarity regarding the authority responsible for executing detention orders, the legislator also ignored the potential undermining of maritime police powers in enforcing the aforementioned proposal. Furthermore, the law does not distinguish between the procedures for detaining a ship and arresting a ship, given that the latter relates to a state's internal regulations and its international obligations concerning environmental protection and combating maritime crimes.

However, the legislator emphasized the necessity of notifying the judicial order that obligates the port authority to comply with its content by taking all necessary measures deemed appropriate to immobilize the ship subject to detention. Consequently, the role of the port authority is limited to ensuring compliance with the detention order. For instance, it may order the ship to relocate its berth to another dock or a designated anchorage area within the port if its current position threatens security or port operations. Nevertheless, such intervention does not constitute interference in the management or operation of the ship, as the port authority is not a party to the dispute.

**Keywords:** Ship, Maritime Authority, Seizure, Service of Notice

### Introduction

Article 659 of Law No. 08-09<sup>1</sup> stipulates that a seizure order must be officially served on the debtor, and the judicial enforcement officer (*huissier de justice*) must draft a seizure and inventory report under

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penalty of nullity. A copy of the seizure report must be delivered to the debtor no later than three (3) days after service. If the seizure order is not served within two (2) months of its issuance or is served but not executed, it shall be automatically voided by operation of law under Article 690 of the same law. However, the second paragraph of this article allows for the renewal of the seizure request after this deadline.

Pursuant to Article 152 of Law No. 98-05<sup>2</sup>, once a seizure request is submitted to the competent judicial authority, the maritime authority must be immediately summoned to appear before the court and submit its observations on the seizure request. The fourth paragraph further specifies that the seizure order must be served on the maritime authority, the administrative maritime authority, and, where applicable, the consulate of the state whose flag the vessel flies.

If the seizure and inventory report omits any of the required formalities, it may be challenged for annulment within ten (10) days of its issuance. Any interested party may file for annulment through summary proceedings (*procédure en référé*), and the court president must rule on the request within a maximum of fifteen (15) days<sup>3</sup>.

While the aforementioned procedures govern the conservatory arrest of vessels, a critical question arises : Which authority is legally empowered to execute the arrest in practice? This is the issue we shall address in the following analysis.

### **1 -The Role of Maritime Authorities in Ensuring the Effectiveness of Ship Arrests**

The Algerian legislator has not specified through Article 59/5 of the Maritime Code how maritime administrative authorities should be formally notified of a precautionary ship arrest. This stands in contrast to the provisions for executive arrests under Article 160/2 of the same law, which explicitly requires that "a copy of the arrest warrant shall be served by judicial process to the shipowner's representative or captain, as well as to the maritime administrative authority<sup>4</sup>.

Notably, the repealed text of Article 159 of the amended Ordinance 76/80 was clearer in this regard, linking maritime authorities' intervention to their formal notification of the arrest. It stipulated that "the maritime administrative authority of the port where the ship is located shall, upon being served with a judicial arrest order, take necessary measures to prevent the arrested ship from leaving the port until a judicial order lifts the arrest<sup>5</sup>.

### **The Port Authority is Not a Party to the Dispute.**

If the bailiff notifies the maritime administration of the ship seizure order, the port authority intervenes solely to immobilize the vessel in compliance with an official judicial document issued by its national courts, as mandated by Article 163 of the Constitution. This constitutional provision obliges all state bodies to enforce rulings issued by national judicial authorities.

The port authority's role may raise questions about whether it acts as a custodian of the seized ship and could thus be held liable for damages arising during the seizure—for instance, if the ship breaks loose from its moorings and damages nearby structures or vessels. However, this question is dismissed, as the port authority does not assume the legal-material custody of the ship. The Algerian legislature clarified this ambiguity in its 2010 amendment to the Maritime Code by explicitly requiring the appointment of a legal custodian for the vessel, thereby excluding the port authority from this role<sup>6</sup>.

From the foregoing, it is evident that the port authority does not intervene in matters pertaining to the custody of the ship. Its role is strictly limited to preventing the vessel from sailing—thereby giving effect to the seizure by immobilizing it.

Consequently, under no circumstances may the port authority be held responsible for safeguarding the seized ship, as it exercises neither supervisory nor administrative control over it. This argument is inadmissible, as the port authority's notification of the seizure order merely informs it of the order's content and obligates it to:

1. Freeze the vessel's movement,
2. Prevent it from leaving the port,
3. Exert reasonable effort to detain it if it attempts an unlawful escape.

Thus, the port authority may only be held liable for negligence in fulfilling these specific duties outlined in Article 159 of the Algerian Maritime Code.

### 1-1 The Impact of Repealing Article 89 of the Maritime Code on the Port Authority's Duties.

Under Article 89 of Ordinance 76/80, the port authority had the power to respond to a creditor's request and temporarily seize a ship without a judicial order, provided that the maritime debt claimed was a privileged debt (preferred maritime claim) and that the seizure did not exceed three days.

At first glance, this provision appears to have been established to assist the privileged creditor in overcoming the complexities and delays of judicial procedures—especially during holidays, weekends, and when the ship is preparing to depart—by allowing them to rely on the port authority to temporarily detain the debtor's vessel until a court order for seizure is issued<sup>7</sup>.

However, in reality, this justification overlooks the negative consequences of such a measure, particularly from an economic perspective. Safeguarding the interests of the privileged creditor should not come at the expense of the ship's commercial operations or the optimal management of the port facility. A sudden seizure imposes burdens on the shipowner and those relying on the voyage, in addition to harming the national economy due to the ship occupying port space, disrupting the movement of other vessels, and damaging the port's reputation<sup>8</sup>.

This is likely one of the reasons why the Algerian legislature deviated from its earlier stance in Law 98/05, which amended Ordinance 76/80, by repealing Article 89.

Moreover, we observe that the application of the aforementioned **Article 89** directly involves the **port authority** in the dispute, particularly if the creditor fails to appear after submitting their request. This contradicts the principle that the port authority is **not a security body** unless explicitly authorized by law—meaning it should only act based on an **official document issued by a competent authority**<sup>9</sup>.

As for the issue of procedural complexity and delays, this is a practical matter unrelated to the law itself but rather to shortcomings in its implementation. Notably, Law 98/09 on civil and administrative procedures stipulates in Article 694 (Paragraph 2): *"A seizure request shall not take more than 5 days to adjudicate from the date of its filing with the court registry."*

Furthermore, Article 302 of the same law allows recourse to summary proceedings (*urgent judicial measures*) during holidays and outside working hours.

### 2-The Scope of the Port Authority's Intervention in Ship Arrest.

If the principle holds that port authorities must only comply with orders from civil executive authorities or national judiciary (excluding unilateral creditor requests), this necessitates a clear demarcation of their role regarding **arrested vessels**, distinguishing it from their port security and safety functions<sup>10</sup>.

## 2-1: Arrest of Ships Within the Port's Maritime Domain.

Pursuant to Article 159 of the Algerian Maritime Code, once officially notified of a judicial seizure order for a vessel, the port authority must prevent it from leaving the port. The legislator outlines two possible scenarios for the vessel's status during its stay in the port<sup>11</sup>:

1. The vessel is docked at the quay, in accordance with Article 152 of the Algerian Maritime Code.
2. The vessel is ready to depart, as per **Article 154** of the same code.

To facilitate the port authority's task, the captain of the seized vessel, as the person directly responsible for navigation, must comply with the immobilization measures and refrain from attempting to leave the port through non-port channels. Failure to do so may result in imprisonment from 6 months to 5 years, as stipulated in Article 509 of the Algerian Maritime Code.

If port officers determine that the vessel's continued presence poses a risk to port security or hinders port operations, they may order the captain to relocate the vessel to another berth or anchorage area. If the captain refuses to comply, the port authority may forcibly move the vessel at the offender's expense, in addition to imposing a fine ranging from 5,000 to 80,000 Algerian dinars, depending on the vessel's tonnage.

However, there is a third scenario: the seizure of a vessel in territorial waters. In principle, this situation does not directly involve the port authority, as it occurs outside its jurisdiction. Nevertheless, a vessel seized in territorial waters will inevitably be escorted to the port, where the port authority will then enforce the prohibition on its departure<sup>12</sup>.

## 2-2 Seizure of a Foreign Vessel in Territorial Waters.

Although Algerian legislation explicitly permits the seizure of vessels in internal waters—as previously mentioned—and prohibits seizure on the high seas unless pursued from internal waters (as inferred from Article 159 of the Algerian Maritime Code), it is noteworthy that the law neither confirms nor denies the possibility of seizing a foreign vessel while it is passing through Algeria's territorial sea.

There appears to be no justifiable reason for the Algerian legislator's silence on this matter, particularly since the 1982 United Nations Convention on the Law of the Sea (UNCLOS) explicitly addresses it. Article 28(2) of UNCLOS stipulates that a coastal state may seize a foreign vessel during its innocent passage through territorial waters, provided that the claim relates to rights or obligations arising from the vessel's journey in those waters.

The developments in the field of marine environmental protection against pollution raise another question concerning judicial cooperation between states and the possibility of a coastal state's authorities detaining a foreign vessel in its exclusive economic zone to secure maritime claims pursued before the courts of another state. This is the case, for example, with the 1992 Protocol amending the 1969 International Convention on Civil Liability for Oil Pollution Damage, which applies to pollution incidents occurring in the territorial sea and exclusive economic zone of a contracting state.

Undoubtedly, implementing this concept requires national efforts to define the jurisdiction of the coastal state's maritime authorities, as well as international coordination in cases where a vessel flees detention<sup>13</sup>.

### 2-2-1 Preventing the vessel from leaving the port where it was detained.

**Article 152 bis-1 of the Algerian Maritime Code stipulates:**

*"Port authorities and administrative authorities shall take all necessary measures to prevent a detained vessel from sailing."* However, if the vessel attempts to flee or refuses to comply with the orders of the maritime police, the same article, in its third paragraph, confirms that the maritime police may fire live

ammunition while ensuring that no individuals are harmed. Additionally, they may use any other means deemed necessary.

The fourth paragraph adds that the vessel may be apprehended in waters beyond national jurisdiction if the pursuit began within these waters. However, the pursuit must cease once the vessel enters the waters of another state, as affirmed by the final paragraph of the same article.

It should be noted that preventing a vessel from departing or detaining it in port falls under the authority of the competent authorities at the port of detention. This requires, first, a judicial decision (as previously mentioned) and then its notification to the relevant port authorities—a necessary condition for immobilizing the vessel. Consequently, the detained vessel is restrained, and its movement is restricted to prevent it from leaving the port of detention. This is the essence of the measure imposed on the vessel, as allowing it to sail—given that it is movable property—would undermine the security that the conservatory arrest aims to guarantee.

Due to the 2010 amendments to the Maritime Code, Article 160 bis-7 now obliges the shipowner to maintain a minimum crew onboard to ensure the vessel's safety, even under detention, in accordance with Decree 02-02 dated January 6, 2002. This decree sets the rules for retaining a minimum crew on vessels exceeding 500 tons to ensure their security. The required number of crew members depends on the vessel's type, navigation category, tonnage, and classification.

It is worth noting that although this provision falls under the regulations governing the executory arrest of a vessel, nothing prevents its application in cases of conservatory arrest.

## **2-2-2 The Hot Pursuit of a Vessel Fleeing Arrest.**

Article 159 of the Algerian Maritime Code imposes on the maritime police authorities the duty to pursue a fleeing vessel to detain and return it to the port, whether it is anchored, has set sail, or is passing through waters under national jurisdiction. These authorities are permitted, in order to achieve this objective, to use all necessary means, including the assistance of coast guards, and even the possibility of using weapons while taking care to preserve human life. The pursuit may continue and only ends when the fleeing vessel enters the waters of another state.

We note the general term "maritime police" mentioned in the text above, which necessitates clarification, as the maritime police are diverse—among them is the port police, which falls under the authority responsible for immobilizing a seized vessel. This leads us to demand clarification of the intended meaning of the mentioned term, as the port authority is not the only entity present along the coastline<sup>14</sup>.

On the other hand, Article 159 of the Algerian Maritime Code does not clearly distinguish between the procedures for detaining a vessel and seizing it, especially since international law differentiates between the two. The right to detain is exercised by the state as a criminal jurisdiction over a vessel, such as detaining it for committing a maritime crime or violating innocent passage rules under Article 19 of the United Nations Convention on the Law of the Sea (UNCLOS), as previously referenced. In contrast, the right to seize is exercised as a civil jurisdiction over a vessel, aiming to claim a debt or maritime lien, either under Article 151 of the Maritime Code or based on the provisions outlined in the 1952 Brussels<sup>15</sup> Convention on the Unification of Certain Rules Relating to the Arrest of Sea-Going Ships, or the 1999 Geneva Convention<sup>16</sup> on the Arrest of Ships in cases of default.

## **Conclusion:**

Although the Algerian legislator did not specify the measures that port authorities must take to prevent a ship from sailing—or at least did not provide standard or typical examples of such measures—and although there is no provision allowing the detention of a foreign ship passing through Algeria's territorial waters in accordance with Article 28 of the Montego Bay Convention, nor any text defining the entity responsible for executing a detention order, the legislator also ignored the potential limitation of

maritime police powers in enforcing the aforementioned proposal. Moreover, the law does not distinguish between the detention of a ship and its arrest, considering that the latter relates to the state's internal regulations and its international obligations concerning environmental protection and combating maritime crimes.

However, the legislator did emphasize the necessity of notifying the judicial order, which obliges the port authority to comply by taking all necessary measures it deems appropriate to immobilize the ship subject to detention. Consequently, the role of the port authority is limited to ensuring the ship's compliance with the detention. It may order the ship to change its berth to another dock or move within the port area if its position threatens port security or operations. Nevertheless, such intervention does not imply interference in the ship's management or operations, as the port authority is not a party to the dispute and is not responsible for guarding the ship.

Hence, the legislator repealed Article 89 of the Maritime Code to eliminate any ambiguity regarding the potential liability of the port authority in case damage occurs during the ship's immobilization.

### References:

1. Law No. 08-09 issued on 25 February 2008, containing the Code of Civil and Administrative Procedure, published in Official Gazette No. 12 dated 23 April 2008.
2. Law No. 98-05
3. Article 691 of Law No. 08-09 (Civil and Administrative Procedure Code)
4. Article 7 of Law 98/05, issued on June 25, 1998, amended by Article 76/80, issued on December 23, 1976, replacing the repealed provisions."
5. Gharbi Ataallah, The Legal Framework of Arresting Ships in Algerian Maritime Legislation, Master's Thesis. University of Algiers, 2009-2010, p. 59.
6. Djilali Ben Selka, Methods and Procedures of Notification and Enforcement Annotated with Official Reports, Dar El-Fenek Publishing, Algeria, pp. 132-133.
7. Attallah Gharbi, Proceedings of the International Symposium on Maritime Disputes, Transport Law and Port Activities Research Laboratory, Third Millennium Publications, Institute of Law and Political Science, University of Oran, 2011, p. 114.
8. Abdelghani Meziani, Arrest of Ships, Graduate Thesis Submitted to the National Institute of Judiciary, Algeria, 2002-2003, p. 17.
9. Attallah Gharbi, Proceedings of the International Symposium on Maritime Disputes, Transport Law and Port Activities Research Laboratory, Third Millennium Publications, Institute of Law and Political Science, University of Oran, 2011, p. 114.
10. Commercial Court of Saint-Nazaire [Tribunal de Commerce], Judgment of 8 September 1978, Case of the vessel Rocco Piaggio, Droit Maritime Français (DMF) 1979, p. 487.
11. Presidential Decree No. 96/438 dated 07 December 1996, concerning the promulgation of the constitutional amendment adopted by referendum on 28 November 1996, *Official Gazette* No. 76 dated 08 December 1996, p. 6.  
*Note: The 2008 amendment did not affect this provision.*
12. **Law No. 10-04 dated 15 August 2010**, published in Official Gazette *No. 46* issued on 18 August 2010, amending and supplementing **Law No. 98-05 dated 25 June 1998** (published in Official Gazette No. 47)
13. Kamal Haddoum, "The Issue of Seized Vessels and Their Impact on Maritime Ports," *Le Phare Review*, No. 28, 2007, p. 4.
14. Executive Decree No. 02-02 establishing the rules concerning the minimum crew requirement for maintaining safety aboard commercial vessels exceeding 500 tons, *Official Gazette* No. 01 dated 6 January 2002.

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15. Algeria ratified the convention through Presidential Decree No. 64-171 dated 8 June 1964, enacting the ratification of the 1952 Brussels Convention for the Unification of Certain Rules Relating to the Arrest of Sea-Going Ships, published in Official Gazette No. 18 of 1964.
  16. Algeria ratified the convention through Presidential Decree No. 03-474 dated 3 December 2003, enacting the ratification of the 1999 International Convention on Arrest of Ships (Geneva), published in Official Gazette No. 47 of 2003.