

Diploma in Law

Lecture 4: Precautionary Acts & Precautionary Warrants

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**Diploma in Law
(Malta)**

Today's lecture:

- Defining precautionary acts / warrants
- Identifying the different precautionary warrants
- Principles governing the filing of precautionary warrants
- How a precautionary warrant is accepted / rejected
- Executing a precautionary warrant
- Challenging a precautionary warrant



What are precautionary acts / atti kawtelatorji?

Title VI COCP

829. It shall be lawful for any person, without the necessity of any previous judgment, to secure his rights by one or more of the following precautionary acts, which shall be issued and carried into effect on the responsibility of the person suing out the act, provided he shall have complied with the conditions prescribed by this Code.

- **NB: Warrants are Mandati / Mandati are NOT Mandates!**
- Broadly defined as a security / guarantee **pending proceedings**
- E.g.: A is a claimant in a civil case and requests the issue of a guarantee to secure assets until the claim is decided. If it is eventually decided in their favour, then the assets are already secured.

What are precautionary acts / atti kawtelatorji?

Title VI COCP

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- Main aim of precautionary acts, i.e. warrants, is for creditors to safeguard their rights and increase the effectiveness of the judicial process
- Precautionary warrants preserve a situation and provisionally regulate it.
- They prevent the **dissipation / disappearance** of assets, hence why a judgment is not needed for a precautionary act to be issued

The precautionary acts / atti kawtelatorji

Art. 830 COCP

830.(1) The precautionary acts referred to in the last preceding article are the following:

- (a) warrant of description;
- (b) warrant of seizure;
- (c) warrant of seizure of a commercial going concern;
- (d) garnishee order;
- (e) warrant of impediment of departure;
- (f) warrant of arrest of sea vessels;
- (g) warrant of arrest of aircraft;
- (h) warrant of prohibitory injunction.

The precautionary acts / atti kawtelatorji

Art. 830 COCP

(a) warrant of description;

May be issued in order to secure a right over movable things, where the applicant may have an interest that such things remain in their actual place or condition.

Executed by describing the things in detail stating the number, quality, weight or measure, and the value thereof.

The things remain in the custody of the person in whose possession they are found, and such person shall be responsible for their safe keeping with an express injunction to that effect being included in the warrant.

The applicant is bound to bring the action in respect of the right stated in the warrant within 20 days from the issue of the warrant. If not, the effects of the warrant shall cease and he shall be liable for all damages and interest.



The precautionary acts / atti kawtelatorji

Art. 830 COCP

(b) warrant of seizure;

Orders the Registrar to seize from the debtor such articles from the place indicated. When a demand is made for the removal of the seized articles the court shall appoint an official consignee.

The applicant is bound to bring the action in respect of the right stated in the warrant within 20 days from the issue of the warrant. If not, the effects of the warrant shall cease and he shall be liable for all damages and interest.

The judicial sale by auction of the property seized shall not take place without a previous judicial acknowledgment or the rendering as an executive title of the debt or claim.

Saving the provisions respecting the claims of the Government, no warrant of seizure shall be issued by the Court of Magistrates unless accompanied by:

1. A demand that the credit or claim are judicially acknowledged; and
2. The debt or claim exceeds €3,494.06; or
3. The demand for such warrant is for an article which, as stated, is property belonging to the person suing out the warrant.

[This is applicable also in the case of the Precautionary Warrant of Seizure of a Commercial Going Concern and the Precautionary Garnishee Order]

The precautionary acts / atti kawtelatorji

Art. 830 COCP

(c) warrant of seizure of a commercial going concern;

May only be issued to secure a debt / claims which could be frustrated by the sale of said going concern.

Warrant puts the going concern under protective terms by preserving the totality of its assets, ordering its keeping in business, and prohibiting its sale, in whole / part.

PW only accepted if there are no other means to safeguard the claim.

The applicant is bound to bring the action in respect of the right stated in the warrant within 20 days from the issue of the warrant. If not, the effects of the warrant shall cease and he shall be liable for all damages and interest.

The precautionary acts / atti kawtelatorji

Art. 830 COCP

(d) garnishee order;

Attaches moneys / movable property belonging to the debtor to a third party - the garnishee.

Orders the garnishee to not release funds / assets and deposit them in court.

Effects are the same as that of an executive GO, except that where the garnishee is a bank, a precautionary GO does not apply to money payable by the bank in execution of any guarantee given by the bank stating it will pay the demand of a creditor.

The applicant is bound to bring the action in respect of the right stated in the warrant within 20 days from the issue of the warrant. If not, the effects of the warrant shall cease and he shall be liable for all damages and interest.

Cannot be issued against salaries, benefits, charitable grants, maintenance due, loans for main dwellings and bank guarantees (limit of €698.81p/m).

No. 12

Garnishee Order.

In *(here insert name of Court)*

(Creditor)

versus

(Debtor)

Application of

Respectfully requests: -

That this Court orders the issue of a garnishee order to be executed on the garnishee or garnishees as hereinafter mentioned, against the debtor for the debt herein mentioned and for the costs of this procedure, as precaution against the debt hereinafter indicated/ by virtue of the executive title herein mentioned/as confirmed on oath hereunder.-

Debt: { Amount
Interest
Costs

Title/Executive title:

Garnishee/s

Advocate

Legal Procurator

This, day of 20

Confirmed on oath before me, after I have read to him the contents, and in the presence of witness to identity, and filed by

(Registrar's signature)

No. 12

Garnishee Order.

REPUBLIC OF MALTA

COURT WARRANT

To Marshal of the Courts

WHEREAS the above application has been filed and it contains the elements required according to law for the issue of the orders herein contained;

You are, therefore, on the said application, hereby ordered that, by delivering a copy of this Order, in the first place, to the aforesaid garnishees and subsequently to the debtor, you shall enjoin the said garnishees to retain in their possession as sequestered until the expiration of the time for which this warrant shall remain in force according to law or until further orders, or otherwise to deposit in the Registry of this Court, so much of the things or moneys in their possession appertaining to the said debtor as may be sufficient to satisfy the aforementioned claim of the said creditor together with the costs hereof under penalty of the payment of damages and interest, in case of disobedience.

And after execution, or upon your meeting with any obstacle in the execution hereof, you shall forthwith report to this Court.

Given by the *(name of Court)*,
and witnessed by Doctor of Laws,
of the said Court.

This, day of 20

No. 13

Order for depositing
after service of Garnishee
Order.

REPUBLIC OF MALTA

To Marshal of the Courts

WHEREAS in virtue of a garnishee order made by the *(name of Court)* and executed on it was ordered that so much of the things (or moneys) in the possession of and belonging to as may be sufficient to satisfy the claim of against be attached;

And whereas it has been represented by the said that the time for the delivery of the things (or moneys) attached as aforesaid has expired;

And whereas an application has now been made for an order that the said be enjoined to deposit in the Registry of this Court the things (or moneys) so attached;

You are, therefore, ordered to enjoin the said to deposit in the Registry of this Court, within two days from the date of service hereof, the things (or moneys) attached as aforesaid and to warn the said that in default of such deposit, within the aforesaid time, proceedings will be taken against him, according to law.

And after execution, by delivery of a copy hereof to the said or agent, according to law, or upon your meeting with any obstacle in the said execution, you shall forthwith report to this Court.

Given by the *(name of Court)*
and witnessed by Doctor of Laws,
of this Court.

This, day of 20

The precautionary acts / atti kawtelatorji

Art. 830 COCP

(e) warrant of impediment of departure;

Essentially same as a form of warrant of prohibitory injunction - we shall discuss, but includes the departure of not only persons but also vessels from Malta's jurisdiction.



No. 14

Warrant of Impediment of Departure of a Vessel.

In (here insert name of Court)

(Applicant)

versus

(Respondent)

Application of

Respectfully sheweth and confirms on oath:

That the applicant seeks to safeguard the credit herein mentioned against the said respondent/vessel;

That by the departure of such vessel from Malta applicant's credit may be evaded;

Wherefore, the applicant respectfully requests that this Court orders the issue of a warrant of impediment of departure against the said vessel for the herein mentioned credit and for the costs of this procedure.

Credit:

Title/Executive Title:-

Advocate

Legal Procurator

This, day of 20

Confirmed on oath before me, after I have read to him the contents, and in the presence of witness to identity, and filed by

(Registrar's signature)

No. 14

Warrant of Impediment of Departure of a Vessel.

REPUBLIC OF MALTA

COURT WARRANT NO.

To

Marshal of the Courts

WHEREAS the attached application has been filed and it contains the elements required according to law for the issue of the orders herein contained;

You are, therefore, on the said application, hereby ordered to detain the vessel therein mentioned, until further orders, and to adopt such measures as may be necessary for the said purpose.

You are further ordered to enjoin, by the delivery of a copy hereof, the Master of the said vessel not to cause the ship to proceed on her voyage, and the Comptroller of Customs not to deliver the clearance papers of the said vessel, and, if such clearance papers have already been delivered, to withdraw them, under penalty of the payment of damages and interest to the said applicant.

Lastly, you are notified that this warrant shall, in default of further orders of this Court, cease to have effect in six months' time from this day.

And after execution, or upon meeting with any obstacle in the execution hereof, you shall forthwith report to this Court.

Given by the *(name of Court)*

and witnessed by

Doctor of Laws,
of the said Court,

This, day of 20

The precautionary acts / atti kawtelatorji

Art. 830 COCP

(f) warrant of arrest of sea vessels;

May solely be issued on vessels exceeding 10m in length, to secure a debt or claims which could be frustrated by the departure of the said ship, and no other warrant may be issued against a sea-going vessel unless it is a warrant of arrest, and whether such vessel is at sea or at some other place.

The warrant shall have the effect to seize the sea vessel from the debtor and attach it to the authority where the vessel is, and also to order the said authority to not release such vessel or allow the debtor to divest himself in any way from the same.

Cannot be issued against vessels chartered by the Government or warships.

Form No. 32
Warrant of Arrest of Sea Vessels
over ten (10) metres in length (Precautionary)

In Warrant No.

Applicant.....

.....

.....

vs

Respondent

.....

.....

Application of

It is being respectfully submitted and confirmed on oath by:-

That the applicant seeks to safeguard a debt or a claim, whether *in personam* or *in rem*, which could be frustrated by the departure of the sea vessel indicated in this application;

That the debt or claim is the following:-

That the details of the said sea vessel of which the arrest is being requested, are the following:-

- Name:-

- Identification details of the sea vessel:

1.
2.
3.
4.

- Place where the said vessel is to be found

- Authority: Authority for Transport in Malta

That the details of the person being indicated by the applicant to effect service of a copy of this warrant in accordance to sub-article (3) of article 856 are the following:-

Full name of individual or company name:

Identity card number or company registration number:

Address:

.....

That the applicant confirms that the above-mentioned person has accepted to effect the said service.

That by the departure of the said sea vessel from Malta, the debt or claim of the applicant may be evaded;

Therefore, the applicant respectfully requests that this Honourable Court orders the issue of a Warrant of Arrest of Sea Vessels against the said sea vessel for the herein mentioned credit and with the costs of this procedure.

Advocate Legal
Procurator

Confirmed on oath before me after having read to him or her the contents.

Filed by:-

Deputy Registrar

The precautionary acts / atti kawtelatorji

Art. 830 COCP

(g) warrant of arrest of aircraft;

May only be issued to secure a debt or claim which could be frustrated by the departure of the aircraft and no other warrant may be issued against an aircraft, with the exception of a warrant of ejectment or expulsion, or the aircraft engine unless it is a warrant of arrest.

The term aircraft includes:

- all data, manuals, technical records
- the airframe, equipment, machinery, and all accessories on board or removed from it
- if in Malta, any engines owned by the aircraft owner, whether attached or not

Warrant has the effect of seizing the aircraft and attaching it to the authority where the aircraft is, ordering it to not release it.

Form No. 34
Warrant of Arrest of an Aircraft
in security of a debt or any other claim
amounting to not less than seven thousand euro
(PRECAUTIONARY)

Before Warrant No.
Applicant
.....
.....
vs
Respondent
.....
.....

Application of

It is being respectfully submitted and confirmed on oath by
.....:-

That the applicant seeks to safeguard a debt or a claim, whether
in personam or in rem, which could be frustrated by the departure
of the aircraft indicated in this warrant;

That the claim or debt is the following:-

That the details of the said aircraft are the following:-

- Name:-
- Identification details of the aircraft
- 1.
- 2.
- 3.
- 4.
- Place where the said aircraft is to be found
- Authority: Authority for Transport in Malta

That by the departure of the said aircraft from Malta, the debt or
claim of the applicant may be evaded;

Therefore, the applicant respectfully requests that this Court
orders the issue of a Warrant of Arrest of an Aircraft against the
said aircraft for the herein mentioned credit and for the costs of this
procedure.

..... Advocate Legal Procurator

Confirmed on oath before me after having read to him/her the
contents, and filed by:-

The precautionary acts / atti kawtelatorji

Art. 830 COCP

(h) warrant of prohibitory injunction.

Aim is to restrain a person from **doing** anything prejudicial to the applicant (positive, not negative acts). Cannot be used to keep a person from **not** doing something or to **force an action**

Can only be **precautionary**, not executive.

Four types:

- General (Art. 873) - *anything prejudicial*
- Alienatory (Art. 874) - *to secure a claim*
- Related to separation proceedings (Art. 876)
- Related to the departure of minors outside MT (Art. 877)

The precautionary acts / atti kawtelatorji

Art. 830 COCP

(h) warrant of prohibitory injunction.

Not issued unless the Court is satisfied that:

- it is necessary to preserve the right of the applicant
- *prima facie* the person possesses that right

If sought against the Government, it is only issued if:

- the Gov. entity confirms in court that the thing sought to be restrained is intended to be done
- Court is satisfied that without the warrant, severe prejudice would be caused - which is disproportionate when compared to the doing of the thing sought to be stopped

The precautionary acts / atti kawtelatorji

Art. 830 COCP

(h) warrant of prohibitory injunction.

If it is proved that this warrant was breached, the court shall condemn the person to remedy the breach. If even this is ignored, the court will allow the applicant to carry out remedial works at that restrained person's expense.



The precautionary acts / atti kawtelatorji

Art. 830 COCP

(h) warrant of prohibitory injunction.

Can be requested for Creditor Claims:

To secure a debt of less than €11,647. Prohibits sale, alienation, transfer or disposal of property indicated. Requires the particulars of the person against whom it is filed that are required to register a property (if immovables are involved).

Is served by a Notary Public within 24 hours to the Public Registry and Land Registrar (if immovables are involved) and the PW is registered.

Remains in effect for one year from res judicata.

The precautionary acts / atti kawtelatorji

Art. 830 COCP

(h) warrant of prohibitory injunction.

Can be requested for Spouse's Claims:

Demanded by a spouse against the other in separation cases (before or during the institution of the case)

Restricts the sale, alienation, transfer or disposal by any means of a commercial partnership (if it is within the CoA), and may also restrain from contracting debt or suretyships on the CoA

Both spouses may demand it, irrespective of who initiates the personal separation

The precautionary acts / atti kawtelatorji

Art. 830 COCP

(h) warrant of prohibitory injunction.

Can be requested for the restraining of persons intending to take minors outside of MT:

The warrant is served on the person/s enjoying legal / actual custody over the minor, the officer charged with the issue of passports, and the Commissioner of Police.

If a passport is already issued then the officer is to withdraw it.

Main difficulty in implementation: Schengen Area *acquis*

No. 21

Warrant of Prohibitory Injunction.

In *(here insert the name of Court)*

(Applicant)

.....

versus

(Respondent)

.....

Application of

Respectfully sheweth and confirms on oath:

That the applicant has an interest that his rights be secured;

That the applicant, in order to secure his rights, desires to restrain respondent from *(here insert the acts to be restrained)*

That the applicant would be prejudiced if respondent is not so restrained;

Wherefore, the applicant respectfully requests that this Court orders the issue of a warrant of prohibitory injunction restraining him from the acts above-mentioned.

Advocate

Legal Procurator

This, day of 20

Confirmed on oath before me, after I have read to him the contents, and in the presence of witness to identity, and filed by

(Registrar's signature)

No. 22

Warrant of Prohibitory Injunction in cases of personal separation restraining the other spouse.

In *(here insert name of Court)*

(Applicant)

.....

versus

(Respondent)

.....

Application of

Respectfully sheweth and confirms on oath: -

That the applicant *(here insert "has brought" or "intends to bring")* before the court of contentious jurisdiction a suit for personal separation;

That in order to secure his rights the applicant desires the court to issue a warrant of prohibitory injunction against the respondent:

(a) restraining the said respondent from selling, alienating, transferring or disposing *inter vivos* whether by onerous or gratuitous title any shareholding in any commercial partnership if such shareholding is comprised in the community of acquests, and in particular *(here insert particulars of the commercial partnership/s)*; and

(b) restraining the respondent from contracting any debt or suretyship which is a charge on the community of acquests; Wherefore, the applicant respectfully requests that this Court orders the issue of the relative warrant of prohibitory injunction against the respondent.

Advocate

Legal Procurator

This, day of 20

Confirmed on oath before me, after I have read to him the contents, and in the presence of witness to identity, and filed by

(Registrar's signature)



Precautionary warrant with particular judicial letters

Art. 833A & 833C COCP

With JL 166A:

Reminder: 166A letters become executive titles if all conditions are satisfied

Together with a 166A, a precautionary warrant of description/seizure/garnishee may also be filed.

With JL for Bills of Exchange:

Together with judicial letters filed to render BoE / promissory notes executable (copies must be attached)

With JL for debts due to Government:

Together with judicial letters filed by Govt departments to collect amounts due to Gov (e.g. ARMS for utility arrears)



**Diploma in Law
(Malta)**


CAMILLERI PREZIOSI
ADVOCATES

Filing of Precautionary Warrants

Art. 831 COCP

By means of an application / rikors containing **under pain of nullity** at least:

- origin & nature of debt / claim sought to be secured
- the amount which would secure it (if a case has already been filed +judicial costs)
- confirmation on oath

Particular PWs will require specific details (e.g. details of minor in case of prohibitory injunction of travel).

Sworn application is then followed up by a writ on the merits (generally within 20 days).

PWs under Art. 830 are all issued by the court unless the Registrar believes it is too urgent - in which case they obtain verbal authorisation from the Judge / Magistrate and issue it.



Executing precautionary warrants

- Once filed, the application is served on party, who has 10 days to file a reply (in urgent cases this period may be reduced)
- No reply = court usually accedes to the pleas

834. The court executing officer shall, at the earliest time possible, serve notice in writing to the applicant, lawyer or legal procurator whose signature is subscribed on the application, of the execution of the warrant or order.

- Court issues PWs provisionally for a short period and under terms and conditions until it decides in a definitive manner. This can include conditions to preserve the object in question.
- Appoints application for hearing, decides on merits after hearing evidence, by no later than 1 month from filing of warrant, confirmation on oath, and notification of parties



Executing precautionary warrants

- If the party against whom the PW is issued makes a deposit or gives a security in the appropriate registry that satisfies the court that the rights claimed are safeguarded, then that PW may be rescinded. This is usually a monetary deposit in court or a bank guarantee.
- Creditor is still duty-bound to bring forward an action within the time prescribed by law according to the particular PW.
- PWs remain in force until they are either:
 - rescinded by the court
 - withdrawn by the party suing out the PW
 - after 15days from when a case becomes res judicata



Executing precautionary warrants

- PWs remain in force until they are either:
 - rescinded by the court
 - withdrawn by the party suing out the PW
 - after 15days from when a case becomes res judicata
- PWs become executive warrants if the case is decided in its favour / judicial letter becomes an executive title
- For warrants of seizure / of a going concern / GO / arrest of sea vessels, the creditor may by means of a note demand an extension or reduction of the effects of the warrant to include legal costs, interest, and difference in principal amount due in terms of the judgment

Executing precautionary warrants

If the applicant:

- does not bring the action within the prescribed period;
- upon request fails to show that the PW had to be issued;
- files the PW in a malicious, frivolous, or vexatious manner; or

If the debtor's situation is not one that gives any reasonable doubt to their solvency, and such situation is known;

then the Court may condemn the applicant to pay a penalty between €1,164.49 - €6,988.12 in favour of the other party, and upon that party's request, they may also be condemned to pay damages (if caused).

Revoking Warrants: the Counter-warrant / Kontro-mandat

Art. 836 COCP

Made by means of an application including all submissions with documents in its support to the court issuing the PW / hearing the case if already begun, requesting the revocation (total/partial) of the PW on any of the following grounds:

- PW ceased to be in force - *e.g. application on merits / court action not filed on time*
- any one of the conditions requested by law for the PW does not subsist - *defect of form not substance*
- other security is available to satisfy the claim - *e.g. by providing a bank guarantee, hypothec, or cash deposit in court. Court must be satisfied that this other security is sufficient*

Revoking Warrants: the Counter-warrant / Kontro-mandat

Art. 836 COCP

- amount claimed is not *prima facie* justified / excessive - *Court can reduce the amount held. no in-depth examination of the merits is carried out at this stage*
- security provided is sufficient
- circumstances show that maintaining the PW is unreasonable / no longer necessary / justifiable - *enables party to inform the court of a change in circumstance leading to the PW no longer being justifiable. Must be proved to the court's satisfaction.*

Revoking Warrants: the Counter-warrant / Kontro-mandat

Art. 836 COCP

- Application must include all submissions and documents in its support
- Application is served on the opposing party who has 7 days to file a note of submissions
- Court shall decide on the counter-warrant with urgency either *in camera* or after hearing the advocates

Appeals

- Appeals from decisions on precautionary warrants are not permitted. Such decrees are final and irrevocable.
- If a PW is revoked, a similar PW cannot be issued in security of the same claim (except for the warrant of description). Exception: if new circumstances justifying it arise



Precautionary vs Executive Warrants

Precautionary Warrants:

- preserve
- provisionally regulate
- anticipate the effects of a final judgment
- prevent dissipation

Executive Warrants:

- enforce and execute a claim



Precautionary vs Executive Warrants

830.(1) The **precautionary** acts referred to in the last preceding article are the following:

- (a) warrant of description; *Not EW*
- (b) warrant of seizure;
- (c) warrant of seizure of a commercial going concern;
- (d) garnishee order;
- (e) warrant of impediment of departure; *Not EW*
- (f) warrant of arrest of sea vessels;
- (g) warrant of arrest of aircraft;
- (h) warrant of prohibitory injunction.

273.The **executive** titles mentioned in article 253 may, according to circumstances, be enforced by any of the following executive acts:

- (a) warrant of seizure of movable property;
- (b) warrant of seizure of immovable property;
- (c) warrant of seizure of a commercial going concern;
- (d) judicial sale by auction of movable or of immovable property or of rights annexed to immovable property;**
- (e) executive garnishee order;
- (f) warrant of ejection or eviction from immovable property;**
- (g) warrant in *factum*; imprisonment in civil proceedings**
- (h) warrant of arrest of sea vessels;
- (i) warrant of arrest of aircraft;
- (j) warrant in *procinctu*; extraordinary means to execute when no means are available**
- (k) warrant of ejection or expulsion from seagoing vessels or aircraft



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LERI PRI
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