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Arrest of ships in the legislation of Arctic region countries: the USA and Canada

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Abstract. In connection with the development of international shipping, the arrest of seagoing ships is becoming even more important from a political and economic point of view. The arrest of the vessel, the cost of its maintenance in a foreign port, penalties, lack of cargo turnover lead to economic losses of tens of thousands of dollars a day. The arrest of the ship attracts the attention of state bodies and direct participants in the maritime enterprises, which should include shipowners, insurers, and charterers. In connection with the precedents of violations and unjustified arrests of courts, legal issues are becoming increasingly important. The legal procedure related to the arrest of a vessel is one of the most complex areas of the law of the sea. The law of the sea is usually divided into the international public law and the international private law. At the same time, public law is regulated by the UN Convention on the Law of the Sea. A large number of international declarations devoted to the relationship of states at sea. A special International Tribunal for the Law of the Sea has been created, the competence of which includes issues in the field of shipping. However, we hear again and again in the news about the arrest of ships and the problems of crew members arising in connection with this. As part of this work, an analysis was made of the current legislation of the countries of the Arctic region regarding the arrest of ships. A comparative legal method of scientific research was applied in the work; the following countries were considered: the USA and Canada. The features and practice of the application of the law in North American countries, their similarities and differences are shown. Legal analysis showed that in the United States and Canada there is no uniform approach to the procedure and the grounds for the arrest of seagoing ships. According to the results of the study, legal norms and grounds were established, within the framework of which the vessel can be arrested while in territorial sea, the exclusive economic zone or in the ports of these countries. Based on the analysis, it was concluded that, in international practice, it would be expedient to unite the provisions of the three conventions regarding the arrest of seagoing ships, and by unifying maritime requirements, develop a unified Convention on the arrest of seagoing ships.

1. Arrest of ships in the legislation of the USA

In the United States of America there are two types of judicial institutions for handling civil and criminal cases. This is a federal judicial system and state courts. In the United States, unlike in the United Kingdom, there are no special admiralty courts; therefore, the federal courts carry out proceedings on maritime disputes.

In the United States, civil procedural law takes the form of a series of rules and judicial practice. Federal courts are governed by the Federal Rules of Civil Procedure; the state courts follow the rules of their state's civil procedures. Quite often, state rules comply with many federal rules. In federal



courts, evidence is based on the Federal rules of evidence, and accordingly, each US state has its own rules on evidence.

1.1 Arrest of ship

In 1934, the US Congress passed Section 28 of the U.S. Code, paragraph 2072 of which gives the Supreme Court the right to issue rules of proceedings and evidence for federal courts until they "abridge, enlarge or modify any substantive right."

The procedural rules governing the maritime arrest and the seizure of property are contained in section 13 of the Federal Rules of Civil Procedure, which indicates the peculiarities of the proceedings of certain categories of maritime affairs, including property claims (Supplemental rules for admiralty or maritime claims and asset forfeiture actions). The latter are used for the implementation of maritime liens and in other cases provided by law. Their consideration is essentially preceded by the imposition of an arrest on a ship, cargo or sums of money. Notice of the ongoing process and the seizure of property is published in a newspaper elected at the direction of the court (Rule “C”).

According to rule “A”, these Additional Rules are used as a remedy in the following cases:

To exercise its rights, a claimant must apply to a federal court. In this case, the vessel must physically be located in the seaport in the zone of jurisdiction of the court. The review procedure is called *ex parte* proceeding. Under the procedure *ex parte* we understand the accelerated consideration of the procedural issue by the court in the absence of the party or parties. This procedure is named in common law countries. The main feature of this process is to resolve the issue by the court without the participation of the parties, but with the notification of persons who may be affected by the proceedings. In the Russian Federation, *ex parte* proceeding are referred to as interim measures.

On the Internet portal of the United States Federal Courts <http://www.uscourts.gov/> submitted forms of documents that must be completed by the plaintiff or the applicant. If the applicant cannot pay the state duty for filing an application to the court, he must fill out a special form in which he gives a receipt stating that he has been warned about the responsibility for providing false information. In the section of state fees it is indicated that the cost of submitting an application for a civil dispute is \$ 350.

Judicial proceedings for the arrest of a vessel are carried out through *in rem* suits. The main feature of the “*in rem*” lawsuits is that they are formally presented as if directly to a thing, the decree fixes the status of the thing and is mandatory for all persons, regardless of whether they are participants in the process or not.

A lawsuit may also be addressed to other “maritime” property. ” Other property means cargo, fuel on board the vessel at the time of arrest, or other belongings that are marine in nature.

This concept, which allows the plaintiff to arrest the ship, is unique in its kind and forms the basis of US Admiralty Law.

However, claims *in rem* cannot be brought without the existence of a maritime lien in respect of the vessel in question. In maritime law of the United States, maritime bail is a prerequisite for the consideration of an application for the arrest of a vessel.

According to Section 31301, the following definitions of the privileged maritime mortgage are indicated in the definition section:

1) a marine mortgage that meets the conditions set out in paragraph 31321 of Chapter 46 (Shipping) of the United States Code;

2) sea tort obligations as a result of damage;

3) wages to stevedores when they are hired to work in accordance with paragraph 31341 of the United States Code and their employer is:

- the owner of the vessel

- captain of the vessel

- by a person authorized by the administration of the ship to organize work at the port of call, or by an agent designated by the owner of the ship,

- the charterer or owner of the vessel *pro hac vice* or the buyer owning the vessel;

4) salary to the crew members of the vessel;

- 5) expenses for general average;
- 6) salvage costs, including salvage contract costs.

Maritime pledge is different from other types of pledge, since it does not depend on the possession of property, is not consensual, and is not subject to subrogation.

It also happens that although the ship owner is not responsible for the resulting maritime lien on a ship, but it will bear this maritime lien until it is sold in court, does not lose seaworthiness or does not sink at all.

According to US law, a party may initiate actions aimed at arresting a seagoing vessel through two different judicial procedures: arrest of a vessel and arrest of property (attachment). The requirement to arrest a vessel is based on the responsibility of the vessel itself (for example, as a result of damage or under the contract) and does not need the personal responsibility of the property owner. Thus, maritime arrest is not merely a means of obtaining jurisdiction for a personal action.

1.2 Arrest of the property (attachment)

In contrast to the procedure for the arrest of the sea, the act of arresting property is based on the responsibility of the owner of the property, and not the property itself. This procedure is an alternative method of obtaining jurisdiction for a claim in personam through the seizure of his property, and therefore such claims are sometimes called quasi in rem - adjacent to the property.

The arrest of property is different from the arrest of a vessel by another important aspect. Property under sea arrest can be sold to meet the plaintiff's claims against the defendant. Because arrest is an action by virtue of an in rem claim, the sale of property makes it free from all liens. On the other hand, during the arrest of the property (attachment), the property is sold only to the extent that the claimant's claims are met with the owner of the vessel, in which case the sale of the property does not affect the rights of third parties who have maritime liens or ship mortgage loans.

According to Art. 1609 of the United States Code in the case of the existence of an international agreement, a foreign vessel is immune from arrest, except in the case of a privileged maritime lien.

In case of disagreement with the decision of the district court, the applicant may appeal to the district court of appeal. The complaint is filed within 30 days, and if the defendant is a state or a federal authority, then within 60 days. At the same time, at the party's request, the period may be extended to 60 days and 90 days, respectively. However, the applicant must provide the court with good reasons for missing the deadline.

In this case, it is enough for the court of first instance to submit a notice of appeal, filled in on 1 sheet without specifying arguments and objections. After the materials are received by the Circuit Court of Appeal and the case number is assigned to it, the applicant can add his explanations.

The filing fee is \$ 505. The review procedure is based on the Federal rules of appeal and the rules of the district courts of appeal. If a party cannot pay this fee, then it must apply to the court with the appropriate request for a deferment.

1.3 Criminal procedure for the arrest of a vessel

The ship also may be detained or arrested in connection with the criminal proceedings. In addition to the Constitution and the US Code, the criminal procedure is governed by the Federal Rules of Criminal Procedure. These rules consist of nine sections:

- 1) applicability;
- 2) preliminary proceedings;
- 3) the grand jury, the indictment, and the information;
- 4) arraignment and preparation for trial;
- 5) venue;
- 6) trial;
- 7) post-conviction procedures;
- 8) supplementary and special proceedings;
- 9) general provisions.

Section 8 describes issues related to the arrest of property. Rule 41 establishes that a warrant for search and arrest of property is issued by the judge of the Magistrates Court of the judicial district for

the property located in the territory of the relevant district. In the absence of a magistrate's court, an arrest warrant may be issued by a federal court in the district.

The condition for the arrest of a ship is that it can serve as evidence in a criminal case, as well as an instrument of crime, the latter takes place in case of an environmental crime related to the damage to the marine and biological environment.

The Magistrate's Court may issue a warrant for the arrest of property outside its jurisdiction if there is a risk of property movement. This item is particularly relevant in the case of ships in connection with the fact that the ship can change the port of call on a daily basis. A similar rule has been established for property that may be associated with terrorist activities.

The Magistrate's Court may also issue a special order for the installation of a tracking device on the property to control its movement within the state or the judicial district or outside of them.

Paragraph 5 of rule 41 of the Federal Rules of Criminal Procedure states that a magistrate court judge has the right to issue a warrant for the arrest of property in any district of the United States and the District of Columbia, as well as outside of them, but only in the following cases:

- The property sought is located in territories owned by the United States or in the territories of the states with which the United States is in the commonwealth, for example, the territory of the state of Puerto Rico;

- A warrant is required for the arrest of real estate by US diplomatic and consular services in the territory of foreign states, regardless of who owns it.

An order to search for or seize property must contain the following information:

- a) a period not exceeding 14 days during which the bailiff must execute the order;
- b) as a general rule, the arrest of property is carried out in the daytime. But if there are important reasons and the need for arrest at another time, then this should be specifically indicated in the warrant. Day time is a period from 6 am to 10 pm local time.
- c) The Magistrate's Court must be indicated, to which the arrest warrant must be returned.

The owner or possessor of the seized property, a bailiff or other person who is carrying out an arrest warrant are required to issue a copy of the order and a document confirming the fact of the arrest.

2. Arrest of ships in the legislation of Canada

2.1 Statute in the law of Canada

At intervals of 15 to 30 years, Canada is reviewing federal statutes. The last such procedure took place in 1985. The purpose of such actions is to consolidate all changes of statutes that have occurred since the last revision, as well as to improve the style, organizational structure and formulations of legal norms without changing the semantic and workload. The mandate of the audit committee and the consequences of the revision are set out in Legislation Revision and Consolidation Act., R.S.C. 1985, c. S-20.

In order to find out what changes have been made to the statute, you need to refer to the Bill of Amendments. Special designation R.S.C. indicates the year of revision of the law, c. B-5 points to chapter b-5, s. 124. - points to section 124.

All legal information can be found on the official website of the Ministry of Justice of Canada <http://laws-lois.justice.gc.ca>, site updates are carried out every two weeks. The site is available in the two official languages of Canada: English and French. Access is free.

However, the most popular lawyer environment site is the Canadian Institute of Legal Information (hereafter CanLII) <https://www.canlii.org>. CanLII is a non-profit organization. It was created by members of the Canadian Federation of Legal Entities, to allow lawyers access to law. Currently, the site provides free access to over 200 databases, including the jurisprudence of the Supreme Court of Canada and lower courts.

2.2 Canadian Maritime Law governing the arrest of ships

The Maritime Law section of Canada’s State Immunity Act states that a foreign state does not have immunity from the jurisdiction of the court in any proceedings that concern:

- property claims against a ship owned or controlled by the state
- personal claims for securing a claim related to a ship owned or administered by the state.

Both conditions work in the event that at the time of the claim or the beginning of the trial, the vessel was used or had intentions to use it in commercial activities.

In the case of a cargo, the vessel is not immune from legal proceedings if it is presented:

a) a real claim to the cargo, which is owned by the state, if at the time when the claim arose or the court hearing began, the cargo or the ship carrying it was used or had such an intention for commercial purposes

b) a personal claim in which the cargo will be used as an interim measure to meet the requirements, if the cargo or the vessel on which the cargo was transported was used for commercial purposes.

The Criminal Code of Canada (Criminal Code) begins with terms and definitions. One of the concepts that is revealed at the beginning of this law is shipwreck. This concept includes cargo, rigging, the supply of the ship, as well as all parts of the destroyed ship; the property of passengers and crew members aboard or abandoned shipwrecked, stranded, or in distress at any point in Canada.

Canada’s maritime law also has a shipping law (Canada Shipping Act, 2001). This legal document defines the sea vessel. Thus, a Canadian ship means a ship registered or entered in the register in accordance with section 2 of this law, as well as a ship that is exempted from mandatory registration in accordance with sub-paragraph 46 (1) of the law.

A foreign ship is a ship that is not Canadian, the definition of which we indicated above, is also not a small boat.

Also, a separate Canadian law distinguishes state courts to which the courts are owned and in the service of Her Majesty the Queen of Canada, the provinces of Canada or in the exclusive possession of Her Majesty.

The Maritime Liability Act (Marine Liability Act, SC 2001, c 6) establishes a limitation period for certain issues of maritime law.

Subsection 23 (1) of this law states that no claim may be filed against a seagoing vessel after two years after receiving damages or damage to health. The same term is established in case of loss of cargo or other property on board the ship, as well as non-receipt of income, damage from injury or death of a person.

However, the above period may be extended by the court if this is allowed by the rules of the court. And it will be established that in two years there was no opportunity to arrest the vessel in the zone of the jurisdiction of this court or in the territorial waters of the flag state of the ship in question or in the country in which the owner is a resident or has a registered business. The court may extend the deadline for the claimant to appeal to the court to consider the issue of the arrest of the vessel.

Canada’s Civil Procedure Law consists of the Federal Courts Act (RSC 1985, c F-7). This legal act concerns the activities of federal courts and federal courts of appeal.

The powers granted to a federal court in accordance with section 22 of the Federal Courts Act may be exercised in in rem suits against any ship that at the time of the act belongs to the actual owner of the ship being the defendant.

Section 22 lists 19 points that define the boundaries of federal jurisdiction in the field of the law of the sea.

Marine Arrest Procedure The procedure for arresting a seagoing vessel is regulated by the Federal Courts Rules (SOR / 98-106). Part 13 of these rules is devoted to the Admiralty lawsuits. In accordance with section 477 for maritime affairs, claims of both in rem and in personam may be brought.

In accordance with subsection 481 (1), an officer authorized by a court may issue a warrant for the arrest of a vessel upon filing a claim in rem after filing a reasoned claim.

To obtain an arrest warrant, the applicant must fill out an affidavit, which should indicate

- 1) the name, address and occupation of the applicant;

- 2) the type of requirements and the grounds for filing a claim in rem;
- 3) evidence that the damage has not yet been repaid;
- 4) name of the vessel, its flag state and port of registry
- 5) in the event that the ship is not the subject of claims, then evidence that the ship belongs to the defendant against whom claims are made

Samples of documents that are drawn up in court proceedings are attached to the Rules of the Federal Courts. The form number corresponds to the rule number for which the form is prepared.

3. Conclusion

Legal analysis showed that in the United States and Canada there is no uniform approach to the procedure and the grounds for the arrest of ships. Not all countries adhere to the principles of international law on this issue. Therefore, we believe that in international practice, the provisions of the three conventions regarding the arrest of ships should be combined, and by unifying maritime requirements, develop a unified Convention on the arrest of ships. The results obtained are generally consistent with the position of the global scientific community. The legal procedure related to the arrest of a vessel is one of the most complex areas of the law of the sea. It is obvious that in order to resolve issues in a seaport of Canada or the United States, a foreign company has to use the services of local lawyers, since each court develops its own practice, both legal and simply related to the peculiarities of clerical work.

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