



INTERNATIONAL MARITIME LAW SEMINAR 2012

Recognition and Enforcement of Foreign Orders and Judgments - Poland

I. General.

Poland is a party to numerous bilateral and multilateral international agreements and conventions which regulate recognition and enforcement of foreign orders and judgments in Poland. Amongst others, worth noting are: 1905 and 1954 Hague Conventions on Civil Procedure, 1958 New York Arbitration Convention, 2007 Lugano Convention (which substituted the previous of the 2000).

Since 01st May, 2004, Poland has been the Member State of the European Union. The most significant act in the EU law, which governs recognition and enforcement of orders and judgments, is the Council Regulation (EC) No. 44/2001. The Regulations covers relations between all EU Member States save Denmark, which is covered by a separate agreement between Denmark and EU.

As all the said international law is more or less known, I will not expand on it, but turn and concentrate on Polish law and practice.

II. Polish law.

In Poland recognition and enforcement of foreign orders and judgments (decisions) is regulated by the Civil Procedure Code. The Code applies where there is no international law in place, otherwise the latter takes priority over the domestic law.

According to the Code, decisions of foreign courts issued in civil matters are recognized by virtue of law unless there exist the following obstacles preventing recognition:

- 1) the decision is not non-appealable in the state where it was issued;
- 2) the decision was issued in a case which falls under the exclusive jurisdiction of Polish courts;
- 3) a defendant who did not defend on the merits of the case was not duly served an initial pleading in due time to enable him to defend himself;
- 4) a party was deprived of the possibility to defend himself in the course of proceedings;
- 5) a case involving the same claim between the same parties had been brought before a court in Poland before it was brought before a foreign court;

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Page 1 of 5

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- 6) the decision is contrary to a previous non-appealable decision of a Polish court or a previous non-appealable decision of a foreign court recognized in Poland, issued in a case involving the same claim between the same parties;
- 7) recognition of the decision would be contrary to the basic principles of the legal order of Poland (the public order clause).

A person who claims recognition of a decision of a foreign court is obliged to present:

- (i) an official copy of the decision;
- (ii) a document certifying that the decision is non-appealable unless it is evident from the content of the decision that it is non-appealable;
- (iii) certified translation into Polish of the documents referred to in (i) and (ii) above.

Moreover, if the decision was issued in proceedings in which the defendant did not defend on the merits of the case, a document must be presented to confirm that the initial pleading has been served on the defendant.

Regarding enforcement, the Code requires that a procedure of declaring the decision enforceability is carried out before a competent court.

Decisions of foreign courts in civil matters which may be enforced by execution become enforceable titles when their enforcement is confirmed by a Polish court. Enforcement is confirmed, if the decision is enforceable in the state of issue and is not blocked by the obstacles referred to in 1) – 7) above.

Enforcement is confirmed on the creditor's petition by issuing a writ of execution for the decision. The petition should be accompanied by the same documents as in case of recognition (see: (i) – (iii) above) and a document confirming that the decision is enforceable in the state of issue, unless its enforceability is evident from the content of the decision or the law of that state.

Last, but not least, it is worth noting that since 01st July, 2009 Polish law resigned from the reciprocity as a condition of recognition and enforcement of foreign decisions in Poland. It is a great convenience of the recognition and enforcement, as the condition was treated as the basis and main one for the recognition and enforcement, thus quite often prevented recognitions and enforcement or caused serious difficulties to the process.

III. Arrests of ships.

Poland is a party to the 1952 Arrest Convention.

The Convention is the only ground upon which a ship can be arrested in Poland. There are no provisions in the domestic law permitting to arrest a ship. Therefore, ships flying flags of the Contracting Sates may be arrested only in respect of maritime claims (as defined in the Convention). Other ships also in respect of non-maritime claims.

In its art. 4 the Convention provides that a ship may only be arrested under the authority of a competent forum of the Contracting State in which the arrest is made. The Convention is found in Poland as a *lex specialis* in respect of other, more general, international agreements and conventions, including also the EU law. Therefore, it is not possible to recognize or enforce in Poland foreign order or judgment providing for arrest of a ship. It means that, even if a foreign forum ordered arrest of a ship, which further appeared in Poland, to arrest the ship in Poland will require obtaining similar decision on her arrest. This practice has been confirmed in numerous decisions of Polish courts.

One should always remember, when arresting a ship in Poland, that should have a claim, in respect of which the arrest is made, for which the ship's owners could be sued or a title against them could be obtained covering the claim. Therefore, he should have the claim *in personam* against the owners or at least *in rem* against the ship, like maritime lien or mortgage.

IV. Maritime liens.

Poland is a party to the 1926 Maritime Liens Convention.

There were recently few decisions of Polish Appeal Courts, involving earlier the Polish Supreme Court, on enforcement of maritime liens combined with arrests of ships.

Plaintiffs have got claims *in personam* against the ships charterers. The claims were for port dues, so gave rise to maritime liens on the ships (art. 2.1 of the 1926 Maritime Liens Convention).

The plaintiffs arrested the ships in Poland. The plaintiffs argued that maritime liens are generally maritime claims arising out of mortgage or hypothecation of the ships (art. 1.1.q of the 1952 Arrest Convention).

Subsequently, the plaintiffs sued in Poland the charterers (*in personam*) and the ships' owners (*in rem*, because of the maritime liens on the ships). The plaintiffs alleged that Polish courts have jurisdiction against the charterers and the owners under art. 7.1.f of the 1952 Arrest Convention, which reads "*The Courts of the country in which the arrest was made shall have jurisdiction to determine the case upon its merits [...] if the claim is upon a mortgage or hypothecation of the ship arrested*" (see art. 1.1.q of the 1952 Arrest Convention).

However, regrettably to the plaintiffs, the concept of such established by the plaintiffs jurisdiction has failed. The Courts, including the Supreme Court, have not agreed with the plaintiffs. The Court held that maritime liens are not *per se* maritime claims as well as that maritime liens are not mortgages or hypothecation of a ship.

Following that, the plaintiffs changed their tactics and tried to rely on art. 11 of the 1926 Maritime Liens Convention, which reads: "*Subject to the provisions of this convention,*



liens established by the preceding provisions are subject to no formality and to no special condition of proof". The plaintiffs were saying that because of art. 11 of the said Convention, their claims, as giving rise to the maritime liens, were released from any formality or special condition of proof, thus, as such, could be sought before any court in and jurisdiction, and no formality, especially regulating jurisdiction of courts, can limit such strength of the maritime lien.

Again, regrettably to the plaintiffs, the Courts did not agree with them. The Courts explained that art. 11 of the 1926 Maritime Lien Convention was of material character, and not formal, therefore had nothing to do with jurisdiction.

As a consequence of the decision, the plaintiffs' claims have been struck out on lack of jurisdiction grounds, and the ships have been released from the arrests.

V. Mortgages.

As it has been already mentioned, Poland is a party to the 1926 Maritime Liens Convention, which also deals with mortgages.

It is worth noting that mortgages are maritime claims provided for in the 1952 Arrest Convention, thus allows to arrest a ship.

In order to enforce a mortgage against a ship in Poland, a creditor (person entitled under the mortgage) needs to obtain an enforceable title against the ship's owners, either issued in Poland or in a foreign state and confirmed to be enforceable in Poland (in the enforcement proceeding).

Having obtained such title, the creditor is to apply to a bailiff in Poland to conduct an execution proceeding from the ship, which proceeding is aimed on sale of the ship and distribution of proceeds.

In some jurisdictions, including Poland, laws provide that mortgages can be accompanied by agreements upon which persons entitled under the mortgages, in certain circumstances provided for in the agreements, can take possession of the ships subject to the mortgages and sale them. In such a situation the laws provide that appropriate formalities are to be taken for the purpose of confirming and evidencing the taking of the possession. In Poland, it is to be the creditor's statement that he takes the possession confirmed by a notary public. Such statement is to be also submitted the Register of Ships and served upon the ship's owners.

The creditor, upon such statement, is to apply to the bailiff to conduct the execution proceeding and enter the creditor into the possession of the ship. In case such formalities were takes in foreign state, the formalities will have to be first recognized or enforced in Poland.



VI. Conclusions and recommendations.

As you may see, even if there is no international agreement or convention in place in Poland, it is still not difficult to recognize or enforce foreign order or judgment in Poland.

It is, however, not possible to recognize or enforce in Poland foreign order or judgment on arrest of a ship. Therefore, to arrest the ship in Poland it is necessary to obtain decision from Polish courts.

Maritime liens are not per se maritime claims under the 1952 Arrest Convention, as they do not generally fall under art. 1.1.q of the said Convention (mortgages or hypothecation of a ship). Moreover, art. 11 of the 1926 Maritime Liens Convention, which releases maritime liens from formalities and special conditions of proof, is of a material nature, and not formal. Thus, it is always to be kept in mind to sue a ship for the maritime lien in a competent jurisdiction and, when a decision is obtained, to enforce the decision against the ship in other.

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