

# INTERNATIONAL MARITIME LAW SEMINAR 2014

## Recent Developments in Maritime Law: a Multi- Jurisdictional Perspective – POLAND

*Jurisprudence on arrests of ships*



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## *Jurisprudence on arrests of ships - POLAND*

### **Last year**

- carriage of goods by sea in the Polish Maritime Code
- new Maritime Code



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## *Jurisprudence on arrests of ships - POLAND*

### **Chapter One**

### **EU Regulation 44/2001 vs 1952 Arrest Convention**



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## *Jurisprudence on arrests of ships - POLAND*

### **Chapter One**

#### **EU Regulation 44/2001 vs 1952 Arrest Convention**

- art. 47.1 of the Regulation: *when a judgment must be recognised in accordance with this Regulation, nothing shall prevent the applicant from availing himself of provisional, including protective, measures in accordance with the law of the Member State requested without a declaration of enforceability under Article 41 being required*



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## *Jurisprudence on arrests of ships - POLAND*

### **Chapter One**

#### **EU Regulation 44/2001 vs 1952 Arrest Convention**

- art. 4 of the Convention: *a ship may only be arrested under the authority of a Court or of the appropriate judicial authority of the contracting State in which the arrest is made*



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## *Jurisprudence on arrests of ships - POLAND*

### **Chapter One**

#### **EU Regulation 44/2001 vs 1952 Arrest Convention**

- art. 4 of the Convention: *a ship may only be arrested under the authority of a Court or of the appropriate judicial authority of the contracting State in which the arrest is made*
- art. 71 of the Regulation: *this Regulation shall not affect any conventions to which the Member States are parties and which in relation to particular matters, govern jurisdiction or the recognition or enforcement of judgments*



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## *Jurisprudence on arrests of ships - POLAND*

### **Chapter One**

#### **EU Regulation 44/2001 vs 1952 Arrest Convention**

- Courts in Poland - Convention prevails (*lex specialis*) over the Regulation



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## *Jurisprudence on arrests of ships - POLAND*

### **Chapter Two**

#### **1926 Maritime Lien Convention vs 1952 Arrest Convention**





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## *Jurisprudence on arrests of ships - POLAND*

### **Chapter Two**

#### **1926 Maritime Lien Convention vs 1952 Arrest Convention**

- art. 1.(1).(q) of the Arrest Convention: *"Maritime Claim" means a claim arising out of the mortgage or hypothecation of any ship*

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### **Chapter Two**

#### **1926 Maritime Lien Convention vs 1952 Arrest Convention**

- art. 1.(1).(q) of the Arrest Convention: *"Maritime Claim" means a claim arising out of the mortgage or hypothecation of any ship*
- art. 7.(1).(f) of the Arrest Convention: *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*



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## *Jurisprudence on arrests of ships - POLAND*

### **Chapter Two**

#### **1926 Maritime Lien Convention vs 1952 Arrest Convention**

- the Supreme Court in Poland – a maritime lien is not *per se* a maritime claim



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## *Jurisprudence on arrests of ships - POLAND*

### **Chapter Three** **Subrogation**

- art. 1.(1).(m) of the Arrest Convention: *"Maritime Claim" means a claim arising out of wages of Masters, Officers, or crew*

### **Chapter Three** **Subrogation**

- art. 8.(5) of the Arrest Convention: when a maritime claim is asserted by a third party other than the original claimant, whether by subrogation, assignment or otherwise, such third party shall, for the purpose of this Convention, be deemed to have the same habitual residence or principal place of business as the original claimant



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### **Chapter Three** **Subrogation**

- Courts in Poland – when third person subrogates Masters, Officers, crew with respect to their wages, the person's claims are not any longer maritime claims



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**THANK YOU FOR ATTENTION AND PATIENCE**

