



LAW
OFFICES

EGOROV
PUGINSKY
AFANASIEV
& PARTNERS

Arrest by any means: is justification necessary?

Alexey Karchiomov, Senior Associate

5/28/18

Background facts

Chance-103 (Шанс-103)

Name	Date	Register
Chance 103	05.2011	RMRS
Type:	Fishing vessel	
Home port	Nakhodka 	
Place of build:	Miho Shipyard (Miho Zosensho) Simidzu 	
Built:	03.09.1986	
Owner and operator:	“Vostok-1” Fishing Collective Farm 	
IMO:	8608858	
MMSI:	273358420	
Reg №:	866965	
Class:	(KM)* (REF)	

- On April 7th – “Chance-103” was detained by Border Service of the Federal Security Service of Russia outside the territorial sea near Cape Golden, where the vessel was fishing for crab.
- After the vessel was directed to the port of Nakhodka, the shipowner for several days could not obtain legally justified reasons from the Border Service on why the vessel remains under arrest.



Grounds for arrest

The vessel was arrested on the following grounds:

- ❑ The mismatch of shipborne rescue equipment with the safety requirements;
- ❑ There were 12 Indonesian citizens on board, who caught and processed crab without relevant working permits;
- ❑ Incorrect registration of crew lists (lists were not certified by the Harbour Master and shipowner, as well as data on Russian and foreign citizens on board were reflected in different crew lists);
- ❑ Violation of fishing rules (were not defined at the moment of detention)

ARRESTED



Arguments of Border Service

- Failure to comply with safety requirements:
 - inconsistency of marine life-saving equipment with safety requirements (vessel's life-saving equipment did not pass the mandatory service procedure, liferafts' reinstallation period has expired).
-
- The Master and the shipowner do not comply with the requirements of the Russian legislation regarding use of foreign nationals in fishing activities.

Shipowner's position

- ✓ The vessel has previously undergone a survey for the safety of navigation - there were no comments / complaints on compliance with safety standards.
-
- ✓ The exclusive economic zone of the Russian Federation is not a territory of the Russian Federation (Art.1 of the Law No.191-FZ dd 17.12.1998).
 - ✓ Fishing activities and producing the goods on board the vessel are carried out beyond the territory of Russia (p.1 Art.67 of the RF Constitution: *the territory of the Russian Federation includes the territories of its subjects, inland waters and the territorial sea, the airspace above them*)
 - ✓ Foreigners are not forbidden to work on Russian vessels and hold any positions except the Master, Chief engineer, Second officer and Radio officer (p.1 Art.56 of the Merchant Shipping Code of the RF)



Incorrect justification

Arguments of Border Service

- Indonesian nationals conducted illegal labor, business and other activities on the territory of the Russian Federation, as they did not obtain a work permit.



Shipowner's position

- ✓ Foreign specialists do not need a work permit in the Russian Federation, and the shipowner does not need to receive a quota for employing foreign nationals, since:
 - Foreign specialists were provided by a shipowner's trading partner.
 - "Vostok -1" as a legal entity did not hire foreign nationals for work, did not pay them salaries and did not enter into labor contracts with them.
 - Foreign nationals did not carry out any activity on the territory of the Russian Federation, since they have not crossed the border and have not entered Russia.
 - The vessel cannot be considered as a "territory" of the Russian Federation
 - The foreign "violators" appeared on the territory of the Russian Federation only after Border Service arrested the ship and directed her to the port of Nakhodka.
 - ✓ Migration authorities are not authorized to establish the fact of illegal labor activity, based on some testimony of a third-party organization, whose competence does not include labor law.
-
- Two crew lists were not certified by the Harbour Master and the shipowner, as well as data on Russian and foreign nationals was reflected in different crew lists.
 - ✓ Border guards based their claims on an already inoperative normative act, which was canceled as early as in 2012.
 - ✓ Absence of shipowner's seal on the crew list is not a basis for the arrest and removal of the vessel from fishing activities.

Later on it was found that:

- 1 One of ship chandlers tried to arrest the vessel for a fairly small debt (about 7000 USD). The courts refused to impose an arrest on the ship, even though the supplier was prepared to provide a bank guarantee as a collateral. The court pointed out:

“provision of counter security by the applicant in the form of a bank guarantee does not entail the automatic adoption of interim measures, since the court must assess both the very fact of the existence of objective grounds for adopting interim measures, take into account the actual circumstances of the dispute, as well as observe the balance of interests of the parties when adopting and determining the type of interim measures.”

(paragraph 2 of item 11 of the Resolution of the Plenum of the Supreme Arbitration Court of the Russian Federation dd 12.10.2006 N 55 "On the application of interim measures by arbitration courts").

- 1 The ship chandler decided to take other measures in order to detain the ship and exert pressure on the shipowner - he informed the Border Service of the Federal Security Service of Russia that there are breaches of safety requirements and that there are illegally employed foreigners on board the vessel...

As a result:

On April 18, after numerous negotiations with the border authorities and filing of numerous complaints (including to the Prosecutor's Office), the arrest was lifted. Altogether, the ship was forced to stand in the port for 12 days and incur **daily** losses: about 16 000 Euro of actual losses and about 81 000 Euro of lost of profit.

**LIFE IS FAIR
BECAUSE IT'S
UNFAIR TO
EVERYONE.**

To conclude

1. Detention of the vessel by the State authorities results in the same: the shipowner is not able to operate the ship and incurs corresponding losses.
2. In practice when a vessel is detained by the State authorities, she shall be firstly arrested, and only after – relevant justification for arrest shall be prepared.
3. Excess of authority by law enforcement bodies in almost any case can be explained as the need to take measures aimed at protecting the legitimate interests of the State.
4. Detention / arrest, even by unlawful actions of State bodies, takes time to collect evidence and appeal it.
5. In practice, a vessel can be detained even when she is not in the port (in this particular case the vessel was detained outside the territorial sea).
6. A vessel can be detained on fairly simple and extremely general “accusations”.

**Applies to any vessel passing through Russian waters
(excluding military).**

The main thing is to find a cause for a detention.





LAW
OFFICES

EGOROV
PUGINSKY
AFANASIEV
& PARTNERS

THANK YOU FOR YOUR ATTENTION!

Nevsky av., 24, suite 132
St. Petersburg, 191186, Russia

Tel.: +7 (812) 322 96 81

Fax: +7 (812) 322 96 82

www.epam.ru



Alexey Karchiomov
Senior Associate

alexey_karchiomov@epam.ru