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Lebedev, V. (2020). Legal regulation of maritime liens in Ukraine. *Lex Portus*, 4, 35–55. <https://doi.org/10.26886/2524-101X.4.2020.2>

UDC 347.797 (477)

DOI 10.26886/2524-101X.4.2020.2

LEGAL REGULATION OF MARITIME LIENS IN UKRAINE

ABSTRACT

Despite the special modern literature quite often touches the theme of maritime liens and ship mortgages, there are lots of issues which still remain unclear for the well-known reasons. The most crucial reasons include: mixture of heterogeneous concepts, relative novelty of the institute of maritime lien in the Ukrainian legislation and complex structure of the institute of maritime liens and ship mortgages. The present research is aimed to clarify some basic aspects of legal regulations of relations concerning maritime lien, in view of their historical development. The author highlights up-to-date concept and legal nature of maritime lien, grounds for its occurrence and termination, priority of claim satisfaction, as well as discrepancies in legal regulation of maritime lien, as compared between the current legislation of Ukraine and provisions of the 1993 International Convention on maritime liens and mortgages. Under the results of analysis, the author proposes one of the methods aimed to bring the Ukrainian legislation in compliance with obligations accepted by Ukraine

under the aforesaid international treaty. The author states that bottomry is the most essential legal structure preceding up-to-date institution of maritime lien. Brief analysis of the history of bottomry allowed us to distinguish two main types of bottomry – Romanic and Anglo-German, i.e. bottomry in its own sense. Although in the modern world the institution of bottomry is almost out-of-date, it has not completely disappeared yet, but serves as historical grounds for some modern institutions of maritime law, in fact treated as encumbrance of the vessel as tangible item, namely: maritime lien and ship mortgage. Based on comparison between provisions of the aforesaid 1993 Convention and the Merchant shipping code of Ukraine, we may state that the Merchant shipping code of Ukraine is too conservative, in particular, with regards to priority of satisfaction of the maritime claims. Meantime, the Merchant shipping code of the Russian Federation was brought in compliance with regulations of the aforesaid 1993 Convention. Finally, the author concludes that the same actual elements are required for occurrence of both maritime claim and maritime lien as security thereof. Such aspects as grounds for termination of maritime lien, in particular in American law, the most vital types of privileged maritime claims and the nature of the list thereof, were also included into the subject of this article. Special attention has been drawn to the concept of maritime lien and to accessory nature of maritime liens, the subject and the parties to legal relations regarding maritime lien.

The key words: Ukraine, maritime lien, maritime liens and ship mortgages, legal regulations, bottomry, privileged maritime claims.

Introduction

Despite the fact that special and scientific modern literature quite often touches the theme of maritime liens and ship mortgages, there are lots of issues still remaining unclear for several reasons – mainly the following ones: 1) relative novelty of the institution of maritime lien in Ukrainian legislation; 2) lack of unity in legal regulation of maritime liens abroad and difficulties in unifying such institution in international maritime law; 3) complex structure of the institution of maritime liens and ship mortgages; 4) lack of practice and understanding legal nature of the abovementioned institution.

Attempts to analyze such legal institution not always have positive results, due to mixture of dissimilar concepts and the realities corresponding thereto. It is not a surprise, because the differences

between them are sometimes extremely subtle. However, there are differences not only between different institutions, but also between similar institutions in the framework of different legal families, as well as between similar institutions in legal systems within the same legal family – for instance, there are different nuances in legal regulation of maritime lien, as compared to English and American law. Study of experience gained in the framework of the aforesaid legal systems should be especially useful, since such experience is quite vast and is well-developed theoretically.

Methodology

The present research is aimed to clarify some basic aspects of legal regulations of relations concerning maritime lien, in view of their historical development. We hope that such work will become essential not only in theoretical, but also in practical sense, because unclear perceptions of such legal institution cause insufficient efficiency of its practical use in merchant shipping. In this regard, the present article highlights the history of maritime lien, its up-to-date concept and legal nature, as well as grounds for its occurrence and termination, jointly with priority of claim satisfaction. It also deals with non-conformities of legal regulation of maritime lien in the current legislation of Ukraine with provisions of the 1993 International Convention on maritime liens and mortgages. Finally, it proposes methods of their elimination and bringing the Ukrainian legislation in compliance with obligations accepted by Ukraine under the aforesaid international treaty.

1. History of maritime lien

Bottomry, which can be traced back to the ancient Mediterranean is considered to be the most essential legal structure, preceding up-to-date institution of maritime lien. Bottomry lenders were selling casualty insurance as well as the use of money, and they required payment of principal, interest, and premium only from

borrowers whose ships had safely arrived at their destinations (Steckley, 2001, p. 257).

Legal essence of bottomry has not become out-of-date yet, because in the list of maritime claims, as set forth in the 1952 International Convention for the unification of certain rules relating to the arrest of sea-going ships (namely, Clause (h) Article 1 (1)), bottomry serves as actual grounds for occurrence of maritime claim, whereas Ukraine is a party to this Convention.

History of bottomry agreement goes back to the Ancient Greece, as a special type of loan. This loan was secured by lien of the vessel or cargo on board. In the Mediterranean, such type of agreement was known to the Greeks in the time of Demosthenes (about 350 B.C.), which is the date of the earliest reference (Trenerry, 2009, p. 10). *Foenus nauticum* is a loan agreement adopted by the maritime trade practice in the Ancient Rome, applicable solely in overseas trade operations in order to provide the shipowner (the vessel master) with capital while sending cargo to distant countries. Under that loan the risk of maritime adventure was bore by the lender of the money used for this purpose (Lopuski, 2008, p. 336). Specification of such loan (credit) was that the creditor could negotiate upon any (i.e. unrestricted) interests to be accrued (*foenus*). The risk was transferred to the creditor at the moment when the vessel was to leave the port for voyage. The risk ceased when the debtor was in delay. This agreement facilitated a so-called joint maritime venture aimed to achieve a common commercial goal. Such goal meant that the merchant (debtor) was able to make a profitable trade transaction with the borrowed funds (monies or other generic items), which would enable him to share its income with the creditor. The commitment was unilateral, like any loan. The creditor's claim was defended by means of *actio pecuniae traiecticae*. In addition, in case of loss of any item due to the debtor's fault, a deed of *stipulatio poenae* was usually concluded. From the creditor's point of view, its claim was facilitated by success of the enterprise.

One can find references to *pecunia traiectica* long after the end of the Roman Empire. It lasted both in theory and in practice (Blicharz, 2017, p. 7). In the Roman countries (France, Italy, Spain), such type of agreement was developed in the Middle Ages. However, in Germany in the Middle Ages, a loan was developed with material security, aimed to help the vessel master who faced problems in a foreign country, mainly due to ship accident. The Russian law was mainly similar to such type of the Anglo-German bottomry (i.e. bottomry in the proper sense). The subject of lien is, first of all, the vessel, and only in case when the amount required for the lien on a vessel is unavailable, legislative acts allow the vessel master to apply cargo lien, either fully or partially.

While entering into bottomry agreement, the vessel master should comply with form of the agreement, as prescribed by the law in the venue of concluding the deal. Bottomry form is everywhere in writing. In Russia, bottomry act (bottomry letter) should have contained references to: a) name of the vessel master and creditor; b) loan amount; c) subject of lien; d) payment term.

Although it is the vessel master who enters into such an agreement, however, based on the fact that he acts as shipowner's representative, it seems that a claim can be brought only against the person who became the subject of rights and obligations under such deal. Meantime, the law offers the creditor to file a lawsuit against the master, although the foreclosure can be imposed on the vessel, i.e. on the shipowner's property. Owners of the goods, pledged by the master and serving as the subject of foreclosure from the creditor, are entitled to file a claim against the master and (as subsidiary) the shipowner, on reimbursement of the lost value (Shershenevich, 1994, p. 331).

Although today English law formally recognizes bottomry as grounds for maritime lien, it is alleged, that maritime liens have been derived from the original method of both the common law and the admiralty law of enforcing legal liability by arresting the wrongdoer.

The maritime law therefore continued to cling to the arrest of the original wrongdoer; and, in so doing, they availed themselves of the popular fiction, regarding the ship as an animate object, and as responsible for her own, acts (Maritime liens, p. 2).

The essence of bottomry essentially decreased in the 19th century. The law on ship mortgage also played a crucial role in such process. Further development showed certain discrepancies between interests of creditors acting as ship mortgagees, from one hand, and creditors under the bottomry agreements, from the other hand. In the framework of many public orders, privileged maritime liens got a priority over claims of ship mortgagees. Meantime, lots of public orders have been developed under priority against claims secured by maritime liens, claims against shipowners arising from the vessel operation and having a privileged nature, to be satisfied at the expense of vessel cost in case of foreclosure against the vessel, i.e. monetary claims secured by ship mortgage.

Most of researchers believe that the concept of maritime lien was applied in the English court practice long ago, however just in the framework of the case *Daniel Harmer v William Errington Bell and Others (The "Bold Buccleugh")* it became significantly clear. The Judge Jervis applied the definition indicated in the Abbot's "A Treatise on the Law Relative to Merchant Ships and Seamen" (Abbot, 1822). Maritime lien shall mean either a claim or a privilege in respect of an item to be sold by means of court proceedings. The Judge added also that such process shall be performed in the form of *in rem* court proceedings, while the claim itself shall follow the item (vessel), irrespective of who is its owner. At the moment of occurrence, such right or privilege has a standby status, while it shall be exercised only in the framework of *in rem* court proceedings, although it shall be deemed as existing from the moment of its occurrence. Therefore, in the middle 19th century, the concept of *maritime lien* has been formed in the framework of English court practice.

Global society tried to overcome discrepancies in legal regulations of various countries, governing relations concerning maritime law and ship mortgages, by means of adopting homonymous Conventions for the unification of certain rules of law relating to privileged maritime claims and sea-going ship mortgages (Brussels, April 10, 1926; Brussels, May 27, 1967) (Melnikov & Remeslo, 2017).

Neither the 1968 Merchant shipping code of the USSR (Kodeks torgovogo moreplavanija, 1968), nor its predecessor – the 1929 Merchant shipping code (Kodeks torgovogo moreplavanija, 1929) mentioned the term of maritime lien; however, both of them stipulated the concept of privileged maritime claims.

2. Modern concept and legal nature of maritime lien

In the second half of the 20th century it got clear that most of the problems arose from difficulties in translation, while other problems arose from confusion in relations, when the privileged maritime claim (as basic one) distinguished unclearly from its security.

A certain progress took place in late 80-s – early 90-s, in the 1989 International Convention on salvage. Article 20 thereof stipulates meaning of the term of *maritime lien* (in Russian: “morskoj zalog”, in Ukrainian: “morska zastava”). In the process of drafting the 1993 International Convention on maritime liens and mortgages, the Russian delegation provided a note upon correct translation of the most vital English terms into Russian.

The 1995 Merchant shipping code of Ukraine (Kodeks torhovelnoho moreplavstva, 1995) was drafted under conditions when the concepts of maritime liens and ship mortgages remained not clear enough. The Supreme Council of Ukraine had insufficient experience in drafting complex innovative legislative acts, while the experience of applying the Merchant shipping code of the USSR still remained fresh in the memory. Thus, the Ukrainian legislators supported the ideas set forth in Chapter XVII “Privileged claim” of the Merchant shipping code of the USSR (Articles 280–285).

Chapter 2 Section X of the Merchant shipping code of Ukraine (Articles 358–363) also governs the institution of privileged claims. However, Chapter XXII of the Merchant shipping code of the Russian Federation (adopted in 1999) (Kodeks torgovogo moreplavanija, 1999) contains the Rules for maritime lien on a vessel (Articles 367–373) and mortgage on a ship or a ship under construction (Articles 374–387). Certainly, both Article 389 of the Merchant shipping code of the Russian Federation (fixing the list of maritime claims) and the corresponding Article 42 of the Merchant shipping code of Ukraine provide for ship mortgage and lien on a vessel respectively, i.e. treat the claims related to ship mortgage and lien on a vessel respectively as maritime claims. It is not a surprise, since both rules of the 1993 International Convention on maritime liens and mortgages and draft rules of the 1999 International Convention on the arrest of ships have been already drafted at that time. One more fact: although the Merchant shipping code of the Russian Federation deals with maritime lien, it governs relations upon maritime claims (e.g. Articles 367–369 of the Merchant shipping code of the Russian Federation) on the grounds whereof such lien arises. Meantime, the Russian legislator detaches consecutively maritime claims from maritime liens serving as security for such claims. At least, the term of privileged claims does not apply in the Merchant shipping code of the Russian Federation, while provisions of the Merchant shipping code of Ukraine are much more conservative. Someway it can be explained by the fact that the 1999 Convention primarily was drafted as the convention on privileged maritime claims and maritime liens. Even the 1993 International Convention on maritime liens and mortgages provides all the types of privileged claims against vessel owner, demise charterer, vessel manager or operator – in fact, against the shipowner itself.

After Ukraine joined this Convention in accordance with the Law No. 240-IV dd. 22.11.2002, the 1993 International Convention on maritime liens and mortgages has become an integral part of

the Ukrainian legislation (Zakon pro pryiednannia Ukrainy do Mizhnarodnoi konventsii pro morski zastavy ta ipoteky 1993 roku, 2002). Thus, all the priorities stipulated by the 1993 Convention shall be valid in case of their conflict with provisions of the Merchant shipping code of Ukraine, in particular, with Article 358 of the Merchant shipping code of Ukraine.

Disputes upon the issue of whether a maritime lien is deemed as the proprietary right or as the right of obligation seem to be inefficient, since there is no doubt concerning its proprietary nature. It's another matter that institutions of maritime liens and ship mortgages contain obligational elements, in particular, in respect of ship mortgage – this is doubtless too. Therefore, there is quite restricted proprietary right which include *jus distrahedi*, i.e. the right of priority satisfaction of the claim at the expense of the item cost. No doubt, in fact lien is deemed as a kind of right on someone's property (*jura in res aliena*). Of course, one should not leave aside the arguments of supporters of the mandatory nature of lien. For instance, the creditor's domination over the item shall terminate due to debt recovery. Of course, correlation of the item in this way completely ceases to exist. There is also one more interesting argument upon the issue of determining the debtor under the obligation, facilitating lien and arising from structure of the Roman institution *actio in rem scriptae*. The debtor under obligation within such lien shall be the current holder/owner of a pledged item, whereby the debtor is related to such an obligation.

As for detailed description of lien relations, we will have to admit that it is impossible to clarify in full the nature of maritime lien, remaining solely in the framework of either proprietary or binding relations. However, it is required neither from theoretical nor from practical point of view. Nevertheless, the leading role of proprietary relations in construction of maritime lien is obvious. Moreover, for a maritime lien they are even more significant than for the general civil concept of a lien. Proprietary nature of maritime lien

is especially vividly manifested in English and American law, which gives procedural features to this institution. Notable provisions regarding maritime lien are contained in consideration of the case *Equilease Corp. v M/V Sampson*: “The federal maritime lien is a unique security device, serving the dual purpose of keeping ships moving in commerce while not allowing them to escape their debts by sailing away ... The lien is a special property right in the vessel, arising in favor of the creditor by operation of law as security for a debt or claim. The lien arises when the debt arises, and grants the creditor the right to appropriate the vessel, have it sold, and be repaid the debt from the proceeds. Thus the maritime lien may be defined as a property right that adheres to the vessel wherever it may go ... Such a lien has been held to follow the vessel even after it is sold to an innocent purchaser”.

Accessory nature of maritime lien means that it cannot exist if there is no maritime claim, so transfer of maritime claim to another person provides also for transfer of the right on lien. Pursuant to Part 1 Article 10 of the 1993 Convention, the assignment of or subrogation to a claim secured by a maritime lien entails the simultaneous assignment of or subrogation to such a maritime lien.

If there is a privileged maritime claim, there is also a maritime lien. Therefore, the creditor has a right to file two types of lawsuits: *in personam* – to be filed against the debtor under maritime claim; and *in rem* – to be filed by the pledgee against the owned of pledged vessel. Strictly, today the concept of maritime claim cannot be called as *the privileged one*; however it is deemed as the privileged one, since it is secured by maritime lien. Essence of the privilege means that such a privileged claim shall be satisfied in priority of any other claims.

Although maritime lien and sea-going ship mortgage are different institutions, it is quite possible to include them into a single class, at least because all of them mean encumbrance of the vessel as tangible item.

3. Occurrence and termination of maritime lien, priority of claim satisfaction

In fact, the same elements are required for occurrence of both maritime claim and maritime lien as security thereof. One of the obstacles for international unification of maritime law is the list of maritime claims, in particular the privileged ones, i.e. the claims facilitating maritime liens. Since such claims shall be satisfied in priority of claims secured by ship mortgage, the list of such claims was drafted under the results of a compromise between interests of the pledgees, who seek to expand it, and the pledgers, who seek to maintain at least a stable and an exhausted list of maritime claims, in particular the privileged ones.

It is unreasonable to provide such list therein (see Article 4 of the 1993 Convention), whereas the same provision is quite similar to Article 367 of the Merchant shipping code of the Russian Federation. Only Subclause (e) Part 1 Article 4 of the 1993 Convention (like Subclause 5 Article 367 of the Merchant shipping code of the Russian Federation) clarifies that losses/damages are restricted to actual damages only. Therefore, provisions of the Merchant shipping code of the Russian Federation, as compared to the Merchant shipping code of Ukraine, correspond to the 1993 Convention.

Privileged maritime claims, as set forth in the 1993 Convention, may be divided into the following types:

- contractual claims;
- claim in tort;
- public (quasi-public) claims, i.e. port, canal (or dues payable in other waterways) and pilotage dues.

Another crucial aspect shall be the moment of occurrence of the maritime claim and the appropriate maritime lien. In general, we may state that the moments of occurrence of the maritime claim and the maritime lien as security thereof usually co-inside. Neither state registration nor performance of any other formalities are required for occurrence and existence of maritime lien, while sea-going

ship mortgage shall occur in compliance with all the formalities prescribed in the place of its occurrence.

Maritime lien shall be terminated either by means of forced sale of vessel or by recovery (satisfaction, enforcement of termination by any other means) of maritime claim. Thus, maritime lien shall terminate due to termination of the obligation secured thereby (i.e. maritime claim). Both loss and forced sale of the pledged item also serve as grounds for termination of maritime lien. Moreover, maritime lien on vessel shall terminate upon expiry of one-year term from the date of occurrence of claims secured thereby, unless the vessel until expiration of the above term was subject to ship arrest, causing forced sale thereof. Meantime, termination of maritime lien securing the claim in respect of wages for the vessel crew members is quite a problematic issue. Such issue may be the subject of distinct research.

Legal regulation of researched relations in the USA is a matter of particular concern. In order to understand correlated issues, a keystone shall be case *Bank One, Louisiana N.A. v. Mr. Dean MV* considered by the Federal Court of Appeal in the Fifth District. In the present case, the dispute arose from performance of the Time Charter. As shown by court decision on the merits, maritime lien arose at the moment of concluding the Charter Party (providing vessel to the Charterer); however the rights on lien may be exercised only after violation of the Charter Party, while till that moment the lien has a standby status. The right to exercise lien shall arise only from the moment of arising the right to file a lawsuit *in rem*. Meantime, maritime lien cannot arise if and until the Contract, on the grounds whereof it arose, remains non-performed in full (based on the doctrine of executory contract). Maritime lien shall terminate due to termination of maritime claim, loss or forced sale of the vessel, rejection of the right on maritime lien. Although American law does not provide for clear validity terms of maritime claim, there is a widespread doctrine of *laches* (i.e. groundless and

improper delay), whereunder maritime lien shall be recognized as invalid, if:

- the pledgee committed improper delay in exercise of its rights;

- the shipowner incurred losses due to such groundless delay.

Priorities for satisfying the claims secured by maritime lien are stipulated, first of all, by Articles 4 and 5 of the 1993 Convention on maritime liens and mortgages. Provisions of the Merchant shipping code of Ukraine (Articles 358–378) and civil legislation of Ukraine shall apply with regards to regulations set forth in the 1993 Convention, valid since the 5th of September 2004.

First priority (out-of-order) shall include reimbursement of expenses related to ship arrest, followed by a forced sale thereof (*custodia legis*) – see Article 12 (2) of the 1993 Convention.

Priorities for satisfying privileged maritime claims shall be determined in the following order: maritime liens securing claims for reward for the salvage of the vessel shall take priority over all other maritime liens, arisen prior to the time when the operations giving rise to the said liens were performed. This is natural, because a successful salvage operation makes it possible to satisfy other claims secured by a maritime lien, although they arose prior to salvage operation. The maritime liens securing claims for reward for the salvage of the vessel shall be satisfied within each own priority, in proportion to the claimed amount, and shall rank in the inverse order of the time when the claims secured thereby accrued. Such claims shall be deemed to have accrued on the date on which each salvage operation was terminated.

In accordance with Article 4 of the 1993 Convention, each subclause of Part 1 thereof has its own priority. Thus, first priority shall include claims for wages and other sums due to the master, officers and other members of the vessel's complement in respect of their employment on the vessel, including costs of repatriation and social insurance contributions payable on their behalf.

This subclause slightly contradicts to Clause 1 Article 358 of the Merchant shipping code of Ukraine, and it is just the beginning.

Second priority shall include claims in respect of loss of life or personal injury occurring, whether on land or on water, in direct connection with the operation of the vessel. It has significant discrepancies with Article 358 of the Merchant shipping code of Ukraine, which prescribes claims on nuclear damage and sea pollution, as well as removal of the pollution consequences.

Third priority shall include claims for reward for the salvage of the vessel, arising independently, i.e. in case when there were no other previous claims secured by a maritime lien. Therefore, if maritime claims arising from the vessel salvage operation regarding precede the other privileged claims, they shall be satisfied as third priority. Also, maritime liens securing claims for reward for the salvage of the vessel shall rank in the inverse order of the time when the claims secured thereby accrued, facilitating additional sequence of claims in the framework of third priority, i.e. the claims which arose later shall be satisfied first of all.

Fourth priority shall include the aforesaid quasi-public claims for port, canal, and other waterway dues and pilotage dues. Although formally they are treated as fourth priority, in fact it hardly reflects their actual priority, since the port authorities are entitled to reject granting permit for the vessel to leave the sea port in case of non-payment of the above port dues.

Finally, fifth priority shall include claims based on tort arising out of physical loss or damage caused by the operation of the vessel other than loss of or damage to cargo, containers and passengers' effects carried on the vessel. Even a clarification in the Merchant shipping code of the Russian Federation, meaning only actually incurred losses, is essential.

The following are the claims secured by ship mortgage.

If full satisfaction of claims of preceding priority results in lack of funds, required for full satisfaction of claims of the current priority,

such claims shall be satisfied in proportion to their amount – of course, except the salvor's claims, which shall be satisfied as first priority but in the inverse order of the time when the claims accrued, as mentioned above.

4. Practice in Ukraine

In order to confirm that relations upon maritime liens and ship mortgages in Ukraine are in critical condition now, we may see that there is lack of judicial practice in respect of such relations. Meantime, although such judicial practice is too small, it shows clearly the fact of concluding agreements on ship mortgage in Ukraine.

For the attention of concerned reader, let us show the dispute considered and settled by the Commercial Court of the Autonomous Republic of Crimea dd. the 5th of June 2012 (case No. 5002-32/1004-2012) (Ukhvala u spravi № 5002-32/1004-2012). A natural person – entrepreneur filed a lawsuit against the Ukrainian Industrial Bank, Limited Liability Company “Alkasar” and Public Joint Stock Company “Delta Bank” on recognizing as invalid the agreement on ship mortgage between Ukrprombank and LLC “Alkasar” Company (mortgagor) dd. the 27th of April 2007 in respect of the fishing transport and refrigeration vessel Albion. This agreement secured the claim of the mortgagee (Ukrprombank) against the mortgagor under the credit. The vessel belonged to the mortgagee based on the Certificate of Title dd. the 26th of April 2004. However, a natural person – entrepreneur stated that it was not the mortgagor, but he is the above vessel owner. The court found out that the entrepreneur had not duly registered the vessel ownership, and therefore the court did not recognize such right. In addition, the claimant's claim to recognize the agreement on ship mortgage as invalid, in order to reimburse its losses caused by the crime commitment, if the person who committed such crime was not identified (Article 1177 of the Civil code of Ukraine (Tsyvil'nyy kodeks, 2003)) was very paradoxical. Naturally, the court rejected the claimant's claim.

Under appellate proceedings, this court decision remained in force.

Conclusions

Therefore, we may propose to bring the Merchant shipping code of Ukraine into compliance with the 1993 Convention, like it has already been committed by legislators of the Russian Federation.

In the present abstract, we may summarize our several researches in the past. The parties to maritime lien shall be the following: from one hand – pledgee (mortgagee etc.), where there are no problems to identify it, since it is similar to creditor under the appropriate claim; from the other hand – an identified vessel. Case *The John G. Stevens*, considered by the American court in 1898, may be very useful in order to understand the concept of *identification of the vessel*.

Phenomenon of *identification of the vessel* is quite clear and is not a secret. The creditor, especially in another country different from the vessel registration state, usually has no access to the debtor's other assets, so it treats vessel as the debtor. Therefore, maritime lien shall arise irrespective of the fact, who is a certain shipowner, while identification of such person becomes essential only in case of enforcement of maritime lien (or ship mortgage, or any other encumbrance against the vessel). It is interesting to know that in the United Kingdom, in case of foreclosure against the vessel under maritime lien in the framework of *in rem* proceedings, it is impossible to request for satisfaction of the creditor's claims at the expense of the debtor's other assets. The subject of maritime claim shall be the vessel. Vessel identification procedure is similar to identification of entity or other property in trust, while in respect of the subject of maritime claim the sea-going vessel shall act as a tangible item only.

Meantime, Article 164 of the Merchant shipping code of Ukraine provides also the right for pledge on cargo.

Lien relations in maritime transport industry are in critical condition now. In particular, it is typical of Ukraine; however, today

the lack of interest in such institution is shown worldwide. Even if there is any concern of similar researches, it is based mainly on theoretical and historical aspects. Meantime, improvement of legal support for maritime transport industry will facilitate expansion of practice for using and applying maritime lien. Furthermore, in the second decade of the 21st century (2010-s) there is already shown some reactivation in such industry.

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Лебедєв В. Правове регулювання морської застави в Україні. – Стаття.

Тема морських застав та іпотек розглядається у сучасній спеціальній літературі достатньо часто, однак до теперішнього часу залишається багато питань, які не цілковито розкриті з відомих причин. Змішування різних понять, відносна новизна інституту морської застави в українському законодавстві, складна конструкція інституту морських застав та іпотек – найважливіші серед таких причин. Це дослідження має внести ясність до деяких базових аспектів правового регулювання відносин, пов'язаних з морською заставою, простеживши їх в історичному розвитку. Сучасне поняття і правова природа, підстави виникнення та припинення морської застави,

черговість задоволення морських привілейованих вимог, а також невідповідність правового регулювання морської застави у чинному українському законодавстві нормам Міжнародної конвенції про морські застави та іпотеки 1993 року перебувають у центрі уваги автора. У результаті аналізу запропоновано варіант способу приведення українського законодавства у відповідність до прийнятих на себе Україною зобов'язань за цим міжнародним договором. Автор вважає, що найбільш значимою правовою конструкцією, яка передувала сучасному інституту морської застави, є бодмерея. Короткий аналіз історії бодмереї дозволив виокремити два її основних види – романський і англійсько-германський, тобто бодмерею у власному розумінні. Хоча у сучасному світі інститут бодмереї практично відмирає, повністю він ще не зник, а складає історичне підґрунтя для деяких сучасних інститутів морського права, які представляють собою по суті обтяження судна як речі, а саме: морську заставу (*maritime lien*) та морську іпотеку (*ship mortgage*). Порівняння норм згаданої Конвенції 1993 року і норм Кодексу торговельного мореплавства (КТМ) України підводить до висновку про надзвичайну консервативність КТМ України, зокрема та особливо щодо черговості задоволення морських вимог. У той же час, КТМ РФ було приведено у відповідність до вимог цієї Конвенції. Автор робить висновок про те, що для виникнення морської вимоги та морської застави, що його забезпечує, необхідним є такий самий юридичний склад. Підстави припинення морської застави, зокрема і в особливості, в американському праві, найважливіші різновиди морських привілейованих вимог та природа їх переліку теж було включено до предмету дослідження цієї статті. Особлива увага приділяється автором поняттю морської застави та акцесорній природі морських застав, предмету та сторонам відносин з приводу морської застави.

Ключові слова: Україна, морська заставка, морські застави та іпотеки, правове регулювання, бодмерея, морські привілейовані вимоги.

Лебедев В. Правовое регулирование морского залога в Украине. – Стаття.

Тема морских залогов и ипотек рассматривается в современной специальной литературе достаточно часто, однако до сих пор остается множество вопросов, не вполне раскрытых по известным причинам. Смешение разнородных понятий, относительная новизна института морского залога в украинском законодательстве, сложная конструкция института морских залогов и ипотек – важнейшие среди таких причин. Настоящее исследование призвано внести ясность в некоторые базовые аспекты правового регулирования отношений, связанных с морским залогом, проследив их в историческом развитии. Современное понятие и правовая природа, основания возникновения и прекращения морского залога, очередность удовлет-

ворения морских привилегированных требований, а также несоответствия правового регулирования морского залога в действующем украинском законодательстве нормам Международной конвенции о морских залогах и ипотеках 1993 года находятся в центре внимания автора. В результате анализа предложен вариант способа приведения украинского законодательства в соответствие с принятыми на себя Украиной обязательствами по упомянутому международному договору. Автор полагает, что наиболее значимой правовой конструкцией, предшествующей современному институту морского залога, является бодмерея. Краткий анализ истории бодмереи позволил выделить два её основных вида – романский и англо-германский, то есть бодмерею в собственном смысле. Хотя в современном мире институт бодмереи практически исчез, полностью на нет он еще не сошел, и составил историческую основу для некоторых современных институтов морского права, представляющих собой по существу обременения судна как вещи, а именно: морской залог (*maritime lien*) и морскую ипотеку (*ship mortgage*). Сравнение норм упомянутой Конвенции 1993 года и норм Кодекса торгового мореплавания (КТМ) Украины подводит к выводу о чрезвычайной консервативности КТМ Украины, в частности и особенно в отношении очередности удовлетворения морских требований. В то же время, КТМ РФ приведен в соответствие с требованиями упомянутой Конвенции. Автор приходит к заключению о том, что для возникновения морского требования и обеспечивающего его морского залога необходим один и тот же юридический состав. Основания прекращения морского залога, в частности и особенно в американском праве, важнейшие виды морских привилегированных требований и природа их перечня тоже были включены в предмет исследования настоящей статьи. Особенное внимание уделяется автором понятию морского залога и аксессуарной природе морских залогов, предмету и сторонам отношений по поводу морского залога.

Ключевые слова: Украина, морской залог, морские залого и ипотеки, правовое регулирование, бодмерея, морские привилегированные требования.

