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PILOT ADMINISTRATIVE AND LEGAL STATUS IN THE
RUSSIAN FEDERATION AND DANISH LEGISLATION

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Abstract

In accordance with the rules of law, the master may waive the services of a pilot while pilotage is in progress, but then he has full control of the vessel in the channels and fairways, with imposed responsibility. It is, to say the least, a strange and inherently ambiguous recommendation, which does not allow the master to clearly formulate his decision and logically build a chain of his actions. Earlier, the text of the Code of Merchant Shipping recommended the master to follow "reasonable recommendations of the pilot" and, of course, to be responsible for everything. But, now the captain decides to refuse the services of a compulsory pilot and again takes over the management of the vessel, bears responsibility for it, which he had before. In order to accept responsibility from someone else, of course, someone else must have it before that moment. Therefore, analysing the practice, we can conclude that the captain first gives responsibility to the pilot and then returns it. But then the following question arises, why there is no clear procedure of delimitation of authority and responsibility between the captain and the pilot. In order to investigate the problem of delimitation of responsibility, as well as the relationship between the captain and pilot, it is necessary to consider the retrospective development of the above relations in Russia over the last hundred years. This problem became particularly pronounced after the adoption of the Code of Merchant Shipping.

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1. Introduction

As man uses the world's oceans more and more intensively every day, a whole set of problems arises that are related to the safety of maritime activities. The relevant next issue is the delimitation of responsibility between the ship's captain and the pilot.

Since the inception of navigation, it has been connected with the choice of the most efficient and safe route for a vessel. Historical documents that have come down to us testify that, already in ancient times, foreign ships whose captains did not know the conditions of navigation in a given area did not go to sea and did not approach the shore without an experienced local sailor, a pilot. The pilot knew the shores along which he was travelling, marking the ship's location on the map, determining the way by a compass (since the time of its appearance), used astrolabe to calculate the height of the sun and stars. No one but pilots knew how to use the tools they used in their practice (a pilot used a long pole to measure the depth of the sea; sometimes a rope with a lead weight – a kind of lot – was also used).

At the moment, with the current development of navigation, in difficult navigational conditions in canals and fairways, the issues of legislative provisions related to pilotage and delimitation of responsibility between the pilot and the master are still not unambiguously interpreted.

2. Problem Statement

Two problems can be distinguished with respect to the conduct of the ship by the master and the pilot:

- i. Issues related to pilotage and the division of responsibility between the pilot and the master.
- ii. The problem of delimitation of pilotage organisations' spheres of activity in the seaports of the Russian Federation.

Disputable issues of normative regulation of relations between pilot and captain are related to pilotage and delimitation of responsibility between the captain and pilot in case of an accident or similar situations. Disputes continue due to the fact that the above issues need legal revision, as many maritime organisations, lawyers, maritime specialists and the legislator himself believe.

The price of this problem is compensation for damages in the event of an accident during pilotage.

While originally the pilot was understood to be the captain's counsellor, this is no longer the case in modern realities.

At the moment, in most ports of the world, on the approaches to them, on such complicated sections of sea routes, where pilotage is mandatory, the pilot is not an adviser, but a specialist who manoeuvres the vessel having the knowledge of all the variety of local specifics. Hence, the pilot manages the vessel in the pilotage area. Commands given to the pilot, to the helm and to the machine, as well as to the tugboats during mooring, must be obeyed, and the pilot in principle does not care whether his command is received directly by the helmsman or transmitted to him through the captain or his assistant. There are no other options (except in the Kiel Canal, where the pilot comes with his helmsmen).

When manoeuvring a vessel in channels and fairways, only one person shall give commands. The pilot shall be the pilot in the pilotage section. During this period, he shall take operational command of

the vessel's movement from the master and shall be responsible for his actions, which shall ensure the safety of the vessel's navigation.

Most of the relationship between the master and the pilot at the time of pilotage is based on trust in addition to the legal provision. But then there is a question of delimitation of responsibility between the master and the pilot. Therefore, legislative acts, such as the Code of Merchant Shipping, Regulations on Pilotage Service, etc., should not use definitions and requirements that do not correspond to the real qualified practice developed in the process of evolution of pilot-captain relations.

3. Research Questions

Within the framework of the study, the author analyses the peculiarities of pilotage in the Russian Federation and Denmark. The author analyses the regulatory and legal framework, which is the basis for pilotage at the national level and the international aspect. The issue of regulation of relations between public and private pilots in Denmark is analysed, the historical aspect is investigated.

4. Purpose of the Study

The aim of the study is to establish the national peculiarities of pilotage, both national and international. The aim is to identify the specific features of the historical development of pilotage in Denmark, as well as the development of the legal framework to regulate the activity under study.

5. Research Methods

The authors used a key method in jurisprudence, such as a comparative legal method, as a main method of research. By means of this method, the authors conducted a comparative analysis of the normative legal regulation of pilotage activities in two states. The authors also used the historical method in order to analyse the historical development and regulation of the activity under study.

6. Findings

There are many examples of pilotage issues and a pilot status being adequately reflected in the regulations of many countries. For example, an extract from the Pilotage Regulations of Port Phillip Bay, where the ports of Geelong and Melbourne (Australia) are located: "A pilot is a qualified and experienced seafarer with extensive knowledge of the local conditions of the area; its fairways, depths, currents, hazards, both within and outside the port for which he is licensed to navigate. He knows the local regulations, is familiar with every berth and turning basin, and is aware of the capabilities of the tugs at his disposal. He is also highly qualified to operate the vessel". And further, "...The pilot is responsible for the safe behaviour and navigation of the vessel from the time he takes over from the master after disembarkation until the vessel is moored at the appointed berth. This includes all pilot's commands to the helm and machinery, tug positioning, including direct commands to them by means of a portable VHF transceiver".

Here is how the position of a pilot on board a ship is defined by the Royal Canadian Commission on Pilotage (Lantseva & Kulikovskaya, 2022):

To conduct a ship is not to be confused with being in command of a ship. The former expression refers to action, to the performance of a personal service by a person employed (it would be better to say appointed by the port authority) (to a personal service being employed) and the latter to authority. The question of whether a pilot steers a ship is a question of fact, not of power to steer the ship. (p. 52)

The fact that a pilot is given the ability to direct the movement of a ship, in order to ensure safe navigation, does not mean that the pilot replaces the captain. The master remains in command; he exercises authority on board. He merely delegates some of his authority to his subordinates and outside helpers with whom he exercises safe navigation of his vessel. Delegation is not a self-deviation from authority, but only one of the ways in which authority is exercised.

In view of the above, it should be noted that the problems of the relationship between the master and the pilot are reflected and developed in the provisions of the Code of Merchant Shipping of the Russian Federation. Article 96 "Relationship between the ship's master and pilot" states that "the ship's master shall follow the pilot's reasonable recommendations and shall not interfere with the pilot's work without sufficient grounds".

Reasonableness is an evaluative category. V.V. Vitryansky rightly points out that the law is not able to define general criteria of good faith, reasonableness and fairness. This can be done by the court when considering a dispute in relation to a specific situation. And only the analysis of judicial acts containing assessments of the behaviour of participants of property turnover in terms of good faith, reasonableness and fairness in the most typical situations will allow developing any general approaches (Pechnikov et al., 2019).

The category and conceptual apparatus can be allocated only with the help of arbitration judicial practice in concrete situations arising in the sphere of captain-pilot relations. But there is a need to identify objective criteria with the evaluative concept and definition, and judicial practice can clarify some characteristic features.

Chapter 6, paragraph 1 "Maritime Pilots", Articles 85, 86 speak about pilotage and its purposes. However, the very concept of "pilotage" remains undefined.

It is possible to define pilotage as the actions of moving a vessel, anchoring it to a berth or at anchor, or leaving a berth, and pulling off the anchor, performed under the pilot's command from the moment the pilot takes control from the captain to the end of the vessel's movement over the pilotage distance (Studenikin et al., 2021).

In order to investigate the problem of delimitation of responsibility, as well as the relationship between the captain and pilot, one must consider the retrospective development of the above relations in Russia over the last hundred years. This problem became particularly pronounced after the adoption of the Code of Merchant Shipping.

In pre-revolutionary Russia, "for more successful pilotage, individual pilots operating on a certain fairway are allowed to form societies and unite into partnerships". In the USSR, the decisive turn towards

pilotage by state pilots only was first reflected in the Regulations on State Marine Pilots (approved by the Resolution of the SNK of the Union of Soviet Socialist Republics of 25 July 1926, as well as in the Resolution of the SNK of the Union of Soviet Socialist Republics of 15 January 1927 on port pilots).

In the 90s, non-state pilot organisations were organised by Russian pilots. And together with the Ministry of Transport, the world's first system of voluntary certification of pilot organisations was developed and implemented, which complied with international standards ISO 9002, allowing significantly improving the organisation and efficiency of pilotage activities and maritime safety in Russian ports.

But, in 2001, when pilotage activity was denationalised, this system was actually abolished. Pilots of Russia, employees of non-state organisations on pilotage of ships, in connection with unconstitutionality of point 2 of article 87 of the Code of Merchant Shipping and being in a normative unity with it, the Government Decree of July 2001, No. 538, on activity of non-state organisations on pilotage of ships addressed the Constitutional Court of the Russian Federation. In 2004, the Constitutional Court of the Russian Federation by its resolution No. 7-P dated 06.04.2004 cancelled clause 2 of article 87 of the CMT of the Russian Federation and the Resolution of the Government of the Russian Federation No. 538 dated 17.07.2001, which is in a normative unity with it. In December 2007, the RF Government again submitted a draft of Federal Law No. 1485-5 to the RF State Duma, according to which it was planned to restrict the rights of non-state pilotage organisations. The State Duma, the Federation Council of the Federal Assembly and the Public Chamber of the Russian Federation, having studied the pilotage problem, confirmed the right of non-state pilotage organisations to provide pilotage services. And on 3 June 2011, the President of Russia signed Federal Law No. 113-FZ, which ensures equal rights of non-state and state pilotage organisations.

In the opinion of the Ministry of Transport, the assignment of the function of pilotage support of commercial navigation in the Russian Federation as an exclusive right and obligation to a state organisation is dictated by the following. The pilotage support is, as it was said earlier, an important component of ensuring safety of navigation and environmental protection in the seaports of the Russian Federation and on the approaches to them and, therefore, cannot be commercial, i.e. used for profit (Abrahamyan & Golubkina, 2019).

According to non-state pilots, the Mitrans proposal contradicts the Constitution and the Federal Law. Part two of Article 55 of the Russian Constitution expressly prohibits the adoption of laws that abolish the rights previously granted to citizens (Somko, 2011). The right to the activities of non-state pilot organisations is already established by Federal Law No. 113-FZ of 03.06.2011 and cannot be abolished.

It should be mentioned that the initiative of the Ministry of Transport to create a Federal budgetary institution, uniting pilot services of all Russian ports, contradicts the Federal Law "On Natural Monopolies" (Abrahamyan & Golubkina, 2020). If this idea is implemented, it will entail an increase in tariffs for pilot services in ports and inefficient spending of funds. The Law "On Natural Monopolies" does not allow artificial restraint of the transition of markets from a monopoly situation to the emergence of a normal competitive environment. Paragraph 3 of Article 4 of the law states: "It is not allowed to

restrain the economically justified transition of the spheres of natural monopolies, specified in paragraph 1 of this Article, from the state of natural monopoly to the state of competitive market".

When examining foreign experience in this regard, it is necessary to pay attention to Denmark.

Pilotage was first mentioned in Danish law in 1561. In order for a pilot to pilot a ship, a special flag had to be raised, when a dinghy would go to the ship and bring the pilot to the ship. Pilotage at that time was carried out by local fishermen who received a special royal charter for pilotage.

In 1748, a legislative amendment was introduced that prohibited the captains of merchant ships from making their own calls in Danish ports. An exception was granted only to those captains who were recognised as being "particularly familiar with the harbour fairways".

The Treaty of Copenhagen of 1857 established the fact that upon timely notification from passing ships, the "State Pilot Service" was obliged to provide pilots.

Since the 18th century, the pilotage service has been under the Danish Ministry of Defence. In 1900, by the royal decree, it was transferred to the Fairways Service (Faevandvæsenet). At the same time, fixed tariffs for pilotage services were established.

In 2006, the new Pilotage Act (Lodsloven) established the state pilotage service Danpilot. The law allows free competition of pilotage services for calling and leaving Danish ports; however, the most important monopoly for transit passages through the Danish straits remains with the state.

After incurring losses of 140 million kroner (\$24.5 million) between 2006 and 2009, Danpilot further increased tariffs, prompting a new wave of complaints to state authorities from shipowners. Danpilot attributed the tariff increase to increased costs.

In 2012, the Danish Government prepared a draft law according to which it is proposed to transform the Danpilot service into an independent commercial company owned by the state. At the same time, a study of the pilotage services market is envisaged in order to create conditions for increased competition.

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7. Conclusion

To summarise the study, the pilotage services market in Denmark currently consists of two unequal components:

- i. Pilotage for ships transiting the Danish straits of Great Belt and Øresund.
- ii. so-called regional pilotage services for vessels starting or finishing their route in Danish ports.

Danpilot maintains a complete monopoly on the first type of service. In the second type of service, there has been free competition since 2006, but Danpilot dominates here as well, performing 75% of the work.

Representatives of the private company "Danish Pilot Service" state that in case of market liberalisation, it will be able to provide pilotage for transit vessels at tariffs 10–15% lower than those of "Danpilot".

More than 30,000 ships pass through the Danish straits every year, so the problem of overpriced pilotage services affects the interests of all members of the Danish Shipowners' Association, including Mærsk Line, the world's largest container carrier.

According to the Danish Shipowners' Association, the government's intervention is also necessary from the point of view of increasing safety, because due to the sharp increase in tariffs, many foreign vessels do not engage Danish pilots and sail through the Danish straits at their own risk.

It should also be noted that due to the imposition of sanctions on the transport of oil by Russian vessels through the Danish straits, some issues may arise with regard to the safety of the marine environment (Lantseva & Kulikovskaya, 2022). Some restrictions may affect the use of pilot escorts and even the inability of Danish pilots to escort Russian vessels. Therefore, the European Union is considering excluding pilotage services from the sanctions against the Russian Federation due to the development of digitalisation in various areas of transport activities, including pilotage in the Russian Federation and internationally (Somko, 2011).

References

- Abrahamyan, S. K., & Golubkina, K. V. (2019). Interdepartmental interaction of water transport management bodies of the Russian Federation. *Marine Intelligent Technologies*, 1–2(43), 82–85.
- Abrahamyan, S. K., & Golubkina, K. V. (2020). Organisational and legal forms of projects based on PPP. *Humanitarian, Socio-Economic and Social Science*, 7, 97–99.
- Lantseva, V., & Kulikovskaya, I. (2022). On the issue of the evolution of international legal norms for the protection of the marine environment. *ООО "Zhurnal "Voprosy Istorii"*, 2022(7-1), 150-154. <https://doi.org/10.31166/voprosyistorii202207statyi07>
- Pechnikov, A. N., Heckert, E. V., Savelyev, V. G., & Aderikhin, I. V. (2019). Ergonomic approach to the assessment of ship specialists' activity: models of action transformation in the process of its mastering and the procedure of their practical application. *Marine Intellectual Technology*, 1–2(43), 104–111.
- Somko, M. L. (2011). Assessment of innovation potential in Russian and foreign practice: experience, problems and prospects. *In the World of Science Discovery*, 6(18), 166.
- Studenikin, D. E., Kondratyev, S. I., Heckert, E. V., & Modina, M. A. (2021). Dynamic formation of a safety corridor when planning a ship route. *Marine Intelligent Technologies*, 2–4(52), 128–131.