

FEDERAL SECURITY SERVICE OF THE RUSSIAN FEDERATION
COAST GUARD DIVISION FOR MURMANSK OBLAST
183038 Murmansk, ul. Perovskoy. 13a , fax: 48-74-12

JUDGMENT
in the case concerning administrative offence
no. 2109/623-13

city: Murmansk

8 October 2013

The following has been established by Oksana Nikolaevna Markova, Senior Lieutenant of Justice, senior expert in administrative proceedings of the investigation and administrative law practice department of the Coast Guard Division of the Russian Federal Security Service for Murmansk Oblast (hereinafter: Coast Guard Division), in the presence of:

the person against whom the legal proceedings have been instituted on account of an administrative offence,

the interpreter – Natalya Vilovna Khasanova, appointed in this case in accordance with the order of 24 September 2013,

by virtue of article 23.10 of the Administrative Offences Code of the Russian Federation (hereinafter: AOC RF), after studying the documents of the case concerning the administrative offence as referred to in article 19.4, paragraph 2, in respect of the functionary:

Surname, first name, patronymic name – Willcox, Peter Henry

Date of birth – 6 March 1953

Place of birth – New York, US

Place of residence – Route James 149, Islesboro, Maine, US

Citizenship – US

Employer and position – civil society organisation ‘Greenpeace International’ (Amsterdam),

master of the ship *Arctic Sunrise*

MATTERS ESTABLISHED:

In accordance with the report of the commander of coast guard vessel *Ladoga* of the Coast Guard Division [sic. text possibly missing]

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An official report was drawn up on 24 September 2013 by the expert in administrative proceedings of the investigation and administrative law practice department of the Coast Guard Division in respect of the functionary, the master of the ship *Arctic Sunrise* for an administrative offence as referred to in article 19.4, paragraph 2 of the AOC RF.

After studying the documents in the case concerning the administrative offence and after assessing the relevant evidence in its entirety on the basis of the provisions of article 26.11 AOC RF, I find as follows:

In accordance with article 19.4, paragraph 2 AOC RF, failure to obey a lawfully given order of an official of a protection authority responsible for the continental shelf of the Russian Federation or a protection authority responsible for the exclusive economic zone of the Russian Federation to stop a ship and obstructing such an official in the performance of his duties, including the inspection of a ship, constitute administrative offences.

Section 1 of the Federal Act of 17 December 1998 No. 191-Φ3 on the Exclusive Economic Zone of the Russian Federation' (hereinafter: the Federal Act on the EEZ RF) provides that the exclusive economic zone of the Russian Federation is an area of the sea that is beyond and contiguous to the territorial sea of the Russian Federation which is subject to a specific legal regime established in the said Federal Act, international conventions to which the Russian Federation is party, and provisions of international law.

The legal regime governing areas of sea of this kind is regulated in the Federal Act on the EEZ RF. The Act regulates the rights of the Russian Federation in the exclusive economic zone in accordance with the rights and jurisdiction of a coastal State in an exclusive economic zone pursuant to the United Nations Convention on the Law of the Sea of 10 December 1982 (hereinafter: the Convention).

Article 56 of the Convention provides as follows:

'In the exclusive economic zone, the coastal State has:

a) sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the seabed and of the seabed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds;

b) jurisdiction as provided for in the relevant provisions of this Convention with regard to:

- i) the establishment and use of artificial islands, installations and structures;
- ii) marine scientific research;
- iii) the protection and preservation of the marine environment;
- c) other rights and duties provided for in this Convention.'

Under article 60 of the Convention, a coastal State also has exclusive jurisdiction over artificial islands, installations and structures, including jurisdiction with regard to customs, fiscal, health and immigration laws and regulations as well as laws and regulations on safety.

Senior expert in administrative proceedings of the investigation and administrative law practice department of the Coast Guard Division of the Russian Federal Security Service for Murmansk Oblast
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In accordance with the Decree of the President of the Russian Federation of 14 January 2013 No. 23 'concerning federal executive authorities charged with taking measures to ensure the safety of shipping in the safety zones created around artificial islands, installations and structures situated on the continental shelf of the Russian Federation, and also measures to ensure the safety of artificial islands, installations and structures situated on the continental shelf of the Russian Federation', the federal executive authorities charged with taking measures to ensure the safety of artificial islands, installations and structures situated on the continental shelf of the Russian Federation are the Ministry of Transport of the Russian Federation, the Federal Security Service of the Russian Federation and the Ministry of Defence of the Russian Federation.

In accordance with section 35 of the Federal Act on the EEZ RF, the protection of the exclusive economic zone, its natural resources, the environment, including the marine environment, and the economic and other lawful interests of the Russian Federation is carried out by federal executive authorities designated by the President of the Russian Federation and the Government of the Russian Federation.

Section 36 of the Federal Act on the EEZ RF lays down the rights of the officials of the protection authorities in the lawful performance of their duties:

'Stopping and inspecting Russian and foreign ships and inspecting artificial islands, installations and structures which are engaged in:

fishing in the exclusive economic zone;

transshipment in the exclusive economic zone of catches of living marine resources to other ships;

exploration and exploitation of non-living marine resources;

exploration of marine resources, marine scientific research and any other activity in the exclusive economic zone.'

Pursuant to section 2 of the Federal Act of 3 April 1995 No. 40-Φ3 on the Federal Security Service (hereinafter: Federal Act on the FSB), the authorities of the Federal Security Service include, above all, the border authorities.

In accordance with section 11.1 of the Federal Act on the FSB, the duties of the border authorities include the protection and security of economic and other lawful interests of the Russian Federation on the boundaries of the border areas, the exclusive economic zone and the continental shelf of the Russian Federation, and also – beyond the boundaries of the exclusive economic zone – the protection of anadromous fish stocks which originate in the rivers of the Russian Federation, cross-border fish species and migratory fish, in accordance with international conventions to which the Russian Federation is party and/or with Russian law.

The court documents show that Igor Vasilyevich Paranchenko, captain second rank, had been in command of the coast guard vessel (hereinafter: the *Ladoga*) since 12 September 2013 in the lawful performance of his duties as commander of the ship during a period in which it was carrying out border control activities, including the protection of the exclusive economic zone of the Russian Federation.

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On 16 September 2013, at 18.15, the Dutch-flagged ship *Arctic Sunrise* was spotted and identified on the screen of the 360° radar in the southern part of the Barents Sea at the coordinates latitude 70°10' 2" north and longitude 54°50' 0" east by officials of the *Ladoga* in the course of the lawful performance of their duties for the protection authority responsible for the exclusive economic zone of the Russian Federation.

Moreover, the crew of the *Arctic Sunrise* were warned on the ship's radio by the officials on board the *Ladoga* that an infringement of the provisions of the 1982 UN Convention on the Law of the Sea for the protection of the safety of shipping in the vicinity of artificial islands, installations and structures, including the offshore ice-resistant fixed platform *Prilazlomnaya* (hereinafter: *MLSP Prilazlomnaya*) – property of the Russian Federation located in the exclusive economic zone of the Russian Federation – would not be tolerated. The crew of the *Arctic Sunrise* were also warned that they had no permission to cross the territorial sea of the Russian Federation or to use the Northern Sea Route, a note of which was entered in the *Ladoga's* log. The *Arctic Sunrise* maintained course for the Kara Strait.

On 17 September 2013, at 00.31, the *Arctic Sunrise* changed course towards the *MLSP Prilazlomnaya*. In response, officials of the *Ladoga* once again issued a warning over the ship's radio that the regulations must be complied with and that it was not permitted to enter the area, where there was a danger to shipping within a radius of 3 miles and where there was a ban on shipping movements within a zone of 500 metres from the *MLSP Prilazlomnaya* (Communications to Seafarers No. 6623/11).

From 16.00 on 17 September 2013 to 04.00 on 18 September 2013 the *Arctic Sunrise* then manoeuvred at a distance of 3-4 nautical miles around the perimeter of the area surrounding the *MLSP Prilazlomnaya*, where there was a danger to shipping.

At 04.20 on 18 September 2013 an official on board the *Ladoga* discovered that two boats with people on board had been put into the water from the *Arctic Sunrise* and were sailing at great speed towards the *MLSP Prilazlomnaya*. At 04.42 the *Ladoga* spotted three more boats from the *Arctic Sunrise* moving towards the *MLSP Prilazlomnaya* and transporting a very large object.

Moreover, A.V. Atyshev, in his capacity of master of the *MLSP Prilazlomnaya*, sought radio contact with the *Ladoga* at 04.43 on 18 September 2013 and stated that he had seen vessels containing unidentified persons in the immediate vicinity of the platform who had not responded to the order to leave the area, in which there was a shipping ban and a danger to shipping.

These persons then attempted to board the *MLSP Prilazlomnaya*, thereby posing a real threat to the oil and gas complex of the Russian Federation and to the people who were carrying out diving work in the area around the platform at that time.

In addition, the *Arctic Sunrise* sailed into the area in which there was a danger to shipping at 04.57 on 18 September 2013 and hoisted up a large unidentified object which was then let down over the side into the sea and was carried by a small vessel to the area around the *MLSP Prilazlomnaya*.

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In view of these circumstances, at 06.15 on 18 September 2013 the commander of the *Ladoga*, I.V. Paranchenko, issued an order via a communication channel to the master of the Arctic Sunrise, pursuant to section 36 of the Federal Act on the EEZ RF, to stop the ship, put about and allow an inspection team on board.

The above-mentioned orders issued by an official of a protection authority responsible for the exclusive economic zone of the Russian Federation to the master of the *Arctic Sunrise* were repeated a number of times on 18 and 19 September 2013, as is evident from an extract from the *Ladoga*'s log, witness statements on this subject and a video recording made by officials on board the *Ladoga* of the circumstances of the offence.

The orders given by the *Ladoga*'s commander to stop were not obeyed by the master of the *Arctic Sunrise*: the ship increased its speed and continually changed course, thereby manoeuvring dangerously and posing a real threat to the safety of the naval ship and its crew. Eventually the *Arctic Sunrise* was forced to stop for inspection on 19 September 2013.

It is apparent from the circumstances that orders lawfully given by an official of a protection authority in the exclusive economic zone of the Russian Federation were not obeyed by the foreign functionary, the master of the Dutch-flagged ship *Arctic Sunrise*, namely Peter Henry Willcox, in the period from 18 September 2013 to 20 September 2013 in the exclusive economic zone of the Russian Federation (in the area having coordinates latitude 69°15' 56.9" north and longitude 57°17' 17.3" east and in a radius of 5-6 nautical miles).

After considering the above evidence and the established circumstances of the case, I therefore conclude that the actions of the foreign functionary, namely Peter Henry Willcox, the master of the Dutch-flagged ship *Arctic Sunrise*, fall within the elements of the definition of the administrative offence under article 19.4, paragraph 2 of the AOC RF.

In accordance with article 2.6, paragraph 2 AOC RF, aliens, stateless persons and foreign legal entities which have committed administrative offences on the continental shelf or in the exclusive economic zone of the Russian Federation contrary to article 8.16, paragraph 2, articles 8.17-8.20, and article 19.4, paragraph 2 of this Code are punishable under administrative law under the generally applicable rules.

There are no mitigating circumstances in respect of the liability of Peter Henry Willcox to punishment under administrative law, nor are there any defences that would preclude the imposition of punishment for the administrative offence.

In accordance with article 4.3, paragraph 1, subparagraph 1 AOC RF, I have viewed as aggravating circumstances the fact that the unlawful acts were repeatedly committed in defiance of the orders of the competent officials to stop their commission.

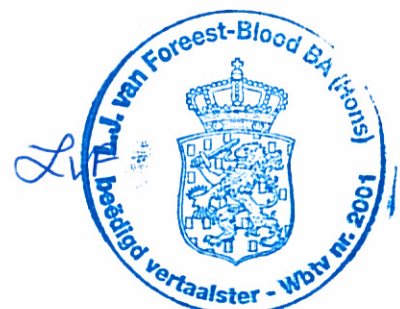
Article 19.4, paragraph 2 AOC RF provides that the sanctions for administrative offences by functionaries are administrative fines of RUB 15,000-20,000.

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In view of the nature of the administrative offence committed by Peter Henry Willcox and the aggravating circumstances attending the commission of the offence and relevant to the determination of the administrative sentence, I consider it fair to impose an administrative sentence in the form of the highest administrative fine under article 19.4, paragraph 2 AOC RF.

On the basis of the above and in accordance with article 23.10, paragraph 2, subparagraph 13 and articles 29.9 and 29.10 AOC RF:

JUDGMENT

1. The functionary, Peter Henry Willcox, a US citizen and master of the Dutch-flagged ship *Arctic Sunrise*, born on 6 March 1953, is found guilty of committing the administrative offence referred to in article 19.4, paragraph 2 AOC RF.

2. The functionary, Mr Peter Henry Willcox, the master of the Dutch-flagged ship *Arctic Sunrise*, is ordered to pay an administrative fine of RUB 20,000 (twenty thousand roubles).

In accordance with article 30.1 (3) AOC RF, appeal lies against this judgment in respect of an administrative offence to a higher authority, a higher person or a court in the place where the case concerning the administrative offence has been heard.

Appeal against this judgment in respect of the administrative offence must be lodged no later than ten days after service or receipt of a copy of this judgment.

The administrative fine must be paid by the sentenced person no later than sixty days after the date on which this judgment concerning the administrative fine becomes final and unappealable or after the day on which the suspension period or instalment period expires.

If the administrative fine is not paid in time, the person concerned may be punishable under administrative law pursuant to article 20.25, paragraph 1 AOC RF, for failure to pay in time the administrative fine specified in the AOC RF, and ordered to pay an administrative fine not exceeding twice the amount of the unpaid administrative fine or sentenced to administrative detention for a term not exceeding fifteen days.

The amount of the administrative fine must be deposited in or transferred by the sentenced person to the following bank account:

Payee: UFK for Murmansk Oblast (PU FSB Rossii for Murmansk Oblast)

INN: 5190139166: KPP: 519031005

Code OKATO: 47 401 000 000

Payee's account number: 401 018 100 000 000 100 05

Payee's bank: GRKTSGU Banka Rossii for Murmansk Oblast

BIC of the bank: 044705001

Income code: 189 116 09 000 01 7000

Personal account: 04 491 732 190

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In the 'notifications' box you should state: 'fine under article 19.4, paragraph 2 AOC RF in case no. 2109/623 13'.

If the administrative fine is not paid in time, it will be collected in accordance with article 32.3 AOC RF.

Senior expert in administrative proceedings of the investigation and administrative law practice department of the Coast Guard Division of the Russian Federal Security Service for Murmansk Oblast
[signature] O.N. Markova.

The text of this judgment has been translated into and read aloud in English.

Interpreter:

8 October 2013

[signature]
(signature)

Senior expert in administrative proceedings of the investigation and administrative law practice department of the Coast Guard Division of the Russian Federal Security Service for Murmansk Oblast

[signature] O.N. Markova.

8 October 2013

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(signature)

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[hand written] *I have received a Russian copy of the Resolution, while the text was translated into English orally.*

I have received a Russian copy of the Resolution, while the text was translated into English orally.

This is to certify that the above is a true translation of the sworn translation into Dutch of the original Russian document.

L.J. van Foreest-Blood, sworn translator,
registered under no. 2001 with Bureau WBTV
(Bureau for Sworn Interpreters and Translators)
of the Dutch Legal Aid Council

