



# **JURISDICTIONAL ISSUES IN RELATION TO FORCED-SALE OF YACHTS IN MONTENEGRO**

INTERNATIONAL MARITIME AND TRANSPORT LAW COURSE

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# List of abbreviations

- ▶ **MINA:** Maritime and Inland Navigation Act
- ▶ **LOY:** Law on Yachts
- ▶ **Enforcement Law:** Law on Enforcement and Security
- ▶ **Beijing Draft:** Draft Instrument on the Judicial Sale of Ships



Image: Getty Images

## ▶ Summary of the facts

- Yacht 36,32m of registered length (42m LOA) and registered tonnage of 395 GT
- IMO number
- Arrested in July 2020
- Forced sale of yacht ordered in December 2020

# However...



- ▶ The forced sale of the yacht is ordered for satisfaction of a claim of a creditor other than arresting creditor;
- ▶ The forced sale is ordered for the claim based on proforma invoice;
- ▶ The forced sale is conducted by a Public enforcement officer;
- ▶ The forced sale was announced in a local newspapers with insufficient publicity and without inviting the creditors, potential holders of maritime liens, not even creditor who arrested the yacht;
- ▶ The arresting party was not even allowed to participate in the procedure.

# The role of Public enforcement officer

- ▶ performing the activities of enforcement as a public service, independently, professionally and as an exclusive occupation.
- ▶ in their work, the public enforcement officers apply the Enforcement Law.
- ▶ pursuant to Article 3 of the Enforcement Law, the public enforcement officer is competent for deciding in the enforcement procedure, conducting the enforcement, as well as for conducting the security, except in cases for which the jurisdiction of the court is prescribed by law.
- ▶ the public enforcement officers are not considered as a part of judicial system, they are entitled to the right to remuneration for work and reimbursement of expenses.
- ▶ Personal liability for legality of their work (the State does not presume liability).

# Rules on jurisdiction 1

## Law on Courts

### Article 18, paragraph 2

Commercial court decides upon and conducts enforcement and security on ships and aircraft, regardless of the characteristics of the parties.



# Rules on jurisdiction 2

## Enforcement Law

### Article 3

The public enforcement officer is competent for deciding in the enforcement procedure, conducting the enforcement, as well as for conducting the security, except in cases for which the jurisdiction of the court is prescribed by law.



## **MINA**

### **Article 906**

MINA shall determine the rules on the procedure of enforcement and security on ships that are in the coastal sea and inland waters of Montenegro.

### **Enforcement Law**

#### **Article 1, Paragraph 4**

Enforcement Law shall apply to enforcement and security on a ship and aircraft only if it is determined by a special law.

# **Enforcement procedure rules**



# YACHT – SHIP OR BOAT?

## MINA, Article 5

- ▶ "**vessel**" means a ship, technical vessel, floating plant, boat and other object that is capable of navigation and that participates in navigation;
- ▶ "**ship**" means a seagoing ship and an inland waterway vessel, other than a warship;
- ▶ "**seagoing ship**" is a ship registered for navigation at sea, whose registered length is at least 12 meters, and the registered tonnage - at least 15 GT;
- ▶ "**seagoing boat**" is a vessel registered for navigation at sea, the registered length of which is less than 12 meters, and the registered tonnage - less than 15 GT;
- ▶ "**yacht**" means a ship used for non-commercial purposes for leisure, sport or recreation;

# YACHT – SHIP OR BOAT?

## **LOY, Article 2**

- ▶ A yacht is a motor-powered or sail-powered vessel, which may have more than one hull, intended and equipped for a longer stay at sea, for leisure, sports and recreation, the length of which exceeds 7 m and which is used for private purpose or business activity.

**Scope of the LOY:** nationality, identification and registration of yachts with the yacht register, the manner of entry, stay and departure of yachts, as well as the rights and obligations when chartering yachts.

# Answer – no legal gap!

Technical characteristics, not use purpose of the ship

## ***Res navis***

- ▶ At least 12 meters of registered length and at least 15 GT registered tonnage (cumulative conditions)
- ▶ Subject to national and international legal regimes
- ▶ Regulated by MINA as *lex specialis*

## ***Res***

- ▶ Less than 12 meters length and/or less than 15 GT registered tonnage
- ▶ Registration for administrative purpose only
- ▶ Regulated by general laws on enforcement and security

# Legal misconception of yachts – consequences?

- ▶ Forced sale of ships without enforceable title
- ▶ Position of holders of maritime liens and other creditors
- ▶ Clean title and unencumbered property ?
- ▶ Applicability of international conventions
- ▶ Superyachts?

# Beijing Draft

## Article 3

- ▶ This Convention applies only to a judicial sale of a ship if:
  - ▶ (a) The ship was physically within the territory of the State of judicial sale at the time of the sale; and
  - ▶ (b) Under the law of that State, the judicial sale confers clean title to the ship on the purchaser.

“**Judicial sale**” of a ship means any sale of a ship:

- (i) Which is ordered, approved or carried out by a court or other public authority by way of public auction or private treaty carried out under the supervision and with the approval of a court, or any other way provided for by the law of the State of judicial sale; and
- (ii) For which the proceeds of sale are made available to the creditors;



Update on the case developments...

Thank you for your  
attention!