

A Critical Analysis of the 2022 Beijing Convention and Its Impact on Romanian Legislation

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Abstract

Recognition of the international effects of the judicial sale of ships in different jurisdictions is of paramount importance to the shipping industry. The need to establish uniform rules to contribute to legal certainty in this area led to the adoption of the first instrument on the international effects of the compulsory sale of ships. The Beijing Convention 2022 establishes uniform rules on the international effects of the compulsory sale of ships, conferring an indisputable right of ownership on the purchaser and subsequent purchasers. The article focuses on the analysis of the conditions that a judicial sale must meet in order to produce international effects: the notice of judicial sale and the issuance of a judicial sale certificate. It also analyzes the procedural aspects of the judicial sale of a ship under the Convention. The article explains the relevant provisions of Romanian legislation in this area, highlighting the differences with the legislation of common law and civil law states. In Romania, from the point of view of civil procedure, the rules on the judicial sale of movable property under common law and the special rules on the seizure of securities, Article 959 et seq. of the New Code of Civil Procedure, are applicable. The article highlights the need to adopt, de lege ferenda, separate provisions on the compulsory sale of ships at national level.

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1. Introductory Aspects

The international legal framework for the recognition and enforcement of foreign judgements is formed by the Lugano Convention², the Hague Convention on Choice of Court Agreements³, the 1980 Brussels Convention, the Brussels I Regulation,

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² Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, JO L 147, 10.6.2009, p. 5–43. <https://eur-lex.europa.eu/eli/convention/2009/430/oj>, accessed on 10 November 2025.

³ Council Decision of 26 February 2009 on the signing on behalf of the European Community of the Convention on Choice of Court Agreements (2009/397/EC) OJ L 133, 29/05/2009, p. 1–13, [https://eur-lex.europa.eu/eli/dec/2009/397\(1\)/oj/eng](https://eur-lex.europa.eu/eli/dec/2009/397(1)/oj/eng), accessed on 10 November 2025.

and the revised Brussels I Regulation⁴. A system of direct enforcement of judgements between Member States was introduced by the Brussels I Regulation⁵. The most recent is the Convention on the Recognition and Enforcement of Foreign Judgements in Civil and Commercial Matters (Hague Convention on Jurisdiction and Enforcement 2019)⁶. The 2019 Hague Convention on Judgements (HCCH) constitutes a comprehensive legal framework that governs the recognition of all categories of judgements⁷. It represents an extended set of grounds for the indirect exercise of jurisdiction⁸. The issue of the judicial sale of ships is not addressed in any specific manner in any of the international instruments⁹.

Judicial cooperation is the pivotal element in the realm of international law that governs the recognition of legal judgements rendered in foreign legal systems concerning the compulsory sale of vessels. Conventions relating to maritime liens and mortgages and the International Convention for the Unification of Certain Rules relating to Maritime Liens and Mortgages of April 10, 1926¹⁰. The 1967 International Convention for the Unification of Certain Rules relating to Maritime Liens and Mortgages addresses matters pertinent to creditors whose claim is secured by the vessel. Conventions concerning maritime liens and mortgages have not been extensively ratified on an international level. The 1993 International Convention on Maritime Liens and Mortgages addresses solely the recognition of the effects of the foreclosure sale of the ship by the register in which the ship was sold at public auction¹¹. The validity of ownership of the ship sold is recognised in no other state except the state in which the judicial sale took place¹².

In this context, the necessity to adopt an international instrument to ensure judicial certainty with regard to the recognition of the international effects of the judicial

⁴ Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast), JO L 351, 20.12.2012, p. 1–32, <https://eur-lex.europa.eu/eli/reg/2012/1215/oj/eng>, accessed on 10 November 2025.

⁵ Giesela Rühl. "Judicial cooperation in civil and commercial matters after Brexit: which way forward?" *International and Comparative Law Quarterly*. 2018; 67(1):99-128. <https://doi.org/10.1017/S0020589317000574>, p.114.

⁶ Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters, OJ L 187, 14.7.2022, p. 4–15, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A2022A0714%2801%29>, accessed on 10 November 2025.

⁷ Yingfeng Shao, Laura Carballo Piñeiro, Maximo Q Mejia, "A newcomer to maritime law: the Beijing Convention on the international effects of judicial sales of ships". *International and Comparative Law Quarterly*. 2024, 73(3):793-810. <https://doi.org/10.1017/S0020589324000186>, p.797.

⁸ Ronald A. Brand, "The Hague Judgments Convention in the United States: A 'Game Changer' or a New Path to the Old Game?". *University of Pittsburgh Law Review*, Vol. 82(4), 2021: 847-880, <https://doi.org/10.5195/lawreview.2021.803>, p. 864.

⁹ Ibidem.

¹⁰ International Convention for the Unification of Certain Rules of Law Relating to Maritime Liens and Mortgages, 1926, published in the Official Gazette, Part I no. 60 of March 13, 1937.

¹¹ Gordan Stanković, Petar Kragić, Danijela Vrbljanac, "Judicial Sales of Ships – A Rocky Road to Unification", *Poredbeno pomorsko pravo*, year 60 (2021), 175, str. 11–35. <https://doi.org/10.21857/mjrl3u76o9>, p. 17.

¹² Yingfeng Shao, Laura Carballo Piñeiro, Maximo Q Mejia, *op. cit.*, p. 796.

sale of ships has become imperative. The Beijing Convention was adopted by the United Nations General Assembly in New York on 7 December 2022. The new instrument provides adequate protection for purchasers against pre-existing claims and the detention of the vessel in jurisdictions other than those in which the sale took place¹³. The financial institutions that provided the loan for the vessel's acquisition are guaranteed that the vessel will attain its full market value in the event of a judicial sale¹⁴. The certainty surrounding the acquisition of a clear title serves to safeguard the interests of all relevant parties involved in a vessel sale, including creditors, harbour authorities, and other governmental entities¹⁵. The ultimate beneficiaries of the legal certainty offered by the convention are international trade as a whole and marine insurance¹⁶.

The article is divided into two parts, the first of which is devoted to an analysis of the text of the Convention, followed by an analysis of the national provisions relating to the judicial sale of ships. The scientific approach proposes to address the object of study through the logical and comparative method. The doctrine emphasised that the logical method involves conducting research on the body of laws. The analysis of national provisions on juridical sale of ships follows a logical approach. The comparative method makes it possible to highlight the differences in the legislative approach to the judicial sale of ships in the different legal systems.

2. Material Scope

The Beijing Convention 2022, applies to the judicial sale of a ship. For a judicial sale to fall within the scope of the Convention, two conditions must be met: the judicial sale must take place in a contracting state, and the ship must be in the territory of the state where the sale takes place at the time of the sale¹⁷. In certain legal jurisdictions, the stipulated requirement is considered to be fulfilled if the vessel is physically present at the conclusion of the compulsory sale procedure, subsequent to having completed several voyages that have been authorised by the relevant competent authority¹⁸. For the purposes of the Convention, a ship means "any ship or other vessel registered in a register that is open to public inspection that may be the subject of an arrest or other similar measure capable of leading to a judicial sale under the law of the State of judicial sale". Vessels operating on inland waterways are also included in the scope of the Convention. In the event of a potential conflict between the provisions of

¹³ UN Doc.ACN/9/923, 13 April 2017, Proposal of the Comité Maritime International (CMS for possible future work on cross-border issues related to the Judicial sale of ships, p. 3/6.

¹⁴ Ibidem.

¹⁵ Ibidem.

¹⁶ UN Doc.ACN/9/973, 24 May 2019, Report of Working Group VI (Judicial Sale of Ships) on the work of its thirty-fifth session (New York, 13–17 May 2019), p. 2/15.

¹⁷ Article 3 para 1-2 United Nations Convention on the International Effects of Judicial Sales of Ships (New York, 2022), <https://uncitral.un.org/en/judicialsaleofships>.

¹⁸ Juan Pablo Rodríguez Delgado, "Algunas Observaciones sobre el Proyecto de Convenio de Uncitral sobre la Venta Judicial de Buques (Some Observations on the Uncitral Draft Convention on Judicial Sale of Ships)". *Cuadernos de Derecho Transnacional*, Vol. 13, No 2, 2021: 472-497. DOI: <https://doi.org/10.20318/cdt.2021.6268>, p. 480.

the Beijing Convention 1922 and the Convention on the Registration of Inland Navigation Vessels (1965), the latter takes precedence¹⁹.

For the purposes of the convention, a judicial sale includes, in addition to selling the vessel at public auction, a private sale supervised by a court²⁰. A judicial sale which is based solely on the agreement of the parties involved and without the involvement of a public authority does not fall within the scope of the international instrument²¹. Ships sold out of court are also excluded, as they do not give the purchaser a clean title.²²

The Beijing Convention 2022 imposes stringent regulations on the international effects of a judicial sale of a ship²³. The judicial sale must result in a clear title being given to the purchaser.

3. International Effects of the Judicial Sale of the Ship

The legal consequence of a judicial sale is that the purchaser acquires clear title to the vessel in any State Party²⁴. A clear title is defined as "title free and clear of any mortgage or hypothèque and of any charge"²⁵. The provision is regarded as the Beijing Convention's foundational regulation²⁶. The public policy exception limits the international effects of a judicial sale carried out in one Member State²⁷. A judicial sale of a vessel shall have no legal effect in a State Party other than the State in which the judicial sale takes place if a court of another State Party determines that this would be manifestly contrary to that State Party's public policy²⁸.

The judicial sale of a ship shall have the effect of extinguishing any mortgage or other security right previously created over the ship and any other charge under the law of the Member State. If the proceeds of the sale made available to creditors are insufficient to satisfy them all, an action *in personam* may be brought against the

¹⁹ Article.13 International Convention for the Unification of Certain Rules of Law Relating to Maritime Liens and Mortgages, 1926; Tomotaka Fujita, "Scope of Application: What is covered by the Convention and What is not?" in *Comite Maritime Internationale, Yearbook 2021-2022 Annuaire*, (pp.445-448), p. 447.

²⁰ Article 2 lit. a United Nations Convention on the International Effects of Judicial Sales of Ships (New York, 2022), <https://uncitral.un.org/en/judicialsaleofships>, accessed on 10 November 2025.

²¹ Thomas Keijser, Feben van der Linden van Sprankhuizen, "Enforcement of security rights over seagoing ships, aircraft, and trains in international treaties", *Uniform Law Review*, Volume 27, Issue 2, June 2022: 131–162, <https://doi.org/10.1093/ulr/unac019>, p.140.

²² Stephen Darryl Girvin, "Aspects of Ship Finance: The Market, Ship Mortgages and Their Enforcement (August 30, 2019)". *NUS Law Working Paper No. 2019/015*, NUS Centre for Maritime Law Working Paper 19/05, <http://dx.doi.org/10.2139/ssrn.3445340>, p.27.

²³ Article 1 United Nations Convention on the International Effects of Judicial Sales of Ships (New York, 2022), <https://uncitral.un.org/en/judicialsaleofships>, accessed on 10 November 2025.

²⁴ *Idem* Article 6.

²⁵ *Idem* Article 2 lit.c.

²⁶ Estrella Faria, Jose Angelo, "To Beijing via Vienna and New York – The UNCITRAL / CMI Common Journey Towards the Newest Maritime Convention" in *Comite Maritime Internationale, Yearbook 2021-2022 Annuaire*, (pp. 418-429), p. 419.

²⁷ *Ibidem*.

²⁸ Article 10 United Nations Convention on the International Effects of Judicial Sales of Ships (New York, 2022), <https://uncitral.un.org/en/judicialsaleofships>, accessed on 10 November 2025.

shipowner.²⁹

As a general rule, the primary objective of the convention is neither to establish nor to modify the rules of procedure that are applicable at the domestic level within member states. The Beijing Convention 2022 is only applicable to a judicial sale of the ship, which gives the purchaser a clear title³⁰. Accordingly, the judicial sale must extinguish all encumbrances that predate it and confer a clear title in the state in which it takes place in order to give effect to the provisions of the Convention³¹. The Beijing Convention 2022 uses the phrase "international effects of the judicial sale of ships". The issue of recognition of a judicial sale in a foreign jurisdiction is not addressed³². The terminology used underlines the legislator's intention to distinguish between the judicial sale and the decision on the merits of the claims arising from it³³.

In accordance with the provisions of the Convention, a state may give effect to a judicial sale of a ship affected by another state under any other international agreement or applicable law³⁴. Nothing in the Convention shall prevent a Member State from recognising the effects of a judicial sale carried out in a State which has not acceded to the Convention³⁵.

4. Procedural Aspects of the Forced Sale of the Ship

The court is duty-bound to reject any application for the arrest of a vessel in respect of a claim arising prior to its judicial sale. The basis for such a rejection is the presentation of the judicial sale certificate.³⁶ Similarly the court shall mandate the cessation of the arrest of the vessel or analogous measures in relation to a claim arising prior to the judicial sale of the vessel upon the presentation of the certificate of judicial sale.³⁷ The provisions are designed to guarantee adequate legal protection for purchasers and creditors, including lien holders and ship financiers.³⁸

²⁹ Juan Pablo Rodríguez Delgado, "The Scope of Application of the UNCITRAL Instrument on the Judicial Sale of Ships." *Poredbeno pomorsko pravo* 61, no. 176 (2022): 705-744., <https://doi.org/10.21857/y26kecl109>, p. 711.

³⁰ Beate Czerwenka, "Key Challenges for the Unification of the Law on Judicial Sales of Ships". in *Comite Maritime Internationale, Yearbook 2021-2022 Annuaire*, (pp.430-437), p. 435.

³¹ Yingfeng Shao, Laura Carballo Piñeiro, Maximo Q Mejia, *op. cit.*, p. 800; Paul Myburgh, "International Recognition of Judicial Ship Sales: English Common Law and the Beijing Convention (2022)". *Journal of International Maritime Law* 28 (2022): 410-424, <https://dx.doi.org/10.2139/ssrn.4465763>, p.410; John E. Bradley, "Convention on the Int'l Effects of Judicial Sales of Ships (U.N.)". *International Legal Materials*. 2024;63(1):78-93. <http://dx.doi.org/10.1017/ilm.2023.44>, p.78.

³² Xingguo Cao, Leyi Chang, Houqun Xing, "Securing the clean title of ships: The prospects and achievements of the Convention on the International Effects of Judicial Sales of Ships", *Marine Policy*. Volume 154, August 2023, 105685, <https://doi.org/10.1016/j.marpol.2023.105685>, p. 3.

³³ Ibidem; Juan Pablo Rodríguez Delgado, *op.cit.*, p. 484.

³⁴ Article 14 United Nations Convention on the International Effects of Judicial Sales of Ships (New York, 2022), <https://uncitral.un.org/en/judicialsaleofships>, accessed on 10 November 2025.

³⁵ Tomotaka Fujita, *op. cit.*, p. 448.

³⁶ Article 8 para.1 United Nations Convention on the International Effects of Judicial Sales of Ships (New York, 2022), <https://uncitral.un.org/en/judicialsaleofships>, accessed on 10 November 2025.

³⁷ Idem Article 8 para. 2.

³⁸ Idem Preamble.

The court may refuse to dismiss an application to arrest or release a vessel if it finds that to do so would be manifestly contrary to the public policy of that State³⁹. The judicial jurisdiction to deal with applications or requests to avoid the judicial sale of a ship, or to suspend the effects of the sale, belongs exclusively to the courts of the territory of the state wherein the judicial sale is being conducted⁴⁰. Jurisdiction shall extend to any application or request that is made for the purpose of contesting the issue of the certificate of forced sale⁴¹.

The Central Registry must be notified for publication of court decisions preventing or suspending judicial sales for which certificates have been issued⁴². Interested parties can therefore rely on the certificate published through the International Maritime Organization's system⁴³.

Judicial bodies within a member state are obligated to decline jurisdiction in instances where an application is made to prevent the judicial sale of a ship in another contracting state, which gives clear title to that ship, or to suspend the effects of the sale⁴⁴.

The legal effects of judgements given by the courts of the state in which the judicial sale takes place under Article 9 are one of the issues not covered by the Convention. In this case, *lex fori* is the law governing the legal consequences of the court's decisions⁴⁵. The national law of the courts in the relevant country shall govern the transfer of a clean title⁴⁶.

The registry or other competent authority of a State Party shall, in accordance with its own rules and procedures, take the following actions at the request of the purchaser: remove the mortgages, liens and any encumbrances registered in respect of the ship that were registered before the completion of the judicial sale⁴⁷; remove the ship from the register and issue a certificate of removal for the purpose of re-registering the ship⁴⁸. These measures are subject to the presentation by the purchaser or subsequent purchaser of a certificate of judicial sale⁴⁹. In order for the vessel to be re-registered, it is a prerequisite that the legal requirements of the state in which the vessel is to be registered are fulfilled, provided that such a re-registration is requested by the

³⁹ Idem Article 8 para. 4.

⁴⁰ Article 9 para.1 United Nations Convention on the International Effects of Judicial Sales of Ships (New York, 2022), <https://uncitral.un.org/en/judicialsaleofships>, accessed on 10 November 2025.

⁴¹ Ibidem.

⁴² Article 9 para. 3 United Nations Convention on the International Effects of Judicial Sales of Ships (New York, 2022), <https://uncitral.un.org/en/judicialsaleofships>, accessed on 10 November 2025.

⁴³ Peter Laurijssen, "Judicial Sale Completed and Certificate issued. Now What? Articles 7,8 and 9". in *Comite Maritime Internationale, Yearbook 2021-2022 Annuaire*, (pp.455-458), p.457.

⁴⁴ Article 9 para. 2 United Nations Convention on the International Effects of Judicial Sales of Ships (New York, 2022), <https://uncitral.un.org/en/judicialsaleofships>, accessed on 10 November 2025.

⁴⁵ Tomotaka Fujita, op.cit., p.448.

⁴⁶ Ibidem.

⁴⁷ Article.7 para.1 letter a). United Nations Convention on the International Effects of Judicial Sales of Ships (New York, 2022), <https://uncitral.un.org/en/judicialsaleofships>, accessed on 10 November 2025.

⁴⁸ Idem Article 7 para 1 letter b).

⁴⁹ Ibidem.

purchaser⁵⁰. Ships that are registered in the charter register as 'bareboat' are also subject to deregistration at the behest of the purchaser⁵¹.

The public policy exception applies if a court of the country of registration or other competent body determines that the effect of the judicial sale, if any, would be manifestly contrary to the public policy of that state. Following such a court decision, the registry can no longer act at the purchaser's request⁵². The potential public policy exceptions that may be invoked in such cases include violations of a state's sovereignty, significant procedural irregularities pertaining to the judicial sale process, or fraud perpetrated by the purchaser in executing the sale⁵³.

The Beijing Convention 2022 is concerned exclusively with the international effects of the judicial sale of ships. There are no regulations governing the procedural aspects of allocating the proceeds of a judicial sale or the distribution's priority order⁵⁴.

The convention does not clarify how an action *in personam* against a person who had a right to ownership of the ship prior to the judicial sale is affected by the judicial sale⁵⁵.

5. Judicial Sale of Ships

The judicial sale of ships is conducted in line with the laws of the jurisdiction where the sale occurs. The same legislation establishes the procedures for contesting the judicial sale before its completion⁵⁶.

The Beijing Convention 2022 delineates two prerequisites for executing judicial sales. Sending a judicial sale notification to the interested parties prior to the ship's judicial sale satisfies the first requirement. The second prerequisite pertains to the issuance of a judicial sale certificate subsequent to the notice⁵⁷.

The shipowner, mortgagees, guarantors, registered lienholders, and other holders of marine privileges receive notification of the judicial sale at that time. If the vessel is recorded in the charter register as a bareboat, the notification is dispatched to the individual listed as the bareboat charterer in the charter registration and the relevant registry⁵⁸. The notification of the forced sale is dispatched to the naval registry or a corresponding registry where the ship is registered⁵⁹. The notification is dispatched for publishing to the central register. The notification of the forced sale is also published through an announcement in the press or through another publication available in the

⁵⁰ Idem. Article 7 para.1 letter c).

⁵¹ Idem. Article 7 para. 2.

⁵² Idem. Article 7 para.5. Peter Laurijssen, *op.cit.*, p.456.

⁵³ Yingfeng Shao, Laura Carballo Piñeiro, Maximo Q Mejia, *op.cit.*, p.808.

⁵⁴ Article 15 para.1 United Nations Convention on the International Effects of Judicial Sales of Ships (New York, 2022), <https://uncitral.un.org/en/judicialsaleofships>, accessed on 10 November 2025.

⁵⁵ Ibidem; Tomotaka Fujita, *op.cit.*, p.448.

⁵⁶ Idem. Article 4 para.1.

⁵⁷ Idem Article 4 para.2.

⁵⁸ Idem. Article 4 para.3.

⁵⁹ Ibidem.

state where the judicial sale takes place⁶⁰. The provisions regarding the access of interested parties to information through the possibility of consulting the central register and the determination of the parties to be notified ensure a high degree of legislative uniformity⁶¹.

The legislation of the state in which the judicial sale takes place establishes the conditions under which the notification of the judicial sale is made⁶². Information from the Ship Register or information provided by the holders of a mortgage or guarantee shall be used for the purpose of notification⁶³.

The notification is considered valid if the interested parties cannot be notified on the basis of the information included in the register⁶⁴. It is subject to debate in the legal literature whether the notification can be recognised as valid for another state party if it is not addressed to all interested parties or does not contain the information required by the convention⁶⁵.

The court that conducted the judicial sale provides the purchaser with a certificate of judicial sale upon completion, granting them a clean title over the ship⁶⁶. The certificate is issued following the state regulations and procedures governing the forced sale of the ship⁶⁷. The Beijing Convention 2022 provisions establish a harmonised regime to confer an international effect on the forced sale of ships⁶⁸. The state procedure's rules, which govern the forced sale, remain unchanged. Similarly, the conditions under which the judicial sale confers a clear title in the State in which it is carried out⁶⁹.

The certificate of judicial sale is transmitted by the state in which the judicial sale of the central register takes place⁷⁰. The certificate of judicial sale constitutes sufficient proof of the aspects provided for in it⁷¹. States that are not signatories to the Beijing Convention have no obligation to recognise the certificate of judicial sale⁷².

The certificate of judicial sale must include: a declaration confirming the sale of the vessel in accordance with the national provisions of the State where the judicial

⁶⁰ Idem Article 4 para.5 letter b).

⁶¹ Frank Nolan, "Article 4: Notice of Judicial Sale" in *Comite Maritime Internationale, Yearbook 2021-2022 Annuaire*, (pp.449-451), p.451.

⁶² Article 4 para.4 United Nations Convention on the International Effects of Judicial Sales of Ships (New York, 2022), <https://uncitral.un.org/en/judicialsaleofships>, accessed on 10 November 2025.

⁶³ Idem. Article 4 para.7.

⁶⁴ Yingfeng Shao, Laura Carballo Piñeiro, Maximo Q Mejia, *op. cit.*, p. 801.

⁶⁵ Gordan Stanković, Petar Kragić, Danijela Vrbljanac, *op. cit.*, p. 26.

⁶⁶ Article 5 para.1. United Nations Convention on the International Effects of Judicial Sales of Ships (New York, 2022), <https://uncitral.un.org/en/judicialsaleofships>, accessed on 10 November 2025.

⁶⁷ Ibidem.

⁶⁸ Jan-Erik Pötschke, "Certificate of Judicial Sales Article 5 Draft Convention on the International Effects of Judicial Sales of Ships - The "Beijing Convention", in *Comite Maritime Internationale, Yearbook 2021-2022 Annuaire*, (pp.452-454), p.452.

⁶⁹ Ibidem.

⁷⁰ Article 5 para.3. United Nations Convention on the International Effects of Judicial Sales of Ships (New York, 2022), <https://uncitral.un.org/en/judicialsaleofships>, accessed on 10 November 2025.

⁷¹ Idem Article 5 para.5.

⁷² Jan-Erik Pötschke, *op.cit.*, p.454.

sale occurs; a statement that the judicial sale granted a clear title over the vessel to the buyer; the vessel's name and registration details along with the vessel's IMO number; the name of the State where the judicial sale is conducted; the name of the court that executed the judicial sale; identification data of the authority issuing the certificate; the location and date of issuance of the certificate; verification of the certificate's authenticity through the signature of the issuing authority or equivalent; and identification data of both the purchaser and the ultimate owner of the vessel⁷³. The certificate of judicial sale may also be provided in electronic format⁷⁴.

6. Judicial Sale of Ships under Romanian Law

The regulations concerning the judicial sale of ships have been established in Romanian law in accordance with the international conventions ratified by Romania and the now-repealed provisions of the Commercial Code⁷⁵. The new Code of Civil Procedure contains distinct provisions regarding the arrest of commercial ships. The judicial sale of ships is subject to the general regime. As of now, Romania has yet to ratify the 2022 Beijing Convention.

6.1 Precautionary Arrest of Commercial Ships

Romanian legislation includes specific regulations concerning the precautionary seizure of civilian ships as outlined in Article 959 and the following sections of the New Code of Civil Procedure. According to the provisions in force, a creditor can request the establishment of the precautionary arrest on a ship⁷⁶. The creditor who has obtained the institution of the precautionary arrest is obliged to file the action with the competent court or to initiate the steps for the constitution of the arbitral tribunal within a maximum period of 20 days from the date of approval of the precautionary measure⁷⁷. In urgent cases, the request for the establishment of a precautionary arrest on a ship can be made even before filing the substantive action⁷⁸. Failure to file the action within the stipulated period entails the legal abolition of the precautionary arrest.⁷⁹

The jurisdiction to settle the application for precautionary arrest on a ship belongs to the court of the place where the ship is located, regardless of the court where

⁷³ Article 5 para.2 United Nations Convention on the International Effects of Judicial Sales of Ships (New York, 2022), <https://uncitral.un.org/en/judicialsaleofships>.

⁷⁴ *Idem* Article 5 para.6.

⁷⁵ Superior Council of Magistracy, National Institute of Magistracy, Conference on the New Code of Civil Procedure, material realised within the framework of the Romanian-Swiss project "Assistance for institutional capacity building in the field of training judges and prosecutors for the application of the new codes" / Bucharest: Patru As, 2015, ISBN 978-606-93968-1-0.

⁷⁶ Article 959 Law no. 134/2010 regarding the Civil Procedure Code, republished in the Official Gazette of Romania, Part I, no. 247 of April 10, 2015, with subsequent amendments and completions.

⁷⁷ *Idem* Article 961 para.1.

⁷⁸ *Ibidem*.

⁷⁹ *Idem* Article 961 para.3.

the action on the merits has been filed or is to be filed⁸⁰.

The court that ordered the precautionary arrest may authorise the exchange of the seized vessel for another at the request of the debtor, or, as the case may be, of the creditor for duly justified reasons⁸¹. A vessel prepared for departure cannot be subjected to precautionary arrest⁸². The temporary halt of the ship's departure, in the absence of a court ruling, can be ordered by the port authority under the conditions of the special law⁸³. After the precautionary arrest has been granted, at the request of the creditor who has a lien on a ship, a co-owner of the ship or even the debtor, the court that ordered the precautionary measure may order that the ship undertake one or more voyages⁸⁴. At the same time, the court determines all the preventive measures that, according to the circumstances, would be necessary⁸⁵. The vessel may depart only after the declaration of approval has been transcribed in the registers of the respective maritime authority and the corresponding mention has been entered in the nationality document⁸⁶. The court may add the freight for the authorised voyages to the sale price after first deducting the necessary expenses for the voyage⁸⁷.

The creditor of the legitimate holder of the bill of lading may proceed to the seizure of the goods represented in the bill of lading, which are on board a ship⁸⁸. If there is no request for the arrest of the vessel, the creditor must also request the unloading of the goods⁸⁹. The precautionary arrest measure is carried out by immobilising the ship by the captain of the port where it is located⁹⁰. Interested persons may appeal the execution to the court of the place where the vessel is located⁹¹. To guarantee port traffic and civil safety while the ship is immobilised, the appropriate court may issue an injunction to implement urgent measures⁹².

6.2. Judicial Sale of Ships

In Romanian law, judicial sale is governed under Articles 758-778 of the New Code of Civil Procedure. Concerning the provisions of the now-repealed Romanian Commercial Code, there are no longer specific regulations pertaining to the judicial sale of ships. Therefore, only the general provisions are applicable⁹³.

⁸⁰ Idem Article 962.

⁸¹ Idem Article 965.

⁸² Idem Article 963.

⁸³ Idem article 969.

⁸⁴ Idem Article 964 para.1.

⁸⁵ Ibidem.

⁸⁶ Idem Article 964 para.3.

⁸⁷ Idem Article 964 para.5.

⁸⁸ Idem Article 966.

⁸⁹ Ibidem.

⁹⁰ Idem Article 967 para.1

⁹¹ Idem Article 967 para.2.

⁹² Idem Article 968.

⁹³ Marin Voicu, *The current state of Romanian maritime law after the entry into force of the NCC and NCPC*, 19.10.2025, available at <https://www.juridice.ro/essentials/328/starea-actuala-a-dreptului-maritim-roman-dupa-intrarea-in-vigoare-a-ncc-si-a-ncpc>.

The bailiff is responsible for notifying the parties and any interested individuals under the New Code of Civil Procedure. He will notify the day, time, and location of the judicial sale at least 48 hours prior to the established deadline for the sale⁹⁴. The bailiff will draw up sale notices and post them at least five days before the auction at the auction site, his headquarters, the town hall, the destination of the goods, the enforcement court, and other public places⁹⁵. The bailiff organises the publications for sale, which he will present to the public via a local newspaper or, if that is not possible, through national publications or dedicated internet pages for the same purpose⁹⁶. The regulations concerning the notification of the creditor in Romanian law align closely with those found in other nations within the civil law system. In contrast, English law operates under the principle of implied notice. The creditors are required to remain continuously apprised of the ship's status, particularly in the event of its arrest, without necessitating formal notification⁹⁷.

The auction will be held at the seized goods' location or elsewhere if necessary⁹⁸. The auction will be made publicly by the bailiff, who will offer the goods for sale through 3 successive calls⁹⁹. According to the provisions of the new Civil Procedure Code, if the minimum price is not offered, the auction will be postponed to another term, for which the advertising formalities will be fulfilled¹⁰⁰. If the starting price for the auction is not met, the property will be offered for sale again. In this case, the auction will begin at a price that is 75% of the amount stated in the publications or announcements¹⁰¹.

The new Code of Civil Procedure provides that the participants in the auction must register, at the latest by the start of the auction, a participation guarantee¹⁰². The pursuing or intervening creditors are not obliged, if they have a useful rank of preference, to deposit the guarantee¹⁰³. The holder of a right of pre-emption who did not participate in the auction will no longer be able to exercise his right after the award of the property¹⁰⁴.

It would be useful, by *ferenda law*, for the forced sale of the ship to be able to take place *pendente lite* as provided for in English law¹⁰⁵. The reasons justifying such a

⁹⁴ Article 761 para.1 Law no. 134/2010 regarding the Civil Procedure Code.

⁹⁵ Idem Article 762 para.1.

⁹⁶ Idem Article 762 para.2.

⁹⁷ Ying-Feng Shao, Laura Carballo Piñeiro, Maximo Q. Mejia Jr., "Paving the way to recognising foreign judicial sales of ships. A comparative analysis of judicial sale proceedings in selected jurisdictions" *Cuadernos de Derecho Transnacional* (Marzo 2023), Vol. 15, Nº 1, pp. 136-160, <https://doi.org/10.20318/cdt.2023.7536>, p. 138.

⁹⁸ The New Code of Civil Procedure, art.760 para. 1.

⁹⁹ Idem Article 769 para.1.

¹⁰⁰ Idem Article 769 para.9.

¹⁰¹ Idem Article 769 para.8.

¹⁰² Idem Article.768 para.1.

¹⁰³ Idem Article 768 para.2.

¹⁰⁴ Idem Article 770.

¹⁰⁵ Christina Zournatzi. "Towards the International Unification of Maritime Law on Recognition and Enforcement of Judicial Sales of Ships". *European Journal of Comparative Law and Governance*, 11(3), 2024: 388-413, <https://doi.org/10.1163/22134514-bja10074>, p.403.

measure before a final decision is taken are the deterioration of the ship, the decrease in the value of the ship during the period of seizure¹⁰⁶ or the payment of port fees¹⁰⁷. According to the New Code of Civil Procedure, the bailiff provides a certificate of adjudication to each successful bidder with his signature¹⁰⁸. The certificate must include the date and place of the auction, the name of the successful bidder, an indication of the property awarded, and, as the case may be, the price paid or to be paid¹⁰⁹. The issuance of a certificate to each successful bidder serves as formal documentation confirming their ownership of the goods sold¹¹⁰.

By virtue of the award, the purchaser becomes the owner of the awarded property from the date of delivery, free of all encumbrances, which are transferred by operation of law to the price paid¹¹¹. By way of exception, the property awarded shall remain encumbered if the successful tenderer agrees that the encumbrances may be maintained¹¹². The provisions concerning the retention of encumbrances are analogous to those in other legislation with regard to the consequences of judicial sale of vessels¹¹³. *De lege ferenda*, a law implementing the provisions of the 1926 Convention for the Unification of Certain Rules Relating to Maritime Liens and Mortgages should be adopted as a matter of priority. There is currently no special law in Romania on maritime liens and mortgages. A separate legal framework for the forced sale of ships is urgently needed in view of the ratification of the Beijing Convention 2022.

7. Conclusions

The Beijing 2022 Convention establishes the first harmonised international regime to facilitate the recognition of judicial sales of ships in different jurisdictions. The procedural criteria for recognising judgements relating to the judicial sale of ships vary from one state to the next. The new international instrument establishes uniform rules whereby a judicial sale confers on the purchaser a clean title in any other contracting state. The competent court will reject any request for the establishment of an arrest based on a claim arising prior to the judicial sale. An already existing arrest is to be lifted on the basis of the presentation of a certificate of judicial sale.

The Beijing Convention 2022 refers to the recognition of the international effects of a forced sale, not to the recognition of judgements on a forced sale in another jurisdiction. The Convention provides adequate legal protection for a wide range of

¹⁰⁶ Ibid.

¹⁰⁷ Lief Bleyen, *Judicial Sales of Ships. A Comparative Study*, International Max Plank Reserch School Institute for maritime affaires at the Univerity of Hamburg, Volume 36 of Hamburg Studies on Maritime Affair Springer, 2015, <https://doi.org/10.1007/978-3-319-24376-4>, p.102.

¹⁰⁸ Idem Article 774 para.1.

¹⁰⁹ Ibidem.

¹¹⁰ Idem Article 774 para.2.

¹¹¹ Idem Article 775.

¹¹² Ibidem.

¹¹³ Julio Carlos Fuentes Gomez, "A Further Step towards the International Effectiveness of the Judicial Sale of Ships." *Cuadernos Derecho Transnacional* 16 (2024): 208-225, <https://doi.org/10.20318/cdt.2024.8421>. p. 213.

interested parties, including purchasers, holders of mortgages and other registered liens on ships and ship financiers, thereby contributing to the protection of the shipping industry as a whole.

The Convention does not alter the national law of States Parties concerning the procedural aspects of the judicial sale of ships. In Romania, the laws that govern the judicial sale of movable property are based on general law principles. They are further strengthened by specific rules about asset seizure, which can be found in Articles 959 and subsequently. From this perspective, it can be said that there is a need for a separate provision in the New Code of Civil Procedure regarding the judicial sale of ships. Romania is a party to the Convention on Maritime Liens and Mortgages but has not yet adopted a specific law regulating liens and mortgages. Romania will also have to ratify the Beijing Convention in 2022. The legislative amendments are necessary to implement the provisions of the Beijing Convention on the International Effects of Forced Sale in view of its ratification by Romania.

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