

Beaching break-up is a waste crime

4 NETWORKS CONFERENCE
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Beach



The case

A Belgian vessel is sold to a cash-broker in 2016 while navigating out of China. The cash-broker has taken over the crew, changed the name of the ship and beached the ship on the coast of Chittatong in Bangladesh. It was demolished, while the ship contained still all the waste, mostly by handcraft of the workers in poor conditions.

We lost the case, because:

- The legislation is not waterproof
- The evidence was default
- The court misjudged the case

The basic legislation

Shipbreaking is the process of dismantling vessels at the end of their operational life (ELVs) to recover valuable materials and components. However, this practice has environmental, safety and ethical concerns, especially when done in non-OECD countries, like India and Bangladesh.

What is the current European legislation:

- The Flag State responsibility
- The Basel Convention
- The EU Ship Recycling Regulation No 1257/2013 of 20 November 2013 (entered into force 1.01.2019)
- Hong Kong Convention for the Safe and Environmentally Sound Recycling of Ships (15 states, that are representing 40% of the gross tonnage of the world trading fleet, must ratify the convention without reservations. These member states must also recycle at least 3% of global recycling represent volume.)

The basic legislation

Regardless of the ownership transfer, the ship's original owner or the flag state remains responsible for the vessel's compliance with environmental regulations. This includes ensuring that hazardous materials on board are properly managed and disposed of in accordance with the international and regional regulations.

- Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste.
- Exports from the Community of wastes destined for recovery in countries to which the OECD Decision does not apply are prohibited.
- 'Competent authority of dispatch' means the competent authority for the area from which the shipment is planned to be initiated or is initiated. (article 2.22).
- Article 1.3i WSR.

Illegal Assets

- An expert was designated to inform the court of the presence of waste in the ELV. He had also the mission to calculate the eventual profit of the operation for the ship owner.
- The gainings from the sale of the vessel after deduction of the commission is USD 5,222,431. In recognized demolition companies, on the other hand, the gaining's amount to USD 3,136,371 in Turkey; USD 949,829 in Ireland and USD 3,934,436 at a yard in China, or on average: 2,673,545 USD. This means that an illegal surplus was realized in Bangladesh from USD 2,548,886.

Illegal Assets

- In a similar case in the Netherlands, a settlement was reached with the Public Prosecution in January 2019 of almost 3 million Euros with a dutch company due to the scrapping of her ship in 2013 India.
- A similar settlement was reached in Flanders with an Italian Company for 2 million Euros.

Partners

The Basel Convention are a part of the “NGO Shipbreaking Platform”, a global coalition of environmental, human rights, and labor rights organizations also preventing ships from being beached in developing countries” (BAN.org).

In a project kicked off on 20 May 2022 IMPEL focused on Ship Recycling and not on beaching itself. They focus on how we can prevent illegal export of ships in the EU and how we as authorities can follow up illegal cases where ships already have been beached.

Conclusion

- Since 2016 the legislation is tightened.
- The ELV was labelled as waste. In the court's opinion, the prosecution's interpretation of the words 'planned to be initiated', is by no means correct.
- The place where the decision to sell came about as well as the flag of the ship - since the WSR does not in any way link its application to the flag state of the vessel - are therefore no territorial connecting factors for the applicability of the WSR.

TEST / Yes or No

- If the facts happened in 2023 the case will still be won by the defendants?
- The Hong Kong Convention will come into force in 2024?
- At a safe yard in Europe the loss of revenue is 25% compared to beaching and breaking down a ship in South-East Asia?
- At least 1000 workers died in Bangladesh and India while dismantling ships?
- An Italian ELV is defined as waste and subject to the WSR?

