THE BOSPHORUS ONLINE

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1. Requirements for Fuel Oil Sulphur Content in Turkey

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In this article, a general review is going to be provided on the regulations regarding the requirements for fuel oil sulphur content in Turkey.

As it is known, MARPOL Annex VI provides the requirements for sulphur content for any fuel oil used ships in general and within the Emission Control Areas. In many international conventions the parties to the convention are given the power to take the regulations in the convention as a starting point and bring stricter regulations domestically. Turkish authorities used this power provided by MARPOL to do so and imposed stricter regulations regarding the sulphur contents of the fuel oil used on board of the ships to be effective as of 1 January 2012.

Since then, Turkey has been enforcing new regulations regarding the limits of the sulphur content of marine fuels on board of the vessels which are in its domestic territorial waters. According to the new regulations the requirements are as follows:

a. For all vessels arriving at Turkish ports and all inland waterway vessels sailing on Turkish inland waters, the marine fuels shall be at or below 0.1% sulphur.

b. For all passenger vessels providing regular services in areas within Turkey's marine jurisdiction, the marine fuels shall be at or below 1.5% sulphur.

c. Turkish-flagged vessels, when sailing within an Emission Control Area (ECA), the marine fuels that they use on board shall be 1.5% or below. However, regardless of this regulation, MARPOL Annex VI currently requires all vessels sailing within an ECA to use fuel oil which contains not more than 1.0% sulphur, regardless of flag and this regulation will prevail.

In light of the foregoing, prior to entering Turkish territorial waters it is advisable for the ship-owners to check the current applications of the regulations as to the sulphur contents of the fuel oil used on board with local contacts if there is any change or additional requirement imposed from by the local authorities.

2. Sea Protest in Turkish Law Practice

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The sea protest has been an important term in Turkish Maritime Law for many years. The Turkish Commercial Code, which came into force in 2011, regulates the sea protest between the articles 1098-1101. The sea protest is not an original term for Turkish law; it was taken from German Commercial Law. However, over time sea protest has become a Sui Generis institution in Turkey. In this article, we would like to inform you about its process

First of all the sea protest which is regulated in Turkish Commercial Code is neither same with the protest which is prepared by Master nor the protest which is prepared by the Port Authority or by any other administrative authority. For issuing a sea protest with the qualifications specified in the Turkish Commercial Code, the protest must be prepared by the Court. The sea protest is not issued by the court on its own motion -ex officio-. In order to issue a sea protest, the Master or his lawyer must make an application to the relevant court. In the application the ship's journal and the crew list must be submitted to the Court. In addition, if there are any other documents related to the incident, they should also be submitted with the petition for sea protest.

The legal characteristic of the sea protest is determination of evidences by the hand of the court. Therefore, such a determination will have a higher value of proof than the other evidences (e.g.: an independent survey report). In this respect as stated above, even if their contents are exactly the

same, the master's report or the statements given to the administrative authorities are considered weaker compared to the sea protest unless they are included in the sea protest. Moreover, sea protest was not evaluated into the provisions related to determination of evidences by the legislator it was specifically regulated by Law. This regulation gives the sea protest sui generis characteristic. Within this context, while the evidence determinations could be made by the civil court of peace, the sea protest can only be obtained from the court where the incident occurs and which is tasked specifically for maritime law disputes. The sea protest is included in the main file. According to the article 1099 of the Turkish Commercial Code the matters to be determined in the sea protest are "the important events of the voyage, especially the accidents and the cautions in order to avoid or decrease damages". The determination of these has to be clear, therefore the judge has the power to interrogate the master and the seafarers who are related to the event. The master and the seafarers must respond the judge's questions.

Since issuing a sea protest is a judicial activity, persons who are involved in the incident, may also be present at the hearing even if they are not employees of the party who requested the sea protest in accordance with Article 1100/3 of Turkish Commercial Code. The law does not allow attendants to ask questions to the captain and / or the seafarers directly. However they may ask the judge and the judge may ask the captain and / or the seafarers if he / she considers these questions appropriate. In determining the jurisdiction of the court which will issue the sea protest, the Turkish Commercial Code Article 1100/5 says "the judge shall ask any question he/she finds necessary." This not only expands the jurisdiction of the court, but also increases the evidence force of the sea protest.

The importance of the sea protest as evidence caused the sea protest to be obtained in limited locations and limited time. According to Turkish Law, the places where the sea protest should be requested are listed in Article 1098 of the Turkish Commercial Code. Accordingly, the sea protest should be requested at the places listed in the article without wasting time. *"... a) at the port of destination and if the port of destination is more than one, in the first port reached after the accident. b) If the ship has repaired or the goods were unloaded, at the emergency port. c) If the voyage ends before arriving to the destination port due to the sinking of the ship or for other reason, is the first convenient place."* The jurisdiction of the counted courts is final. In case the sea protest of the relevant places is abandoned without being requested, it will not be possible to obtain a sea protest from the Court which in another place and there will be a risk of loss of the right to receive a sea protest. This situation is an example of the principle of the evidence must be recorded in the place where the incident occurs.

The captain or his deputy is obliged to apply urgently for the sea protest. In return, in order to prevent the maritime trade from being interrupted, the court where the application is made is obliged to determine the date of the hearing as soon as possible and issue the sea protest. In this regard, Pursuant to Article 1100/2 of the Turkish Commercial Code: *"Upon application, the court or consulate shall determine a day as soon as possible."* However, this regulation does not specify a deadline for the Court. In practice, it is possible to say that the sea protest is issued within 1-5 days from the application depending on the workload of the court where the sea protest is requested.

The sea report is issued by the statements of the captain and the seafarers and their responses to the judge's questions at the hearing to be determined by the competent court upon the application of the captain. All seafarers who have information about the incident together with the captain must attend the hearing. The court can also decide to listen to the seafarers who did not attend the hearing according to the Article 1100/5 of Turkish Commercial Code. This authority can be used only if the seafarers who have attended the hearing do not have sufficient information about the incident which is the subject of the sea protest and the seafarer who is the witness of the incident is not present at the hearing. Since such a situation may delay the process, captain should be accompanied by the sufficient number of seamen during the hearing. Generally in practice, the statements of 2 or 3 seafarers and the statement of the captain are considered adequate.

Since Turkish Maritime Commercial Code attaches such importance to sea protest, it became an essential document for administrative investigations in practice. Even if there is an administrative record issued by the Harbour Master for the vessel which was temporarily barred from the voyage due to being involved in an accident, the vessel still cannot continue the voyage without a sea protest submitted to the investigation file and the investigation file without a sea protest is not considered completed. This makes sea protest mandatory in practice, even if there is no legal dispute to be brought to trial (even if the sea protest is not used as an evidence).

3. The Role of The Damage Assessment Committee in Pollution Incidents

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A law has come into force on 11/3/2005 called *"Law on Emergency Response and Compensation of Damages in Case of Pollution of the Marine Environment by Petroleum or Other Harmful Substances"* and an executive regulation (prepared by the Ministry of Environment and Forestry) which details the provisions of the Law has entered into force on 21.11.2006 named *"Executive Regulation for Law on Emergency Response and Compensation of Damages in Case of Pollution of the Marine Environment by Petroleum or Other Harmful Substances".*

This Law and the Regulation regulates the duties and powers of the Damage Assessment Commission and grant them power to decide on liability, determination of damages and compensation amount in pollution incidents.

According to article 6 of the Law; the Damage Assessment Commission is entitled to determine and order an amount regarding the cleaning costs caused by pollution or threat of pollution, costs associated with protective measures, damage done to living resources and marine life, costs for recreation of the deteriorated environment, handling and disposal of collected waste, damages to natural and living resources used for subsistence purposes, damages to private property, losses due to injury or death of persons, revenue losses, damages to revenue and income capacities and other public losses.

The Commission may assess the damages by itself or consult a specialized Turkish or foreign persons and entities to evaluate the damages and claims. The amount of loss such determined will be valid after approval by the commission and a penalty will be imposed on the pollutant accordingly. However, the provisions of LLMC 1976 (as amended by 96 Protocol) to which Turkey is a party shall be reserved regarding the total liability limit per ship.

4. Maritime Arbitration In Turkey

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International arbitration is a mechanism by which international disputes can be definitively resolved, pursuant to the parties' agreement, by independent, non-governmental decision-makers. There are almost as many other definitions of international arbitration as there are commentators

on the subject. Commercial arbitration is common in both international and domestic contexts. Arbitration has several defining characteristics, they are as follows:

1. Arbitration is generally consensual in most cases, the parties must agree to arbitrate their differences.

2. Non-governmental decision-makers resolve arbitrations, arbitrators do not act as state judges or government agents, but are private persons ordinarily selected by the parties.

3. Arbitration produces a binding award, which is capable of enforcement through national courts, but not a mediator's or conciliators non-binding recommendation.

4. Arbitration is comparatively flexible, as contrasted to most court procedures.

Arbitration is a form of alternative dispute resolution (ADR) allowing to resolve disputes outside the courts. A "maritime" arbitration involves maritime commercial disputes, in cases when there is a link between the res litigiosa and maritime navigation, industry and trade. The link between the arbitration case and the ship serves as the constant element of maritime arbitration. Some typical issues involve disputes arise out of charter parties, Bill of Ladings, contracts of affreightment, second-hand ship sales, shipbuilding contracts, marine insurance, disputes arise out of marine accidents, such as collisions, groundings, salvage and other associated maritime matters.

In practice, generally, arbitration is faster than many national court proceedings. In addition, the New York Convention allows the arbitral award to have a wider enforcement system all around the world.

For international maritime Arbitration, traditionally London has been the most popular place for the settlement of maritime disputes via Arbitration. Nevertheless, there have been an increasing number of disputes where the parties have selected Istanbul Arbitration Centre (IAC) as the place of arbitration for both domestic and international disputes. Although arbitration is not commonly used for domestic disputes, Turkey has been making progress to become more arbitration-friendly in making arbitration and ADR methods more accessible. There are two major bodies which currently provide services for domestic arbitration in Turkey:

The Istanbul Chamber of Commerce and the Union of Chambers of Commerce, Industry, Maritime Trade and Commodity Exchanges of Turkey. In addition, the IAC operates and provides arbitration and ADR services for all private disputes of both a foreign and domestic nature.

As with any form of arbitration, the parties must have concluded a valid arbitration agreement amongst themselves in order to resolve their dispute through arbitration. Article 4 of Turkish International Arbitration Court (TIAC) provides that the arbitration agreement is valid if it complies with the requirements of the law chosen by the parties to apply to the arbitration agreement, or failing such a choice, if it complies with the requirements of Turkish law.

In maritime law practice, parties often base their contracts on standard contracts. Under Article 4/1I of TIAC, the reference in a contract to a standard contract containing an arbitration clause constitutes an arbitration agreement provided that the contract is in writing and the reference is such as to make that clause part of the contract to which the dispute relates. Thus, even if the parties did not mention arbitration but simply referred to a standard form of contract that contains such an arbitration agreement, the principle of arbitration.

In a contract where the parties agreed to Arbitration under the Paris Chamber of Commerce, the Claimant referred the dispute to the International Chamber of Commerce since the local Chamber in Paris did not provide any Arbitration service. The Turkish Supreme Court decided that since the parties' intention on Arbitration was clear and the dispute was international, the true intention of the parties' was certainly Arbitration under the Rules of the International Chamber of Commerce located in Paris.

In maritime practice, parties may have optional arbitration clauses enabling the parties to choose arbitration or litigation. In such circumstances the claimant may choose to start arbitration proceedings or bring a lawsuit before the national court that the parties have agreed upon. Even though this is accepted practice in many parts of the world, it is important to note that such optional arbitration clauses are not valid under Turkish law. The Turkish Supreme Court has held that if the parties refer to both arbitration and to the jurisdiction of a particular national court, the parties intention to refer to arbitration is not clear enough as they have not exclusively chosen arbitration. This clouding of the intention to arbitrate invalidates the arbitration agreement under Turkish law.

In international maritime disputes where Turkish parties are involved, the London Maritime Arbitration Association (LMAA) is often referred to. Beside the LMAA, there are some other international maritime Arbitration institutes or standard rules that provide maritime arbitration rules or service to the parties such as the Chamber of Maritime Arbitration (CMA); the International Organization of Maritime Arbitration (IOMA), Paris: Lloyd's Institution (LI), London the Maritime Arbitrators Society (MAS), New York; the Alexandria Centre of Maritime Arbitration (ACMA), Egypt, In Turkey, the Arbitration Rules of the Union of Maritime Chambers of Commerce and Commodity Exchanges of Turkey was set up for domestic and international arbitration in Turkey. The Court of the Union of Chambers of Commerce and Commodity Exchanges of Turkey was set up to assist arbitration.

However, with the establishment of the Istanbul Arbitration Centre (ISTAC) by Law 6570 on 1 January 2015, and the start of its operation on 26 October 2015 with the publication of the ISTAC Rules (which are very similar to the ICC Rules) an upward trend in the use of commercial arbitration is anticipated. It is very common for disputes regarding international business transactions to be resolved before arbitral tribunals. Arbitral tribunals are often seen as a reliable forum and are especially favoured by foreign investors who engage in business in Turkey.

Arbitration is significantly faster and more efficient, especially when it comes to large and complex disputes. State judges and court appointed experts are often insufficient for disputes which require special expertise. There is a common perception that arbitration is a more expensive method for resolution of commercial disputes. This can be accurate for small-sized disputes. However, for large-scale commercial disputes, litigation costs before state courts often exceed arbitration fees. Confidentiality is another advantage of arbitration, as Turkish court proceedings are public. Enforceability of arbitral awards outside Turkey under the New York Convention is also an important advantage.

"In the Case No 7895, Final Award dated 1994, published in the ICC International Court of Arbitration Bulletin Vol. 8 No. 2, 1997 Turkish Supreme Court 1s Civil Circuit dated 133.2007 numbered 769/1572, http:/www.kazanci com, Turkish Supreme Court 19th Civil Circuit dated 03.06.2001 numbered 9357/4209

5. Status of International Maritime Conventions in Turkey

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In order to solve the maritime cases, general and legal rules are set down in written form by the highest legislative authority of the Turkey. Constitution, codes and statutes, international conventions, statutory decrees, regulations and by-laws are the basic written sources that comprise the legislation of a state.

The main source of Turkish maritime law is the 5th book of Turkish Commercial Code. On the other hand, The Turkish Constitution states that all the international convention that entered into force in due form, shall have the same effect as the codes. However no one can apply to the Court of Constitution against them by asserting the contradiction of them with the Constitution (art 90, para.5) The drafting committee of the 6762 numbered TCC adopted the principle that domestic law must be brought into harmony with modern international conventions to prevent the conflict between TCC and International Codes.

There is an update list including effective dates of the most important international convention considered by the lawmaker in the preparation process of TCC for both Turkey and IMO.

INTERNATIONAL CONVENTION	**EFFECTIVE DATE**	**EFFECTIVE DATE IN TURKEY**
BUNKERS 2001	21.11.2008	**12.12.2013**
CLC 1992 Protocol	30.05.1996	**17.08.2002**
COLREG 1972	15.07.1977	**29.05.2013**
FUND 1992 Protocol	30.05.1996	**17.08.2002**
FUND 2003 Protocol	3.03.2005	**5.06.2013**
LLMC 1976	1.12.1986	**1.07.1998**
LLMC 1996 Protocol	13.05.2004	**17.10.2010**
MARPOL 73/78 (Annex I/II)	2.10.1983	**10.01.1991**
MARPOL 73/78 (Annex III)	1.07.1992	**29.05.2013**
MARPOL 73/78 (Annex IV)	27.09.2003	**29.05.2013**
MARPOL 73/78 (Annex V)	31.12.1988	**10.01.1991**
MARPOL 1997 (Annex VI)	19.05.2005	**4.02.2014**
OPRC/HNS 2000 Protocol	14.06.2007	**3.12.2013**
SALVAGE 1989	14.07.1996	**27.06.2015**
SOLAS 1974	25.05.1980	**31.10.1980**
SOLAS 1978 Protocol	1.05.1981	**3.12.2013**
SOLAS 1988 Protocol	3.02.2000	**29.05.2013**
TONNAGE 1969	18.07.1982	**18.07.1982**
BMW 2004	8.09.2017	**8.09.2017**
ARREST 1999	12.03.1999	**25.03.2017**
GENEVA 1993	6.05.1993	**25.03.2017**

6. Termination Of The Contract In Case Of Personal Injury Or Disease On Board Of Turkish Flagged Vessels

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Pursuant to Article 14, sub-article 3 of Turkish Maritime Labour Code which regulates the terms and conditions of employment on board of Turkish flagged vessels; in the event that the seafarer undergoes a disease or injury that permanently prevents him to work on board, both the owner (or his representative) and the seafarer may terminate the contract of employment for a valid reason since this situation is considered as a valid reason to end the contract under Turkish Law. (Provided that a sick wage is paid)

As can be understood from the provision; the seafarer's disease or injury must have two characteristics: First, the disease or the injury should prevent the seafarer from working on board. Therefore, in case of any other work which the seafarer can do on board, despite the illness or the injury, termination of the contract by the owner (or his representative) is considered to be a breach of the contract. The second is the continuity of the illness or the injury. Temporary diseases or injuries do not give the right of termination. The seafarer can return to work after receiving the necessary treatments. However, if the disease frequently relapses and prevents the seafarer from working, it is considered to be permanent. It should be determined by the doctor's report that the disease or the injury suffered by the seafarer is permanent and prevents him from working on board.

In order to use the right of termination, the seafarer does not have to be at fault in the event of illness or injury. It should also be noted that the condition of illness or injury should have arisen after the seafarer started working on board. In the event that the illness or injury exists before the seafarer starts working on board; the owner has the right to terminate the contract of employment due to misleading information or fraud according to the provisions of Turkish Code of Obligations.

The provision of Article 15 of Maritime Labour Code limits the right of parties to declare termination on the basis of rightful termination for a certain period of time. According to this provision; the right to terminate the contract cannot be used by one of the two parties on the grounds of termination, after six business days starting from the day on which the party learns the event, and in any case one year after the event occurs.

7. Foreign Seafarers Within The Scope Of Turkish Maritime Labour Law

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Turkish Maritime Labour Code is the main regulation in Turkish Law which regulates the employment principles of the seafarers and the Owners. In accordance with Article 1 of Maritime Labour Code which shows the scope of application, this law shall be applied to the seafarers and their employers, who work on board of Turkish flagged vessels under a contract of employment in seas, lakes and streams. Besides, the vessel should weigh 100 and more gross ton.

On the other side, with the reference of Article 4, this law shall be also applied to the foreign seafarers who work on board of vessels which fall within the scope of this law according to the principle of reciprocity. Furthermore, their social insurances were ensured according to the relevant provisions of the Code of Social Insurance and General Health Insurance. Reciprocity is a principle that recognizes mutual rights to the citizens of both nations and could be originated from treaties or de facto application. To give an example, a contracting state employee or an employee from a country which recognizes the same rights for Turkish citizens, could benefit from the relative Turkish regulations for social security. As a result, the foreign seafarers who work on a Turkish flagged vessel could benefit from the Turkish Labour Laws which provide a wide range of protection.

The list of the Countries with whom Bilateral Agreement has been signed on Social Security:

COUNTRIES	**Date of Signature**	**Effective Date**	**Revision Date**	**Effective Date**
01. GERMANY	30.04.1964	01.11.1965	02.11.1984	01.04.1987
02. NETHERLANDS	05.04.1966	01.02.1968	04.09.1980	01.05.1983
03. BELGIUM	04.07.1966	01.05.1968	11.04.2014	01.09.2018
04. AUSTRIA	12.10.1966	01.10.1969	28.10.1999	01.12.2000
05. SWITZERLAND	01.05.1969	01.01.1972		
06. FRANCE	20.01.1972	01.08.1973		
07. DENMARK	22.01.1976	01.02.1978	13.12.1999	01.12.2003
08. LIBYA	20.03.1976	01.10.1976	13.09.1984	01.09.1985
9. SWEDEN	30.06.1978	01.05.1981	26.08.2004	01.08.2012
10. NORWAY	20.07.1978	01.06.1981		
11. CANADA	19.06.1998	01.01.2005		
12.NORTH MACEDONIA	06.07.1998	01.07.2000		
13. ALBANIA	15.07.1998	01.02.2005		
14. AZERBAIJAN	17.07.1998	09.08.2001		
15. GEORGIA	11.12.1998	20.11.2003		
16. ROMANIA	06.07.1999	01.03.2003		
17. QUEBEC	21.11.2000	01.01.2005		
18. BOSNIA	27.05.2003	01.09.2004		
19. CZECH REPUBLIC	02.10.2003	01.01.2005		
20. LUXEMBOURG	20.11.2003	01.06.2006		
21. CROATIA	12.06.2006	01.06.2012		

22. SLOVAKIA	25.01.2007	01.07.2013		
23. SERBIA	26.10.2009	01.12.2013		
24. ITALY	08.05.2012	01.08.2015		
25. KOREA	01.08.2012	01.06.2015		
26. MONTENEGRO	15.03.2012	01.12.2015		
27. TUNISIA	28.05.2013	01.04.2018		
28. HUNGARY	24.02.2015	01.04.2018		
29. IRAN	16.04.2016	Approval Phase		
30. MOLDOVA	05.05.2017	Approval Phase		
31. POLAND	17.10.2017	Approval Phase		
32. MONGOLIA	07.03.2018	Approval Phase		
33. KYRGYZSTAN	09.04.2018	Approval Phase		

Ulgener LC/LO, based in Istanbul, with its office right in the Shipping Center, where the most major Turkish ship holding groups have their headquarters, is a law firm dedicated mainly to shipping matters, with a wide scope including all kind of related issues, such as: P&I matters, such as cargo claims - disputes arising from bills of lading, crew claims, pollution, liens on vessels; as well as accidents, such as collisions, salvage, wreck removal and general average matters, etc. FD&D matters, such as disputes arising from voyage and time charterparties, i.e. forced freight & demurrage collection, liens on cargoes, etc. H&M, war and strike clauses and cargo insurance matters, such as salvage, general average adjustment, etc., also representing underwriters and providing legal advice regarding local and international law, collection of outstanding premiums on behalf of P&I Associations, Ship Finance - Sale & Purchase, as well as assisting foreign banks and other financial institutions, covering also mortgages and disputes arising out of mortgages, Enforcement of foreign arbitration and court awards, Advising shipowners and P&I Clubs regarding issues arising from Turkish as well as International maritime law, (legal correspondent of a P&I Club within International Pool) Also assisting owners for protection of their interests and avoiding conflicts on drafting charterparties, bills of lading, MOA's and other documentation, advising leading Turkish steel manufacturers for shipping related issues, Serving as legal advisers to Turkish Chamber of Shipping, also representing the Chamber at the Bimco Documentary Committee.

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