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THE BOSPHORUS ONLINE

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Earlier volumes of the newsletter can be found on our website.

1. Right of Individual Application Before Constitutional Court

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Article 148 Â§ 3 of the Turkish Constitution was amended on 13th May 2010 and jurisdiction was given to Turkish Constitutional Court to examine individual applications concerning the fundamental rights and freedoms protected by the Turkish Constitution and the European Convention on Human Rights, after exhaustion of ordinary remedies (such as cassation). In addition to this and in order to make the right of individual application more clear, Code of Constitutional Court's Establishment and Trial Procedure, numbered 6216 (Code 6216) came into force on 30th March 2011.

As per provisional section 1 Â§ 8 of Code 6216, decisions that had become final after 23rd September 2012 could be challenged in an individual application. As per the rules of Code 6216, the individual protection could be made within 30 days after the exhaustion of ordinary remedies. 15 days extension could be given if an impediment could be validly justified.

The application should be made with a form that could be found at the web site of Turkish Constitutional Court. The necessary headings of application are as follows:

he identity info and contact details of the applicant and his representative;

he right or freedom that is infringed by act and omission of governmental authorities;

he relevant articles of Turkish Constitution on which the application is based plus the reason of the allegation of infringement;

he stages that were passed for the exhaustion of remedies;

he date on which the applicant learnt the infringement or the date on which the ordinary remedies had been exhausted;

he amount of the damage(s), if any;

nd the evidences.

In addition to the above, the form should also include the original or its true copy of the decision or the act of the governmental authority plus the official document showing the payment of the application's duty. The attorney's Power of Attorney should be also attached to this form.
The form could be deposited with Constitutional Court's Registry or national courts.
The individuals and the private legal entities (Turkish or foreign) may apply to the Constitutional Court provided that governmental authorities infringe their rights and freedoms. Therefore, the parties should apply to the Constitutional Court in case they would like to bring their matters before European Right Courts. In other words, application to the Constitutional Court is a precondition for the European Right Courts.

2. The Charterer's and The Shipper's Statements as to The Cargo and Protection of the Carrier against Incorrect and Inadequate Information

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According to Turkish Commercial Code (TCC) art. 1145 the charterer and the shipper are obliged to give correct and adequate information about the cargo to the carrier. Both charterer and shipper are deemed responsible for their incorrect or inadequate statements against the carrier. In the event that the charter and/or breach their duty in this regard, the carrier will be entitled to recover any accrued damage.
It is the charterer's and shipper's obligation to inform the carrier about the condition of the cargo according to TCC art. 1145 which reads as follows;
"The charterer and shipper have to provide the carrier correct and adequate information about the cargo. Any of them who fails to do so is responsible for the damage of the carrier".
The reasoned explanations of this article also exhibits the main purpose of the article:
"In order to protect the carrier who has no (physical) information about or opportunity to detect/examine the cargo whatsoever until when they take the cargo in their possession, it is found convenient to provide a guarantee responsibility in relation to all statements regarding the cargo in accordance with the Hague Convention of 1924."
With this article it is recognized that providing the carrier correct and adequate information as to the cargo is of crucial importance for the safety at sea during the voyage, for proper stowage and for the loading and discharging operations to be completed properly. In addition to these, correct and adequate information is also important to issue the bill of lading correctly. Information about the cargo also includes the information as to the signs of the cargo in order to separate the different cargo from each other.
Moreover, information as to the cargo is important to determine the amount of the freight in sea transport, as well.
It is also accepted by the maritime law doctrine that the charterer and the shipper must inform the carrier adequately about the condition of the cargo: Inadequate or general (unspecified) information has the same effect with incorrect information if they are related to important issues about the cargo (Ã‡aÄŸa/Kender, Deniz Ticareti Hukuku, Cilt II, 10th Edition, pages 28-29).
On the other hand, the charterer and the shipper are not responsible for the damage of the other related parties unless the charterer and the shipper have fault. The term "the other parties" entails the following parties: shipowner who is not the carrier, other cargo interests whose cargo is loaded on board, passengers, master and other seamen.
Recognizing the importance of the correct and adequate information as to the cargo, TCC art. 1145 provides the carrier protection against the charterer's and the shipper's incorrect and inadequate statements who are naturally expected to be in access to necessary information about the cargo. Moreover, the parties are not free to alter this rule. Failing to provide correct and adequate information will cause them to recover the carrier's damages as a result of their failure whether they are faulty or not.

3. Arbitrators to decide limitation

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If it is an issue involving factual questions or substantial contractual issues, and if one of the parties objects under Section 9 of the Arbitration Act 1996 to the issue being considered other than by arbitrators, then a dispute regarding whether or not an arbitration agreement is time-barred by limitation should be decided by arbitrators rather than by the high court.
So held Mr Justice Mance in the Queen's Bench Division (Commercial Court) when dismissing the application of Grimaldi Compagnia di Navagazione Spa for an extension of time under Section 12 of the 1996 Act in its arbitration against Sekihyo Lines Ltd, and in allowing Sekihyo's cross-application under

Section 9 for a stay of Grimaldi's application for a declaration that the Hague Rules incorporated in the schedule to the Carriage of Goods by Sea Act 1971 were incorporated into the arbitration agreement.
Grimaldi had chartered Sekihyo's vessel, which sank with the loss of some of Grimaldi's possessions. Grimaldi applied for arbitration under arrangements provided for in the charter party.

Sekihyo asserted that Grimaldi's attempt to bring the matter to arbitration was out of time because the Hague Rules, which included a one-year limitation in Article 111 Rule 6, had been incorporated into the charter party. Furthermore, Sekihyo did not consider the items which had been lost to be capable of attracting the operation of limitation on the grounds that they were not "goods" in the sense projected by Article 111 Rule 6.
Mr Justice Mance said that the 1998 case of Vosnoc Ltd v Transglobal Projects Ltd exemplified the continuing practice under Section 12 of the 1996 Act. There, the claimant sought first a declaration that it had commenced proceedings within the one-year limit, which it was common ground applied, and second - in case it was held that the proceedings had not been so commenced - an extension of time under Section 12. The judge had refused the declaration but granted the extension sought. Both parties there were evidently content to have the court determine the applications for all the relief sought. In the present case, the respondents were not.
The present case possessed a feature which did not appear to have been present in any previous case. The respondent had issued its own application for an order preventing the applicant's application.
In many cases, of which the present was an example, the issues arising from the suggestion of a time bar involved important and essentially substantive contractual issues. Whether the Hague Rules were incorporated depended on the proper construction of the agreed terms of the charter.
If they were incorporated, the question arose of whether and to what extent the claims related to goods to be delivered within Article 111 Rule 6. Both these questions were of potential significance for the standard of any responsibility on the respondent's part for loss or damage.
Whether the goods related to "goods" for delivery, so as to bring Article 111 Rule 6 into play, might also benefit from more detailed consideration of factual aspects of the alleged claims, only sparsely investigated in the deposition evidence before the court.
Those were all matters which the parties must be taken to have assumed would normally be investigated before arbitrators rather than the courts.
(The Times Law Reports)

4. The rights of crewmember’s acquintances deriving from deaths on board

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Employment contracts between crew member and owners / managers of ships are generally limited duration due to the special conditions of ship Works. This limited duration on contract can either be agreed as a date or as a voyage. Consequently, parties agree on the ending date of the employment when it is signed. However, a contract can end before reaching the limited duration in some cases. One of these cases is the death of crew member during his work on board.
According to the Turkish Law, the first possible problem that may occur from this case is severance pay demands alleged by acquaintances of crew member; because, employment contracts with limited duration under Maritime Labor Law do not provide severance pay rights once they end and even if a new one is signed. The article 20 of Maritime Labor Law, which is related to severance pay rights, states that if the employment contract ends because of the death of crew member, a total calculated on 30 days wages for each year passed under the employment contract shall be paid as severance pay. The existence of such regulation leads shippers to 6 months employment contracts; but this time, the shortness of contract may cause practical problems as shipper and shipmen would need to renew their contract often. The main point of the article 20 is that severance pay right provided by this article is concerned to an ordinary death, thus it should not be forgotten that if the death is caused by a work accident, the liability of shipper is yet reserved.
Ships which carry a favorable flag do even not allow such liability as Maritime Labor Law is applied to the shippers and shipmen of Turkish flagged ships which weight 100 tonnages or higher. By taking into consideration current tax regulations, it is a common knowledge that Turkish shippers prefer having favorable flags for their ships. In 1952, in order to prevent loss of rights that may derive from favorable flag practices, International Transport Workers Federation (ITF) decided to establish Special Crew member Department which would act as an union representative for shipmen who work in ships carrying favorable flags and who therefore do not have the right to be registered in a national union. ITF publishes regularly the ships which sign conventions prepared by this international union, and encourage shipmen to work in these ships. Therefore, many Turkish shipper/operator have to become part to these conventions. While Turkish Maritime

Code provides only the right of severance pay for deaths occuring during work but not deriving from work accident, ITF conventions stipulate 93.154 $ of compensation for every successor and 18.631 $ of compensation for every child under age of 18 in 2013. Also when two regulations are compared, it is clearly seen that ITF conventions stipulate an absolute liability for deaths which are not caused by work operations. Hence, it becomes vital for shippers/operators to pay maximum attention during recruitment for a ship and to establish a well protected ambiance for crew member.

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ULGENER LEGAL CONSULTANTS / LAW OFFICE

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 provision of legal advice regarding local and international law,

Collection of outstanding premiums on behalf of P&I Associations,

Litigation and also corporate issues regarding yachts / superyachts.

Ship Finance - Sale & Purchase, as well as advising and assisting foreign banks and other financial institutions, covering also Turkish mortgages and disputes arising out of mortgages,

Assisting owners in respect of new building contracts and relevant steps to be taken after initial stage.

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 correspondents 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,

Also advising leading Turkish steel manufacturers for shipping related issues,

Legal advisers to Turkish Chamber of Shipping.