

# THE BOSPHORUS ONLINE

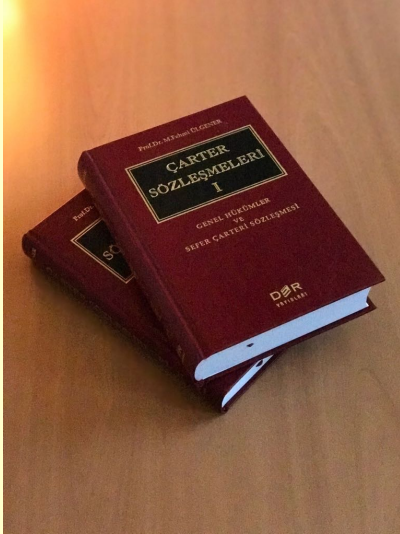
Newsletter of Ulgener Legal Consultants / Law Office

NO: 24 11/2017 ENGLISH EDITION

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## 1. SECOND EDITION OF CHARTER CONTRACTS VOL. 1.



Second Edition of Charter Contracts Volume One is published.

As you know Volume two has been released in 2016, it is covering time charters in details. (based on NYPE charterparty)

First edition of Volume One was published in 1999. It was covering general information about charter contracts (introduction) and also voyage charter parties. However, during the following years some important changes were noted in shipping practice and law, including the new Commercial Code in Turkey dated July 2012. Furthermore, important case law has also made the second edition of this book imperative. Second edition therefore is a complete overhaul of the volume one.

Volume three of Charter Contracts is on planning stage, writer intends to commence the works on it after completion of the second edition of "Marine Insurance / Rule of Cause Proxima". Volume three will cover remaining charter contracts, such as Bareboat Charter, COA and Consecutive Charters.

## 2. PORT AGENTS' ROLE AS THE LEGAL REPRESENTATIVES OF THE SHIPOWNERS AT TURKISH PORTS

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Under the general terms of Turkish Commercial Act (TCA), only the contract making agencies or the agencies which acts as an intermediary in enacting contracts could place legal warnings, notices or protests to protect their principal's rights. There is no other specific provision that may make way for the agents to operate on behalf of the shipowners.

Having said that there are special provisions to offset the foregoing general legal configuration for the port agencies to be able to act on behalf of the shipowners, that is to say that if the shipowner is a foreigner who does not have any branch or headquarters within Turkey, the provisions from the 102<sup>nd</sup> to the 123<sup>rd</sup> of the TCA could be applied to their agencies, including their port agencies.

The special provisions from the 102<sup>nd</sup> to the 123<sup>rd</sup> clearly set the procedure and legal basis how an agent could act on behalf of their principal which also includes the actions to be taken for the protection of the shipowner's rights. Within the scope of these provisions a port agent could appoint a lawyer in order for the lawyers to act on behalf of the shipowner and/or send protests, warnings and notices for the protection of the shipowner.

### **3. CRIMINAL REGULATIONS ON SAFETY OF TRAFFIC WITHIN TERRITORIAL WATERS OF TURKEY**

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Under the first article of Act No. 2674 on Territorial Sea of the Republic of Turkey, "The sovereignty of the Republic of Turkey extends beyond its land territory to its territorial sea. The breadth of the territorial sea shall be of six nautical miles.", which is why any criminal act committed within these boundaries shall be deemed to have happened in Turkey. Criminal regulations regarding maritime traffic have been employed under the articles on highway traffic by Turkish Criminal Code. Consequently, in case of any danger concerning maritime traffic within Turkish borders, master of the ship shall be criminally liable under the articles of 179 and 180 of Law No. 5237 on Turkish Criminal Code.

Accordingly; should the master of the ship so conducts the ship as to put the lives and health of the people and the cargo in danger, he shall be given a prison sentence for "three months to two years". This rule shall also apply when the master is established to be under the influence of alcohol or any narcotics or otherwise incapable of conducting the ship securely. When the master negligently leads to a danger regarding the lives, health of the people and the property on board, he shall be convicted to three months to three years in prison.

Under Act No. 5271 on Criminal Procedures, Article 12, competent court for the prosecution of the master shall be the one, within the district of which, the crime has been committed, or under Article 15 paragraph 3 of the same Act, it could also be the one, the district of which is the first place the ship arrives after the crime has taken place. It must be stated that under the same article, the court the district of which is the first place the ship arrives after the crime has taken shall be competent for the prosecution of all crimes committed on board of the ship.

### **4. ADDITIONAL ARTICLE REGARDING SEIZURE OF VESSELS USED FOR DRUG SMUGGLING**

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As it is known, a new executive order ("EO" no. 694) has come into force on August 25, 2017 and with it's Article 11, an additional article has been introduced to the Code on the Supervision of Drugs (number 2313). This article stipulates that vehicles used in committing the crime of manufacturing and trafficking narcotic or stimulant drugs shall be seized as per Article 128, paragraph 4 of the Criminal Procedure Code ("CPC"). The paragraph 4 of Article 128 of the CPC, to which the additional article above refers, emphasizes that the seizure decision shall be executed by lodging a caveat on registry.

However, it is regulated by this new article that a seized vessel shall not be returned to its owner in the event a) she is used again in committing the same crime while investigation and prosecution are ongoing, b) she is not registered in Turkish Registry, c) she is captured while holding significant amounts of drugs or stimulants of significant value, or d) there are special equipment on vehicle that enable committal of the crime. In that case, the vessel shall be returned to her owner if the owner submits a security in the amount of the value of the vessel (the value indicated in the hull and machinery policy) to the Ministry of Finance within thirty days from the date of seizure; otherwise, the vessel shall immediately be liquidated without waiting for the outcome of the investigation and the prosecution. In the event the liquidation takes place as a sale, all the expenses required for maintaining and selling the vessel shall be deducted from the proceeds of the sale, and the remaining amount shall be deposited to the escrow account to be used in accordance with the outcome of the prosecution.

In brief, the additional article introduced by the EO, regulates that the foreign flagged vessels shall be seized and then liquidated, if security is not deposited. Naturally, said additional article has raised anxiety especially among container ship owners since they can not identify what there is in the containers.

However, we would like emphasize that, paragraph 1 of Article 128 (of CPC), regulates that "land, sea or air transport vehicles of the suspect or the defendant" may be seized "in case of strong suspicion supported with concrete evidence that the crime subject to investigation or prosecution has been committed and the vehicle has been acquired from such crime". Therefore, even though the additional article introduced by the EO directly refers to paragraph 4 of Article 128, this shall not mean that paragraph 1 of Article 128 shall not be enforced.

Article 19 of the Regulation on Preparing Legislation stipulates that "for the avoidance of any doubt, if an article refers to another regulation; the date, number and name of the regulation referred and its article, paragraph, subparagraph or clause should be clearly indicated". Therefore, in accordance with the regulation on references, we believe that the direct reference to paragraph 4 should not pose an impediment to seeking the conditions of seizure indicated in paragraph 1 of Article 128.

In conclusion, seizure of a vessel used in committing a crime of drug smuggling requires, in any case, presence of strong suspicion that the drug manufacturing and trafficking has been committed and the vessel has been acquired from such crime.

As a matter of fact, the regulation introduced with the additional article already exists as the same in the Anti-Smuggling Code (that in force for types of smuggling other than drugs) and seizure order made by prosecutors and judges necessitates strong suspicion supported with concrete evidence that the crime has been committed and the vehicle has been acquired from such crime. However, there is no doubt that it is at the discretion of relevant prosecutor and judge to determine whether strong suspicion exists in each case.



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*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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