

THE BOSPHORUS ONLINE

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1. NEW DEVELOPMENT REGARDING THE POLLUTION INCIDENTS IN TURKISH WATERS

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Demand of security for damages because of a pollution incident is not unusual. Sadly, pollution happens and then authorities issue fines against the ship and also demands a letter to secure the possible further damages; and that is the exact point where the approach of the authority has been drastically changed.

Because of a pollution incident during which we were instructed by the P&I Club to defend the owner's interests, authority requested a letter from the club which undertakes to immediately pay "*an amount which is to be determined by the damage assessment committee*". In different words, the authority has asked a security without any monetary limit and without any subject/condition for payment (such as an amicable settlement or a finalized court decision).

The damage assessment committee is tasked by Law to determine the extent of damage (the ecological extent and also the loss/damage incurred by third parties) by evaluating the evidence gathered (where it may be necessary to obtain expert reports, usually from universities) and has the authority to claim/demand compensation. The damage assessment committee is not a permanent body and only convenes in exceptional cases (in case of incidents involving major environmental pollutions). Since determination of damages usually takes considerable time, the Transportation Ministry has instructed all port authorities to release such vessels only after submitting a letter meeting the above described standards.

Needless to say, such a wording was in contradiction of all international regulations including the Bunker Convention and every industry standard. In order to solve this and enable the vessel to resume her voyage, we have made several meetings with the ministry and the harbor master and tried to explain them the impossibility to issue such a letter. We have even attended to the first meeting of the damage assessment committee, where we had the opportunity to express the impossibility to the members of the commission.

It took us almost two weeks to create a common ground; however, we were able to get acceptance (although reluctantly) of both parties on a common wording at the end.

Please do not hesitate to contact us, if you will end up with a similar demand.

¹According to the tariff published by the ministry each year.

2. CYBER CRIMES IN TURKEY

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Combat against cyber-crimes has gained more importance in recent years, and the shipping industry is not exempt from cyber-attacks of criminals who develop better and better methods every day. There is a Department of Fighting Cyber-Crime of Istanbul Police that was established in 2013, and it is dealing with different types of cyber-crimes. This article will give brief information about the scope of the duty of the Department of Fighting Cyber-Crime and what types of cyber-crimes they are dealing with.

Hacking: It is a crime that most of the time comes with other crimes or paves the way for potential other crimes, and it is against the law in Turkey as in the most of other countries.

Crime Against Data: Following unauthorized and illegal access to data (by mostly hacking) of entities or individuals, it is illegal to add new data to the existing actual data or to erase, decode, steal or block access to the existing data.

Bot-Net and D-Dos Attacks: These kinds of attacks are committed to block access to an information system. This means that the action that makes this crime take place is the act of preventing other users from accessing a specific web site by sending a large number of requests to the same web site. This is brought into action by commanding an entity's or individual's computer that is accessed and commanded by a malware and such computer is called BOT. This is generally committed for commercial purposes in order to make the victim's website ineffective or amiss. However, it has been experienced that the driving force behind this crime are political and terrorist motives, as well.

Illegal Logging in the Information System: It is the crime of entering a part or all of an information system. It is also considered as a reason for aggravated punishment if data is erased or changed in the attacked system or it is committed against the systems that is produced in exchange of commercial fee. It is also important to note that not only erasing or changing data is a crime but also after illegal logging in, remaining inside the information system is a cyber-crime.

Blocking System, Distorting, Erasing or Changing Data: To prevent the operation of an information system in any way, or to break, destroy, change and transfer the data in the system, and similar actions are considered as crimes. If such crimes are committed within bank systems, it is a reason for increasing the penalty.

Infringing the Confidentiality of Communication: This comes into the picture as a result of not only exposing the information of communication between third parties, but also by exposing one's own communication with a third party without the permission of such party.

Infringing the Confidentiality of Private Life: Infringing the confidentiality of private life of others is against the law, but if this crime is committed by recording voice or taking video or such voice or video recordings are spread, the punishment is increased.

Recording Personal Data : Recording the sensitive data as to individuals (such as political views, religion, race, sexual life, and health condition or syndicate connections) is against the law.

Thievery by Cyber Methods: It entails the theft schemes through malware and overtaking data inside the data traffic in an information system without the permission or consent of the data owner. Transferring the balance in the bank account to another account and stealing a game character within an online gaming platform are typical examples of this crime.

Qualified Interactive Fraud: This is a cyber-crime which comprises the criminals' actions to use banks or credit entities as intermediary tools. The most common examples of this crime are criminals' actions to collect personal information of the clients by fake e-mails or acts to obtain information of consumers on fake websites.

Bank and Credit Card Crimes: It is illegal to access, hold or use the credit card of one another without their permission or consent for whatever reason. It takes a big part of the investigations of the law enforcement to seek after criminals who commit thievery by illegally acquiring mail order information of third parties. Further to this, committing this crime by copying the credit card magnetics is being dealt by the law enforcement as a cyber-crime.

Child Pornography: It is also a criminal offense to sexually abuse a child and record a sexually abusive video of a child and publish, store, import, sell, export, or present such recording.

Organized Online Crime: Online gambling is considered also as a cyber-crime in Turkey. If this crime is committed in a way that children could also access the online platform and be part of the online gambling, it is deemed as an aggravated felony, and increased punishment is applied.

Having given short information about the cyber-crimes in Turkey, it is apparent that cyber-crimes are very often affiliated with the internet use, and ever since the internet dethroned conventional means of communication in business affairs and personal lives, we have started to come across new sets of crimes called "cyber-crimes". This new and continuously refurbished area of crime has forced the law enforcement to take the matter in a more sophisticated manner with specialized departments, and the practice has proven that the combat with cyber-crimes needs experts who renew themselves every day with the technological developments. Only if the law makers, enforcers and strategy developers could think and renew themselves faster than the criminals, this combat could be won.

3. SIMPLE TRIAL PROCEDURE AND ITS APPLICATION IN COMMERCIAL CASES

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The principal procedure of jurisdiction in Turkish civil law is "written procedure". In exceptional cases specified in the civil law, "simple trial procedure" shall apply. The purpose of the simple trial procedure is to simplify the written procedure and to shorten the proceedings. The most important factor that differentiates the simple trial procedure from the written procedure is that, after the reply petition of the defendant, it does not give the parties the right to petition for the second time. Therefore, in the simple proceedings, contrary to the written procedure, the allegations in the first petitions cannot be changed or extended with a second petition. According to this regulation, the parties have to submit their evidence with their only one petitions in cases subject to simple judicial procedure. (Article 318 of the Civil Procedure Code)

In simple proceedings, the aim is to conclude the case faster. Therefore, in these cases, there is no oral proceeding phase after the investigation is completed. In the session during which the court is notified of completion of the investigation, the file is concluded after the last words of the parties are asked.

Pursuant to Article 318 of the Code Of Civil Procedure, temporary legal protection such as interim injunction, cautionary attachment, determination of evidence and as well as receiving marine reports, requests of appointment of dispatcher, transacts to be taken against them are subject to simple procedure of trial. In principle, written procedure is applied in commercial disputes relating to maritime law other than those specified in the law. However, due to a change in the law made by lawmakers on 28.02.2018, it has been accepted that the commercial cases, which settle a dispute between the parties definitely, are also governed by simplified procedure and this, in designation, is based on the value of the case. Accordingly, from now on, in commercial cases, the quantity and value of which do not exceed 100.000 Turkish liras, simple procedure shall be applied. Therefore, these cases whose value can be considered relatively low as ordinary course of commercial law, conclude faster. But however, if there is a lower case value, then litigation parties should submit their petitions and evidence to the court without losing time.

4. INTERNATIONAL AVIATION REGULATIONS TO WHICH REPUBLIC OF TURKEY IS A PARTY

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Regulatory Framework

Domestic law

The primary domestic laws governing the aviation industry in Turkey are the Civil Aviation Act (2920) and the Act on the Organisation and Duties of the Directorate General of Civil Aviation (5431).

International law

Turkey has concluded the following international aviation agreements:

- the Chicago Convention on International Civil Aviation (1944);
- the International Air Services Transit Agreement (1944);
- the International Air Transport Agreement (1944);
- the Warsaw Convention for the Unification of Certain Rules relating to International Carriage by Air (1929);
- Montreal Protocol 4;
- the Montreal Convention for the Unification of Certain Rules relating to International Carriage by Air (1999);
- the Tokyo Convention on Offences and Certain Other Acts Committed on Board Aircraft (1963);
- the Hague Protocol to Amend the Warsaw Convention;
- the Hague Convention for the Suppression of Unlawful Seizure of Aircraft (1970);
- the Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1971);
- the Montreal Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Montreal Convention (1971); and
- the Cape Town Convention and Protocol on International Interests in Mobile Equipment (2001).

5. IMPLEMENTATION OF MLC 2006 AND MLC 2014 AMENDMENTS IN TURKEY

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MLC 2006 (including MLC 2014 Amendments) of the International Labour Organisation ("ILO") dated 07 February 2006, has been ratified by Turkey, declared and published in the Official Gazette numbered 30018 dated 25 March 2017.

As you well know, the Maritime Labour Convention MLC 2006 includes regulations on the safe and secure working environment, fair employment of the seafarers, honourable rights to work on the ship, health protection and medical care, welfare facilities, and other social security benefits.

A number of amendments to MLC 2006 on financial issues came into force on January 18, 2017. With entry into force of the new regulations, ship owners are obliged to assure that the crew are working on board their ships, 'against abandonment, death or long-term disability'. Ship owners have been held liable for the possession of a legal evidence document (a certificate or other documentary evidence of financial security) issued to them by the financial security provider upon the entry into force of the MLC 2014 amendments.

As per MLC 2006 Article VIII 4, after the general admission requirement has been provided, it enters into force for the affirmative Member States 12 months after the date of its ratification. Thus, in the inspections to be carried out under the control of the Port Authority in Turkey (Port State Control), there is no legal obstacle to seeking compliance with MLC 2006 and MLC 2014 Amendments since 25 March 2018.

Ministry of Labour and Social Security and Ministry of Transportation, Maritime Affairs and Communications have instructed Port Authorities, Ship Surveying Organizations and class organizations to arrange for compliance of Turkish flagged vessels with the contract and amendments.

With the instructions (not yet sent) to be sent by the Ministry of Labour and Social Security and the Ministry of Transport, Maritime Affairs and Communications, foreign flagged vessels will be inspected for compliance with the MLC 2006 contract. Also, foreign flagged vessels which are not in compliance with the MLC contract may also be detained at Turkish harbours. However, there is no MLC audit on these ships as part of port inspections conducted by Harbour Master authorities and even if nonconformity is detected, no sanctions are imposed right now.

6. TERMINATION OF CONTRACT UNDER TURKISH LAW

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The parties have the right to terminate the time charter contract at any time. Nevertheless, in terms of the consequences of the termination, there are two cases. In some instances of the termination, the terminating party is not obliged to pay any compensation; however, in some other instances of termination, the terminating party is obliged to compensate the losses of the terminated party that will arise from a termination.

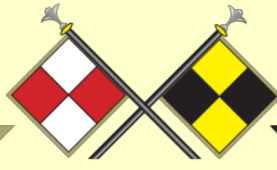
The cases in which there is no right of termination without compensation are given below:

1. The restrictions on only a part of the goods: TCC art. 1219: (1) The restrictions on only one part of the goods do not grant the right to terminate to the parties. The charterer has to remove goods which are not free anymore away from the ship due to the reasons such as war and export or import prohibitions in any case. However, if the shipment has not started yet, provided that the conditions of the carrier will not be worsened, the charterer may load other goods to the ship instead of these removed goods or may terminate the contract by paying half of the freight charges.

2. The change of route by the captain with a valid reason: TCC art. 1220: (1) The change of route by the captain at sea either to save life and property or for any valid reason, has no effect on the rights and obligations of the parties and the carrier is not liable for the losses arising from the change of route. (2) The provision of Article 2 of the Turkish Civil Code is reserved.

3. The need to repair the ship during the voyage: TCC art. 1221: (1) During the voyage, if there is a need to repair the ship, in case all freight charges and claims until that moment are paid or provided to the carrier, the goods can be taken from the ship or the end of repair can be waited. In cases the freight charges are decided in terms of time, the duration of repair will not be taken into account. (2) The provision of the first sentence of the first sub-article of the article 1222 is reserved.

4. The effect of other causes: TCC art. 1222: (1) Delay in voyage, either before or after it starts, due to natural phenomena or another unexpected circumstance other than the ones provided by the law, does not change the rights and obligations of the parties unless this delay leads to the loss of a specific purpose of the contract. In addition, any delays that arise from unexpected circumstances and seem to take a long time under the current conditions, the charterer has the right to unload the goods by posting an adequate and appropriate guarantee on the condition that the charterer bears the risk and expense and reloads the goods on time. In case of not reloading, the charterer is obliged to pay all freight charges and compensation for the losses arising from unloading.



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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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