

An Update on Turkish Shipping Law

A short review on New Turkish Commercial Code numbered 6102 and it's Fifth Book about maritime commerce

New Turkish Commercial Code ("TCC") numbered 6102 has been accepted by the Parliament in January of 2011 and has been promulgated in the Official Gazette at date 14 February 2011. New TCC is newly on practice since 1 July 2012. New code has brought a lot new features and amendments with it, especially in in the area of maritime commerce. In this article we will be trying to amplify briefly the amendments and the features related to maritime commerce part of the TCC.

At first we need to be in consciousness of that although the international agreements/regulations have been selected as the base line at the determination of the rules about maritime commerce in TCC, still there are some little differences at some points between the rules in TCC and the international regulations. This situation caused just because of the adaptation of the German Commercial Code (Handelsgesetzbuch). Thus, while becoming a party of mentioned agreements/regulations, Germany have determined some certain reservations to them and therefore there are differences between those international regulations/

agreements and the German Law.

Reforms in Turkish Shipping Law at a glance

Within the new TCC numbered 6102 principal amendments made regarding the maritime commerce law are as follows;

- In the abrogated Commercial Code numbered 6762 rules regarding the maritime commerce were based upon the second half of the 19th century. Thus, the need in the new TCC and some basic amendments were essential. Within the new TCC the legislator has sought the needs of the modern world and tried to accommodate the international agreements/regulations with the new code.
- The speech of the new code has significantly simplified and rendered much more understandable.
- As stated above, regulations based upon the second half of the 19th Century and left behind the time has been disposed. Therewith some newish legal concepts and institutions have been added to the new TCC.
- It is clear that there has been some important and radical changes took place in the Turkish legal system. Amendments made on the Turkish Law of Obligations, Turkish Civil Code and Code of Civil Procedure are the other reforms related to our subject. At the creation of the new TCC numbered 6102, all those above-mentioned amendments taken into consideration regarding to create a harmonization in the meaning of civil law within the rules about maritime commerce of TCC.

The New Turkish Commercial Code in the

light of international conventions

As mentioned above it is expressed that the international agreements/regulations have been selected as the base line at the determination of the rules about maritime commerce in TCC. Rules about maritime commerce in TCC are in step with Hague Rules 1924, Visby Rules 1968 and London Protocol 1979 (all named as Hague/Visby Rules) in which Turkey is a party. Besides we have to state that legislator has also tried to give some space for Hamburg Rules 1978, but it has not a wide coverage in the code as the Hague/Visby Rules, any a few articles are in step with it. Furthermore for the Rotterdam Rules (The United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea) it is not possible to state that the legislator has influenced from or tried to be in settle with it. The reason for that is simply both the TCC and the Rotterdam Rules are so new. Rotterdam Rules has been settled newly on 11 December 2008 and still Turkey is not a part of that convention. Moreover only Spain, Togo and Congo has ratified that convention. Regarding the carriage of passengers by sea the legislator has taken as the base line the Athens Convention 1974 (Athens Convention relating to the Carriage of Passengers and their Luggage by Sea 1974) and the Protocol of 2002 which amends the Convention.

A comparison: The abrogated Commercial Code and the new TCC

Maritime Commerce has been regulated between the articles 931 and

1401, in the fifth book of the new TCC numbered 6102. In the abrogated Commercial Code articles regarding maritime commerce were divided into 7 different sections. Instead in the new TCC the 8th section has been added and articles about compulsory execution have been regulated under it. Moreover, the 7th section has completely re-formed and subject "Limitation of Liability and Compensations for Oil Pollution" has been regulated under it.

The fifth book about maritime commerce begins with a reform that can be considered quite important. This reform is about the definition of the ship which is regulated under article 931. Regarding this from now on we will be considering the mobility on/in the water, but not on/in the sea. Through now TCC is now applicable for inland vessels as well.

An intense argument undergoing in the period of the abrogated TCC has been concluded expressly. The abrogated TCC numbered 6762 had none definitions if the ships are movable property or immovable in the legal meaning. The argument was arising from the Bankruptcy And Enforcement Law which considers all the ships registered to a registry as immovable. The 936th article of the new TCC numbered 6102 has expressly clarified that all the ships are movable properties in the meaning of the TCC and all other Codes. At the same time all the necessary amendments in the related Codes has been completed within the acceptance of the new TCC.

New TCC has expressly stated that a Turkish ship shall be registered under the Turkish Flag. To determine a ship as Turkish ship the owner or the shareholder of the most lots of that vessel has to be a Turkish citizen. Ships that do not possess the conditions of the 940th article of the new TCC won't be registered under Turkish Flag

Another reform within the new TCC is about the sale & purchase and the transfer of the ownership of the ships. This operation which was not requiring any procedures or forms in the period of the abrogated TCC is now on qualified for a notarized written agreement or an agreement made in front of the registry clerk and the transfer of the proprietorship within the new TCC. In practice all these procedures are concluded by

method of "Fronting".

For the mortgages on the ships and the new buildings a harmonization has been provided with the articles of the Turkish Civil Code regarding the pledge. Even the 1013th article of the new TCC is referencing to the related articles of the Turkish Civil Code.

The abrogated TCC numbered 6762 was not giving any assurance to mortgagee in case if his mortgage or the collection of the debt would be in risk. Instead with the new TCC the mortgagee has right to ask for a cautionary attachment before the due of the debt in case meeting of the some requirements.

Besides the owners liability of the negligence of the shipmen, owners liability of the negligence of the pilot is regulated under the new TCC. The abrogated TCC was only attributing the negligence of the shipmen to owner.

New TCC in endeavor to stay in step with international legislation constantly refer directly to those international agreements/regulations. One of those often seen in the new TCC is the Convention on Limitation of Liability of Maritime Claims 1976. This convention gives the opportunity, whether to owner or captain, to limit the liability. Accordingly a newish setting, 4th paragraph of the 1089th article has been added to the TCC.

In the new TCC there has been some important amendments made regarding the contracts of maritime trade. Regulations got out of date or never enforced have been removed. In addition to this Bareboat Charter Contracts and Time Charter Contracts which are regulated expressly and in detail in the Hague/Visby Rules and Hamburg Rules are set in to new TCC in step with those mentioned international legislation.

It's clear that rules regarding the deck cargo is quite the same of the Hamburg Rules. Carrier's liability about unlawful deck cargo is such as the 9th article of Hamburg Rules in new TCC.

Carrier's liability is regulated under new TCC, between articles 1178 and 1192. It is possible to see that these articles are regulated in set

with Hague/Visby Rules and Special Drawing Right Protocol 1979. For situations in which none applicable rule is available in the above mentioned international regulations the legislator has used the Hamburg Rules complementarily.

Special Drawing Right (SDR) is a new and needed arrangement regarding the new TCC. It is possible to say that by this new regulation of SDR, problems and litigations regarding the amount of compensations permanently terminated. The only difference between the new TCC and abovementioned international regulations is about the amount of the SDR.

Regulations about the maritime bills has also been formed in new TCC in set with abovementioned international regulations. For instance regarding the modern conditions it is possible to create an electronic bill of lading in difference with the abrogated TCC numbered 6762.

For debts arising from contracts regarding the carriage of passengers by sea new TCC numbered 6102 is directly referencing to the Turkish Civil Code and gives a right of lien to the carrier.

Regarding the conflicts at sea the Convention of Brussels 1910 (The International Convention for the Unification of Certain Rules on Conflicts at Sea 1910) has been adopted almost similarly.

Regarding the maritime accidents again it has been referenced directly to international regulations saying that York - Antwerp Rules accepted most recently by Comité Maritime International (CMI) would be enforced.

In the end it can be seen that regarding the time bar the new TCC has left the way of bringing a sole general regulation, but it is now regulated under each disposition.

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