

SALVAGE IN TRANSITS THROUGH THE TURKISH STRAITS

The Marmara Sea and the Turkish Straits region inherently present elevated navigational risks due to their narrow structure, proximity to residential areas, and, in certain parts, shallow waters. When narrow passages, dense traffic, strong currents, and sharp course alterations are considered together, it is evident that transits through the Bosphorus require a high level of attention and planning.

Nevertheless, the region is of critical importance to global maritime trade as it constitutes the only waterway connecting the Black Sea to the Mediterranean, with no viable alternative route. Not only Türkiye's ports in the Black Sea and the Marmara Sea, but also the maritime trade of all Black Sea littoral states, is largely conducted through the Turkish Straits System.

In addition to commercial traffic, the intensive passenger transportation within Istanbul—a major metropolitan city—and across the Marmara region further increases the sensitivity of the area in terms of maritime safety. As a significant proportion of maritime incidents in Türkiye occur in this region, salvage services are predominantly rendered here.



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Dispute Resolution under the National Salvage Agreement

Such a unique geographical setting has necessitated, in addition to the internationally recognized standard salvage agreement, the *Lloyd's Open Form (LOF)*, the development of a national form of agreement applicable to activities within the territorial waters of the Republic of Türkiye.

Accordingly, the Turkish Salvage Agreement was prepared by the Directorate General of Coastal Safety, taking LOF as a model. Until 2015, the Directorate General utilized the *Turkish Open Form (TOF)* in salvage operations. Following amendments in 2015, the agreement was renamed as the *Turkish Salvage Agreement (TURKS)*.

These forms differ particularly with respect to the nature of the arbitration clauses concerning disputes on the determination of salvage remuneration. LOF provides for arbitration in London for disputes arising out of the contract, whereas TURKS stipulates that disputes relating to the determination of salvage remuneration and special compensation shall be resolved through arbitration in Istanbul.

As noted, Article 7/3 of TURKS contains an arbitration clause limited solely to disputes concerning the determination and recovery of salvage remuneration or special compensation. Matters falling outside this scope remain within the jurisdiction of the national courts.

In this context, it has been deemed appropriate to examine, in broad terms, a recent decision rendered by the Istanbul 17th Commercial Court of First Instance, acting as a Specialized Maritime Court, concerning a dispute adjudicated before the courts and not directly related to salvage remuneration.



Summary of the Case

- In 2022, a tanker, under compulsory escort, experienced a temporary power failure during its transit through the Strait.
- A tugboat intervened by pushing the vessel's stern or bow for approximately four minutes, thereby preventing drifting.
- The shipowner argued that the service fell within the scope of the pre-existing escort agreement, relying on:
 - The tariff of the Directorate General of Coastal Safety, which defines "Planned Escort Service" as including pushing/towing where necessary (Article 1.3.9 of the relevant tariff),
 - The Turkish Commercial Code, which excludes services rendered under a pre-existing contract before the emergence of danger from the scope of salvage (Article 1298/4(c)),
 - The UK Towage Standard Terms, which require an extraordinary service for a salvage claim.

Court Decision

- According to the expert report, the vessel temporarily lost control due to the power failure, and the situation deviated from normal operational conditions.
- The Court held that the intervention went beyond the standard scope of contractual escort services and, therefore, could give rise to a claim for salvage remuneration.

The decision is a first-instance judgment, and no information is available regarding any appellate proceedings.



Considerations for the Parties

- **Impact of Operational Deviations:** Situations such as temporary power failure or loss of control may lead to a reassessment of the nature of the services rendered.
- **Burden of Proof:** Where a contractual framework exists, it must be demonstrated that the services exceeded the ordinary scope of the agreement.
- **Practical Implications:** It should be taken into account that the distinction between contractual services and the salvage regime may lead to different outcomes depending on the specific circumstances of each case.

Conclusion

Escort services are mandatory under applicable legislation for vessels exceeding certain size thresholds and are generally performed on a contractual basis. However, unforeseen operational developments may alter the legal characterization of the services rendered. In certain cases, this may trigger the application of salvage provisions.

In this respect, it is essential for the parties to carefully assess the relationship between the contractual framework and the factual circumstances of each incident.

