

Statutory Non-Liability of Carrier under Turkish Maritime Law

In principle, the carrier is not only responsible for the transportation of goods by sea but also for the storage and timely delivery of the same. The liability of the carrier has been limited and even abolished both under the Turkish Commercial Code and international regulations, provided that certain conditions are fulfilled, in order to determine the liability limits of the carrier in the transportation operations wherein more than one party involve. Therefore, one of the most important issues in international maritime trade is the determination of liability and non-liability issues of the carrier.



Until the end of the 1800's, the regulations and records that contained the non-liability records of the owners were dominant and the liability of the owner was only originating from the delivery and the accuracy of the information contained therein if a B/L was issued. For these reasons, it has become a necessity to introduce a number of mandatory rules to ensure the survival of each actor participating in commercial life. The Harters Act, which came into force in 1873 in the United States of America, was the first regulation that had set limits on the non-liability records of the owner in favor of the cargo interests and prohibited conclusion of contracts restricting liability for damages resulting from a "commercial deficiency". Following these developments, the Hague Rules in Europe and the subsequent conventions aimed at achieving the balance of forces between the carrier and the cargo interests. Turkish Commercial Code which was adapted from the German Commercial Code, is also based on the Hague Rules and regulates the absolute non-liability of the owner in line with this. Although it is thought at the first glance that it has been prepared based on the Hague Convention and contains some provisions in favor of the carrier (For example; TCC article 1180/2: providing that the damage in case of hesitation shall not be deemed as a consequence of technical management), it is seen that "Late delivery" related liability provisions, which are not covered by Hague Rules but regulated under the Hamburg Convention, have been legislated under the Turkish



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Commercial Code. The most important responsibilities of the carrier in accordance with the provisions of the Turkish Commercial Code are i) Responsibilities regarding the cargo (loss and damage emerging in contrary to the due diligence and responsibilities on late delivery in parallel to Hamburg Rules) and ii) liability for damages caused by the vessel's unseaworthiness or , cargo worthiness and voyage worthiness at the beginning. (Article 1178 et al. and article 1141 of TCC)

In the TCC systematic, provisions concerning the non-liability of the carrier are sometimes arranged as an exception to the liability and the exception to the non-liability of the carrier is included in the article. For example, in accordance with the provisions of Article 1141 of the TCC, the carrier of obligated to "show the attention and care that a cautious carrier is obliged to show". However, exceptionally, the same article also regulates the release of liability, and the carrier shall not be held liable for damages arising from cases where "the deficiency of the same was not possible to be discovered until the beginning of the journey".

Some non-liability cases within the law are regulated not with the exception provisions but in direct and individual articles. These include technical defects and fire, rescue at sea which are the cases of absolute non-liability of the carrier and danger and accidents in the seas and other waters which are suitable for the operation of the vessel, unrest and riots, movements of public enemies, orders or quarantine restrictions by the authorities, seizure orders given by the courts, strikes, lockouts or other labour obstacles, acts or negligence of the shipper, charterer and cargo owners as well as their representatives and officials, instinctive decrease in volume or weight or hidden defects in the goods or natural inherent type and quality of the good, inadequate packaging, inadequate marking, which are the cases of possible non-liability. In addition to that, deliberate misrepresentation of the quality or

quantity of the goods by the shipper or charterer and getting off course for saving lives or property or for another just cause are also considered as cases of non-liability of the carrier pursuant to article 4 of Hague Rules.

In summary, if the circumstances mentioned above take place, the carrier may be relieved from liability provided that the burden of proof shall be at his account unless it is proven that, the incident resulted from owners/or it's employers' fault and that the carrier did not keep the vessel seaworthy, cargo worthy and voyage worthy pursuant to article 932 of the Turkish Commercial Code.

