

Passenger Transportation Implications of Turkey's Adoption of Protocol 2002 to the Athens Convention

The Law No. 6990 which ratifies adoption of Protocol 2002 to the Athens Convention 1974 relating to the Carriage of Passengers and their Luggage by Sea, has entered into force upon its promulgation in the Official Gazette on 03.04.2017. Likewise, the Turkish Commercial Code No. 6102 was enacted before the effective date of the Athens Convention and was based on this convention in the responsibility regimes.



The most important innovation introduced in Turkish commercial law is the compulsory insurance in maritime transportation. Pursuant to Article 1259 of the Turkish Commercial Code, if passenger transportation is performed by a vessel licensed to carry more than 12 passengers, all carriers, who undertake or perform all or part of the transport operation, are obliged to provide an insurance covering their liabilities arising from the death of or injury to the passengers. Accordingly, the maximum amount of compulsory insurance shall not be less than 250.000 Special Drawing Rights (SDR) per person per accident.

The law explicitly states that a vessel that does not fulfill this obligation shall not be allowed to depart. Thus, as stated in the justification of the said law, harmonization with international law was ensured and it was also ensured that the provisions of the Turkish Commercial Code were put forward within the framework of international law in line with the national interests. Therefore, the transferring of the relevant protocol to our domestic law should be noted as an extremely important development in terms of providing the necessary protection for the circumstances where indemnification arises in favor of passengers in maritime transportation.



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With the Protocol, Article 6 of the, Athens Convention 1974 relating to the Carriage of Passengers and their Luggage by Sea, was revised and the provision stipulating that the responsibility of the carrier for the death and injury of a passenger could in no case exceed 400,000 Special Drawing Rights (SDR) per incident, has been established. Of course, the provision of the first clause of Article 1256 of the TCC, stipulating that if the carrier is in negligence, it shall be liable for the damages exceeding these amounts, has been reserved and in that case the carrier is obligated to bear the burden of proof that it is not in negligence. It should be underlined that the contractual liability of the carrier for damage or loss of the luggage shall be deemed to have existed only if the luggage has been delivered to the master or officer in charge of this duty, and if there is a misconduct by the carrier or its assistants and there is an absolute causality between the misconduct and the damage incurred.

In addition, Article 8 of the Protocol stipulates a limit of liability for damages caused by loss of and damage to the luggage and vehicles, and these limits have been likewise maintained under the provisions of article 1263 of TCC, stipulating that regarding the indemnification liability of the carrier arising from these circumstances, the carrier shall not be liable for claims exceeding 2.250 Special Drawing Right per passenger under any circumstance, that the liability of the carrier arising from the loss and damage to the vehicles and any luggage carried inside or on such vehicles, shall not exceed 12.700 Special Drawing Rights per vehicle per transportation operation and that the carrier's liability for any luggage loss or damage other than these, shall not exceed 3.375 Special Drawing Rights per vehicle per transportation operation. It should be stated that in cases where the objects subject to the claim for damages due to damage and loss are of precious goods, works of art, precious documents and money, the occurrence of claim is conditional on the notification of the type and value of the goods to the master or the person assigned to for that task during delivery.

If the carrier caused such damage intentionally or recklessly, or caused emergence of such loss while acting by the awareness of such possibility, then the limitations provided for in the Athens Convention and the Turkish Commercial Code shall not be applied. In any case, appropriate covers are necessary for the safe voyages in our seas in order to avoid possible risks.

