

Master's duty of care during loading/unloading operations and Turkish Supreme Court's current considerations on FIOS

The masters, who act as the highest officer and as owner's representative in a vessel, have been assigned with set of serious of legally binding responsibilities in addition to their duties of vessel's management.



These responsibilities given under Turkish Commercial Code numbered 6102 are specified in the articles between 1088-1118. According to such rules, the master is obliged to act cautious in all his works, especially in the fulfillment of contracts that fall to him as per article 1088 of TCC as otherwise he shall be liable for his negligence to all parties concerned with the vessel and cargo as per article 1089, including the passengers. TCC provides that neither following the owner's order nor the owner who deliberately instructs the master will work to relieve the master/and or the owner from liability. In article 1090 of the TCC, it is stipulated that the master must provide the seaworthiness of the vessel by ensuring that all the documentation regarding the vessel, cargo and the crew is suitable, yet apart from these primary responsibilities, this article aims addressing the master's liabilities linked with loading/unloading/handle/stow/care which are sourced from Hague and Hague Visby Rules Article III and Rule II and as per article 1091 of the TCC in the light of current Supreme Court practice in Turkey.

The article 1091 of TCC stipulates expressly that loading and unloading operations must be carried out in accordance with their intended use and with the applicable Maritime rules under master's duty of care even if it is done by private stevedore company. In the second paragraph, the responsibility of master of paying attention to the vessel not being overloaded, and to ensure that the holds are



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proper to accept protecting the Cargo subject to transportation is highlighted. Under the lights of verdicts in Turkish courts, the master's such responsibilities seems to be remaining wherein Turkish law is applied to interpret terms of carriage even though these operations are carried out by third parties rather than the carrier.

As per TCC article 1112, the master shall perform his duty of care on protecting Cargo during the voyage in line with the best benefit of the Cargo interest, yet we shall try to demonstrate the current considerations of Turkish Supreme Court in a case where the Cargo operations beyond the master's control and where FIO/FIOS and/or other protective terms for L/S/D exist to save master from the liability.

Referring to the one of the latest decision dated 25.02.2020 of Turkish Supreme Court 11th Civil Law Division (Please see 2018/451E, 2020/2010K) the liability insurers for transportation filed a recourse action for the indemnity which was paid to its assured regarding the yacht that was alleged to have damaged whilst carriage between United Arab Emirates to Marmaris Turkey. The local court decision was dismissed based on the fact that the stevedore company and its legal position could not be specified accordingly. In the subject court file, the attorney of the carrier stated that as per the bill of lading, law of Genova/Italy should be applied and therefore the carrier should not be liable for the Cargo carried on deck, however as the reverse side of the B/L could not be provided, the court advised that the jurisdiction clause was not proven, thus held that master must comply the duty of care in TTC article 1178. The court also added that as per TCC 1243, any terms previously agreed to directly or indirectly relieve/limit the owner's such liability would be void and thus such clauses must be dishonored.

Ultimately, the master's supervision obligation in accordance with maritime procedures will be of paramount importance in limiting the liabilities of owner in case of damage caused by negligence in stowage and lashing, thus master's duty of care must be performed as required during cargo operations.