

Current application of pollution fines under Turkish Environmental Code and Port Law

In recent years, it could be clearly observed that the Turkish authorities apply environmental sanctions very strictly. Given the fact that the pollution claims related with owner's liabilities arising out of the discharge or escape from the vessel are amongst the most sumptuous main risks covered by a regular P&I policy, these developments have affected us significantly.

As per Article 20 of the Code numbered 2872, which is the Turkish Environmental Code, the vessels which cause a sea pollution by discharging petroleum products, dirty ballast, garbage and sewage into Turkish waters are imposed pollution fines.



It should worth highlighting that the rates to be applied for these fines have been scaled up significantly after January 2020 and in the current status they are applied 22.58% higher than the previous year. The applicable tariff called "Turkish Environmental Pollution Fine Tariff" which has been effective from 1st of January, 2020 to December 2020 can be found easily from the official gazette, as well as various publishing issued by the actors of marine industry such as underwriters, law firms and local correspondents. It may be said very briefly that the mentioned "Tariff" distinguishes the type and source of pollution into four parts; which are: i) Petrol and petroleum products discharged by tankers, ii) Dirty ballast discharged by tankers, iii) Petrol/petroleum products and dirty ballast discharged by vessels or any other marine vehicles and iv) Garbage and sewage discharged by vessels or any other marine vehicles and takes the GT of the vessel into consideration while imposing the fine. In the subject regulation, it is noted that the polluting vessel shall be fined very seriously in case where the discharged material was of hazardous type and if the polluting party is a corporate body. In addition, repetitive actions are also being punished by increased fines.

Based on our experiences, the authorities are likely to collect these fine in cash rather than accepting a letter of undertaking. The ¼ of fine is deducted in case where the payment is made within 30 days after notification of the polluting vessel's interest. It should be noted clearly that the authorities would not fail to arrest the subject vessel if the fine amount is not paid/or an acceptable security is not put up, although the subject fine is objected before the Administrative Court within applicable period which is also 30 days. Therefore, facing with a pollution fine stands as a critical risk to be taken into consideration and should be avoided for the vessels calling at Turkish waters. On the other hand, as we look up the Environmental Code we see that only 1/3 of pollution fine is applied in case where it is established that the vessel removed the pollution by her own means, yet in practice authorities do not implement this article. As Turk P&I, we had few approaches to create awareness of the said regulation by explaining this to the port authorities on behalf of our assureds however this could not become prevalent application.



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In addition to abovementioned pollution fine, the harbor master's wide discretion which was granted by the current ports law should also be taken into consideration. As per latest regulations in Harbor Law, the harbor master is entitled to charge the vessel for an administrative fine up to TL 5,000,000 under suitable circumstances which are detailed in the subject regulation. On the other hand, pollution is also linked with criminal investigations which could be commenced against the master.

Based on our experiences, it is very obvious that the chance of success against a pollution fine is not very optimistic, that is to say the loss preventive measures such as avoidance of deballasting operations or checking whether the discharge valves were closed are of the essence! Turk P&I would always be ready to assist and guide the assureds in terms of advised preventive measures. On the claims side, in case where you are alleging that you have been fined unlawfully, the solid evidences such as videos, pictures, statements and such records would always be a rescuer.

We wish you safe voyages and clean waters.