

Dear Sirs,

We would like to provide you with brief legal advice concerning sea pollution incidents, their criminal aspects, Club LoU and practice in light of MARPOL, which may assist Clubs, members and masters in pollution cases in Turkey.

1 - Statutory sources:

In 1983, the Environment Code numbered 2872 (the “Environment Code”) came into force with strict provisions for land, sea and air pollution as a whole against all form of environmental pollution / polluters. On 24.06.2006, numerous alterations were made in the code and there is a regulation, which contains provisions as to the application of the environment code. The said code has an article determining the quantity of the fines that should be imposed to the vessels, however, at certain intervals (usually once a year) the rates are modified and the Ministry of Environment and Forest notifies with a circular.

2 - Pollution and pollutant:

Article 8 of the Environment Code describes the *pollution prohibition* as follows:

It is prohibited, to introduce into, store in, transport to or remove from the receptor area any discharge or waste in such a way as to inflict damage on the environment or in a way directly or indirectly in contradiction with the standards and methods specified in the applicable regulations, or to engage in similar activities.

Although it is clearly mentioned in the above article that the residue or poured material must have an effect inflicting damage on the environment, the authorities widely interpret the term of pollutant. In some previous cases, regrettably even dumping out clean ballast water was considered as pollution.

3- Determination of the pollution:

The authorities have the right to determine the pollution and impose a fine in line with the governing regulations. Recording by photograph or by video are essential in the relevant regulations; however, in the article 10.5 of the relevant regulation, if the vessel has left the incident place and there is an actual impossibility, issuing a “determination minute” is sufficient to impose a fine. Such an exceptional rule gives an extensive right to the authorities and usually prevents obtaining a favorable result

if an objection is filed against the fine before the administrative courts.

Please bear in mind that there has been a new development in sea pollution regulations. As you may recall from our previous circulars, according to the Article 11 of Regulation Regarding to Determination of the Breach of Environmental Code and Collecting the Administrative Fine; sufficient samples shall be taken from polluted place and polluter, the samples shall be put on special pots and sealed, the samples shall be sent to a laboratory for analysis. However, please be informed that this Regulation has been regrettably abolished and a new regulation has come into force. According to the recent regulation named Environmental Control Regulations, sea pollution caused by a vessel shall be determined as follows:

“In case of sea pollution caused by a vessel, the sea pollution control teams shall issue the Fact Finding Report in the authorized areas by one or several of the following means as taking photos, video records, aerial photos, IR/UV scanner or other technical devices of the polluted area, pollution type and the polluter. In that case, no samples are required from the polluted area and the polluter.”

Since the new regulation has repealed the previous one and the recent regulation includes a considerable and drastic amendment, we would like to lay stress that our main defense point has been almost eliminated.

It is not a necessity for the authorities to obtain the signature of master to issue a determination minute. If the master refuses to sign the relevant minutes or refrains from taking delivery of the said documents, the authorities can go on with the proceedings and as a result, the vessel will be detained until the payment of the fine.

4- Rates of fines:

With respect to above, the level of applicable sea pollution fines scale is updated annually. As per the amendment published on 29.12.2022 in Official Gazette, the sea pollution fines for 2023 are determined as below:

a) For pollution caused by tankers discharging petroleum and petroleum derivatives (such as crude oil, fuel products, bilge, sludge, slop, refined product, greasy waste materials etc.): i) For vessels less than 1000 GT / 2,009.85 TL per GT; ii) for vessels between 1000 GT – 5000 GT / in addition to above fine amount 502.48 TL per GT; iii) for vessels more than 5000 GT / in addition to above fine amounts 50.23 TL per GT.

b) For pollution caused by tankers discharging dirty ballast : i) For vessels less than 1000 GT 366.18 TL per GT; ii) for vessels between 1000 GT – 5000 GT / in addition to above fine amount 73.05 TL per GT; iii) for vessels more than 5000 GT / in

addition to above fine amounts 11.59 TL per GT.

c) For pollution caused by ships and other naval vessels discharging petroleum derivatives (such as bilge, sludge, slop, fuel products, greasy waste materials etc...) or dirty ballast: i) For vessels less than 1000 GT 1,004.92 TL per GT; ii) for vessels between 1000 GT – 5000 GT / in addition to above fine amount 200.99 TL per GT; iii) for vessels more than 5000 GT / in addition to above fine amounts 50.23 TL per GT.

d) For pollution caused by tankers, ships and other naval vessels discharging solid waste or domestic wastewater: i) For vessels less than 1000 GT/ 502.48 TL per GT; ii) For vessels between 1000 GT – 5000 GT / additional to above fine amount 100.50 TL per GT; iii) For vessels more than 5000 GT / additional to above fine amounts 50.23 TL per GT.

The authorities will calculate the pollution fines in accordance with the above rates. Besides, if the owner of the vessel, which caused pollution is a legal entity, the calculated fine amount will be imposed as tripled.

In line with article 23 of the Environment Code, in case the acts, which necessitated administrative fines to be imposed, are repeated in three year time as of the date of such acts, the administrative fine shall be doubled for the first repeat and it shall be tripled for the second and following repeats.

As per the recent amendment changing the relevant Articles of Environmental Code on 15.06.2022, the calculated fine amounts shall be doubled in case the pollution occurs in Marmara Sea, Istanbul Strait (Bosporus) and Canakkale Strait (Dardanelles) which had been announced as Special Protection Area.

On the other hand, in the event where it is determined that following the occurrence of incident, the vessel or the sea craft cleans the pollution caused by its own, by using her own means and efforts, the administrative fine shall be reduced down to its one-third. However, in practice, it must be said that there has been general dissatisfaction with ignorance of the relevant provisions and the lack of uniformity in its interpretation among the local bodies. To get more information regarding the details of its practice, please do not hesitate to contact us.

5- Objection against the fine:

An objection can be filed against the fine before the administrative courts within 30 days as of the notification date of the penalty order. As you will understand from the explanations herein above, all evidence is collected by the authorities and it is nearly a fact that solely a determination minute would be enough to impose the fine. The

owners therefore cannot avoid the strict liability by proving that they have exercised all care in order to prevent the pollution. Usually, it is rather difficult to obtain a favorable result from the meritorious aspects.

On the other hand, an objection against the fine shall not block the execution of the penalty.

In line with the Code of Misdemeanor, 25 % reduction must be made, in case a payment would be effected before the deadline of filing an objection (within 30 days as of notification date of the imposed fine), which does not prejudice the right of objection.

6- Club LOU:

According to relevant articles of Environment Code, in theory, the Club LoUs are acceptable to lift the arrest order on the vessel. However, in practice, it must be said that there has been general dissatisfaction with the lack of uniformity in the interpretation of the relevant provisions by the different local bodies at different locations. Given the international dimension of the shipping industry, the greatest necessity for the harmonization has arisen.

With reference to our newsletters concerned with the efforts on recognition of Club LoUs in the matters of sea pollution at Turkey which were released on the dates of 28.06.2016 and 06.09.2016, there have been some developments before the Ministry of Maritime Affairs and Ministry of Environment for the recognition/acceptance of Club LoUs in case of sea pollution. Although, there is still not % 100 uniformity at all ports, the number of the local authorities that are inclined to accept a Club LoU (subject to agreement about the wording) is slowly but surely increasing. Please let us know if/when you may wish to obtain sight of the wording(s).

7- Criminal Proceedings:

We would like to advise you that as to the latest amendments performed concerning the Turkish Criminal Code (TCC), two articles were inserted to the code as regards polluting the environment.

One of them is article 181 titled as “*polluting environment intentionally*”. As to the same;

- (1) “*Person, who intentionally dumps wastes or leftovers to land, water or air in a way against the technical procedures determined by relevant laws that will harm the environment, shall be punished with penalty of imprisonment between 6 months to 2 years.*”

- (2) *Person, who imports wastes or leftovers into country without permission, shall be punished with penalty of imprisonment between 1 year to 3 years.*
- (3) *In case wastes or leftovers show a permanent characteristic on land, water or air, above mentioned punishments shall be doubled.*
- (4) *In case the acts mentioned under 2nd, 3rd and 4th paragraphs here above are committed by wastes or leftovers that have features to cause illnesses to human beings or animals which are hard to treat, that cause atrophy to breeding capability, change animals' or plants' natural characteristics, punishment of imprisonment not less than 5 years and payment of judicial fine for 1000 days shall be judged.*
- (5) *Regarding the acts mentioned under 2nd, 3rd and 4th paragraphs of this article, security measures particular to legal entities shall be judged concerning those entities."*

Article 182 regulates polluting environment by negligence. It is stated that;

- (1) *"Person, who negligently causes dumping wastes or leftovers to land, water or air in a way which will harm environment, shall be punished with judicial fine. In case those wastes or leftovers leave permanent effect on land, water or air, punishment of imprisonment between 2 months to 1 year shall be judged.*
- (2) *Person who negligently causes dumping wastes or leftovers that have features to cause illnesses to human beings or animals which are hard to treat, that cause atrophy to breeding capability, change animals' or plants' natural characteristics, punishment of imprisonment between 1 to 5 years shall be judged."*

Please also note that the Ministry of Environment and Forestry issued a circular with number 2009/13 dated 15.05.2009. With the circular, the Ministry authorized and instructed relevant Port Authorities, Coast Guard Commanderships and Metropolitan Municipalities to file a criminal complaint to relevant public prosecutors as per articles 181 and 181 of the TCC after imposing administrative sanction decree.

We would like to draw your attention that, in light of the Ministry's circular, authorities shall make necessary complaints to public prosecutors without losing time. Public prosecutors will most probably initiate criminal proceedings against masters of the vessels. Payment of imposed fine will not prevent initiation of criminal proceedings. Due to preliminary criminal proceedings procedure, public prosecutor will take statements of masters. In that respect, i.e. if a vessel faces an environment fine on Saturday, even if fine is paid immediately, the vessel may face an actual detention since the vessel cannot sail before master's statement is taken by

prosecutor. Consequently, there is a possibility for subject vessels to be delayed due to criminal proceedings.

8- Practical information to prevent pollution matters / collect evidence:

In Turkey, the vessels usually face with pollution fines at the anchorage area of Istanbul. For your detailed information, please note that Istanbul Metropolitan Municipality is well equipped for such kind of incidents and they are making intense controls with their boats and planes.

As a usual process, we do suggest masters to immediately inform their local correspondent, who will take necessary steps to release the vessel. If there is a doubt, the masters must require the appointment of a surveyor also. Although they do not constitute decisive evidence, the masters should take own photos or videos if possible, which might be helpful in defending the vessel in case of an objection. (i.e. if the pollution is caused by another vessel nearby.)

For preventing pollution fines, following advices can be given to the masters of vessels visiting Turkish waters.

- All decks' scuppers need to be plugged,
- No ballast operation has to be performed if the cleanliness of tanks are not known and if they are dirty,
- All overboard discharges need to be blocked.
- Even the vessels are fitted with approved sewage system, they should not run the system during stay at Turkish ports and/or anchorage areas
- All sanitary waters and/or waste waters and/or dish waters and/or other waters coming from the living areas floor scuppers, galley's floor scuppers, lavatory drains, wash basins' drains, faucets, hospital's lavatory drains and floor scuppers, laundry's floor scuppers, washbasins drains, deck toilets faucets and floor drains, crew cloth changing rooms' faucets and floor scuppers need to be transferred to one holding tank.
- If the vessels are not equipped with such holding tank for the waters described above the overboard connections of the piping related to above areas must be blocked and not to be discharged overboard during the stay at port and/or anchorage.
- No any deck washing and/or hatch cover hose testing must be performed during the stay at port and/or anchorage.
- The fireman and fire hoses used need to be checked strictly if they are in need of use during the stay at port and/or anchorage.
- All vessels need to be fitted with continuous deck edge plates to prevent flooding of water from the decks.
- The drain scuppers at steering gear room, any of poop deck stores, forecastle,

forecastle store and emergency fire station room need to be blocked during the stay at port and/or anchorage.

- Throwing and/or discharging and/or disposing of garbage is forbidden.
- Throwing and/or discharging and/or disposing of food wastes are strictly forbidden.
- Throwing and/or discharging and/or disposing of any kind of dirt, dust, rust residues, cargo residues strictly forbidden.
- Throwing and/or discharging and/or disposing of oil, oily water, bilge water, oily materials, oily rags strictly forbidden.
- Throwing and/or discharging and/or disposing of incinerator residues forbidden.
- Throwing and/or discharging and/or disposing of funnels' blacks forbidden. If the funnels are creating excessive black dust this problem must be fixed by applying such kind a filter, wire strainer or filter.
- If the vessel is calling a shipyard and/or entering to dry-dock also are responsible for providing the above cautions.
- If the vessel is subject for maintenances and repairs at her open decks and hull sheel plating and regarding to the extent of the work, the vicinity of the vessel need to be protected with barriers, oil booms, etc.
- The works of the shipyards' staff and workers must be strictly checked and any negligence of shipyard workers and/or if any defective equipment used for such works, the shipyard managements must be warned in written with urgent notice.
- It must be noted that the environment protection controls in Turkey are preformed strictly 24 hours and around the clock.
- It must be noted that all actions, findings, way of sampling of the environment protection squad are recorded with video cameras and these records are kept by the municipality for presenting to courtyard in case of appeal.

Yours faithfully,

OMUR MARINE

Ahmet Can Bozkurt & Cagdas Kircali