

Salvage Reward under Turkish Law

Introduction

Turkish law has been harmonised with international maritime law in 2012 with the enactment of the Turkish Commercial Code (“TCC”, Law No. 6102). Provisions of several international conventions including International Convention on Salvage, 1989 (“Convention”) have been adopted to TCC. Furthermore, Turkey has become a party to the Convention in 2015.

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Pursuant to the Article 1/a of the Convention and Article 1298/1 of TCC, salvage operations are defined as “*any act or activity undertaken to assist a vessel or any other property in danger in navigable waters or in any other waters whatsoever.*” Accordingly, salvors entitle a reward after a successful operation made to vessels or any other properties exposed to a danger.

According to the statistics shared by Directorate General of Coastal Safety, 41.112 vessels passed Istanbul Strait in 2019. The potential risk caused by the high number of ships passing through the Bosphorus is significant in terms of understanding the importance of salvage operations. This article briefly examines the conditions for the salvage reward.

General Information

Salvors do not acquire the ownership of the property in exchange for a salvage operation. However, salvage operations which have had a useful result give right to a “salvage reward” under TCC and the

Convention. Claims for salvage reward give rise to maritime liens under Turkish law.

If the operation is not successful, invested time and expenses does not lead to any remuneration except for certain circumstances explained below.

Debtor of Salvage Reward

Pursuant to Article 1306 of TCC, the debtor of salvage reward is the owner of the vessel or other property which have been salvaged at the time when the salvage operation is completed. If the vessel and other properties do not belong to the same person, salvage reward shall be divided between the owners in proportion to the value of salvaged vessel and properties.

Conditions for Salvage Remuneration

Conditions are stipulated under TCC in order to be entitled to a salvage reward. First of all, there must be a vessel or a property to be saved. The vessel includes ships as well as any other type of navigable property according to Article 1298/2 of TCC. Secondly, there must be a marine peril, in other words, a kind of danger to the vessel or property or both. The danger can be associated with heavy weather emergencies, running aground, fire, collusion, war etc. A future danger is even sufficient for a salvage operation. Thirdly, salvor must not owe a legal duty to perform its services. However, performing salvage services under a salvage contract are also regarded as voluntary. Finally, there must be a success in order to entitle the salvor to an award which is the fundamental principle of salvage law: “no cure no pay”.

Salvage Contract

A salvage contract is not a necessity to claim a salvage reward. In practice, however, salvage operations are performed usually under standard salvage contracts. The most common type of standard salvage contract is Lloyd’s Open Form (LOF). Directorate General of Coastal Safety which has a monopoly over all the salvage operations

in Istanbul and Çanakkale (*Dardanelles*) Straits together with Marmara Sea uses a standard contract called the Turks Salvage Agreement (Turks 2015).

Masters are authorized to sign salvage contract on behalf of the vessel owner pursuant to Article 1300 of TCC.

In addition, master and the vessel owner are both authorized to sign the contract on behalf of the owners of properties in vessel.

According to Article 1 of Turks 2015, the agreement is executed on the principle of “no cure no pay” with the exemption of salvage operations that prevent or minimize the damage to environment.

Accordingly, pursuant to Article 6 of Turks 2015, if the salvage operation is rendered for a vessel and/or the property onboard the vessel which poses a threat for the environment, and the salvor is not entitled to a salvage remuneration which is at least equivalent to the special compensation to be calculated, then the salvor has a right to ask for the expenses incurred for the salvage services rendered from the owner.

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Criteria for Fixing the Salvage Reward

If the Salvor and owners of the salvaged vessel or property cannot compromise on the salvage reward, the court may adopt the reward by taking into account the following criteria regardless of their order pursuant to Article 1305 of TCC which is adopted from Article 13 of the Convention:

- the salvaged value of the vessel and other property after the salvage operation,
- the skill and efforts of the salvors in preventing or minimizing damage to the environment,
- the measure of success obtained by the salvor,
- the nature and degree of the danger encountered by salvaged vessel, lives and other property in it as well as by salvors,
- the skill and efforts of the salvors in salvaging the vessel, other property and life,
- the time used and expenses and losses incurred by the salvors,

- the risk of liability and other risks run by the salvors or their equipment,
- the quickness of the services rendered,
- the availability and use of vessels or other equipment intended for salvage operations,
- the readiness, efficiency and the value of the salvor's equipment and thereof.

Salvage reward shall not exceed the value of the salvaged vessel and the other property after the salvage operation pursuant to Article 1304/3 of TCC. Even if the salvaged vessel and the vessel performing the salvage operations belong to the same owner, salvage provisions under TCC shall apply and salvor will be eligible for a reward.

Salvage operations may become necessary or more difficult due to the fault or neglect of the salvor or the salvor may be guilty of fraud or other dishonest conduct, in this case salvor will be deprived from the whole or part for the reward according to Article 1311 of TCC which is adopted from Article 18 of the Convention.

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Special Compensation

Salvor's vessel may be damaged or some expenses may be incurred during the performance of salvage operation. In such circumstances, if there is no success, damages or the expenses cannot be claimed by the salvor since carrying out a salvage operation is voluntary.

Special compensation claim is an exception to the notorious principle of "no cure no pay" which has been introduced with Article 14 of the Convention and is adopted to TCC. Accordingly, if neither vessel nor property is salvaged, yet damage to the environment is prevented or minimized, salvor shall be entitled to a special compensation from the owner of the vessel equivalent to his expenses under Article 1312 of TCC.

Life Salvage

The statistics published by the Ministry of Transport and Infrastructure shows that 485 incidents occurred in 2019 and 2403 people were salvaged in Turkish waters. According to Article 1318 of

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TCC, in case of a salvage of human life, salvaged person does not have to pay a reward since it is a humanitarian duty as well as a fundamental responsibility of the masters. However, human life salvor has a right to claim a fair share of the payment that is awarded to the salvor for salvaging the vessel or other property or preventing or minimizing damage to the environment.

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