



DEHUKAMDER

DEHUKAM DENİZ HUKUKU DERGİSİ
DEHUKAM JOURNAL OF THE SEA AND MARITIME LAW

DEHUKAMDER - Volume: 5 / Issue: 1 / Year: 2022, pp. 87-102

AN EVALUATION ON PROCEDURE OF ISSUING THE SEA PROTEST*

*DENİZ RAPORUNUN DÜZENLENMESİ PROSEDÜRÜNE İLİŞKİN BİR
DEĞERLENDİRME*

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ABSTRACT

The sea protest is evidence that includes the statements of the master and seamen regarding the extraordinary incidents and accidents that may occur during the voyage. The courts, port authorities, and consulates are authorised to issue it. When the courts issue the protest, the procedure causes hesitation as it prolongs the time the ship spends in the port. The concept of sea protest is defined in the paper, and the procedure to be followed under Turkish Law and some other national laws for issuing the protest is discussed. The effect of the procedure on the port time is evaluated, and some suggestions for reducing the time are given.

Keywords: •Sea protest •Marine casualty •Shipmaster •Marine note of protest •Evidence

* Research Article, Received 04.10.2022 / Accepted 27.10.2022.

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Contribution Rate: The contribution rates of the authors to this article are as shown below:

Asst. Prof. Cansu ÇAKAN ÇAVUŞ 100%

Conflict of Interest Declaration: The author(s) have no conflict of interest to declare.

Declaration of Support and Acknowledgement: None.

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**ÖZ**

Yolculuk esnasında gerçekleşebilecek olağan dışı olaylara ve kazalara ilişkin kaptan ve gemi adamlarının beyanlarını içeren bir delil olması için düzenlenen deniz raporu, mahkemeler, liman başkanlıkları ve konsolosluklar tarafından düzenlenir. Özellikle mahkemeler tarafından düzenlendiğinde işleyen prosedür, geminin limanda geçirdiği süreyi uzattığı için tereddütlere neden olmaktadır. Çalışmada deniz raporu kavramı tanımlanarak raporun düzenlenmesi için Türk Hukukunda ve bazı diğer ulusal hukuklarda izlenecek prosedür ele alınmıştır. Daha sonra söz konusu prosedürün limanda geçirilen süreye etkisine ve sürenin azaltılması için bazı önerilere yer verilmiştir.

Anahtar Kelimeler: •Deniz raporu •Deniz kazası •Kaptan •Protesto •Delil

INTRODUCTION

The sea protest is a document that will constitute an important piece of evidence in terms of disputes arising as a result of incident that may occur during the voyage of the ship. There is no other way to record the incidents in question with an official document other than the ship's log. For this reason, a sea protest from the competent authority specified in the law may have an effect that will change the course of the case. The authority to issue the sea protest, which is accepted as evidence in many national laws, is generally given to the courts and port authorities, and to consuls in applications made abroad.

With the impact of technological developments, the time required for a ship to stay in port to meet the technical requirements has decreased. However, the duration of the procedures to be carried out under legal regulations has remained the same. This situation leads to inefficiency in the institutional infrastructure and increased costs. The long procedure for issuing sea protests by the courts is also a factor in increasing port time. Simplifying the procedure for issuing the protest and handling protest files as a priority can speed up the proceedings. A change in Turkish Law that port authorities have the authority to issue sea protests may increase our ports' operation speed.

The concept of sea protest is defined in the paper, and the procedure to be followed in Turkish Law and some other national laws that have an important place in world maritime practise is discussed. Then, the effect of the procedure in question on the port time and our ideas for reducing the time are given.

I. THE CONCEPT OF THE SEA PROTEST

The sea protest is an official document that records the accidents or extraordinary incidents encountered by the vessel during the voyage, with the participation of



all or some seamen¹. With this document, the master and seamen obtain official evidence regarding the reasons for release from liability against a possible claim, with their statement before the court or notary public.

Although each country has a term corresponding to this document in its language, internationally, the sea protest is not referred to by a single globally accepted term. Phrases such as “*note of protest*”, “*master’s note of protest*”, or “*marine protest*” are used instead of the sea protest. Although the term “*sea protest*” used in Turkish corresponds to the concept of “*sea protest*”, it includes the word “*report*” instead of “*protest*”.

1. Legal Nature of The Sea Protest

Under Turkish law, filing of the sea protest is left to the choice of the master. The activity of the court or the consulate to issue the sea protest is in the nature of the determination of evidence². On the other hand, the sea protest document is a piece of primary evidence in terms of the disputes it relates to³. There are also authors who assert that a sea protest is a special tool of proof⁴. However, the said means of proof does not imply an absolute value⁵. It can be proved on any occasion that what is stated in the protest does not reflect the truth⁶. In case of collision, the conflicting sea protests of the vessels in the collision may eliminate the evidential nature of the protest⁷.

The provision of filing the sea protest through the consulates while the vessel was abroad was not in the previous Turkish Commercial Code. Although this innovation was welcomed, it created confusion among practitioners. While the same task is an ex parte judicial proceeding work in domestic courts, it is an administrative act held before the consulates abroad⁸. It is considered a strange

¹ Kerim Atamer, “‘Gemi Adamları’na İlişkin Türk Ticaret Kanunu Hükümlerinin Kaynakları ve Görevli Mahkeme Sorunu – 2. Bölüm’ (2013) 8 Liber Amicorum in Honour of Prof. Dr. Aydın Zevkliler E-Journal of Yaşar University 405, 446 <<https://dergipark.org.tr/tr/pub/jyasar/issue/19146/203168>> (accessed on 21/06/2022).

² *Ibid.*, 447.

³ *Ibid.*; İnci Deniz Kaner, *Deniz Ticareti Hukuku I-II* (4th edn, Filiz Kitabevi 2021) 113-114.

⁴ Fahiman Tekil, *Deniz Hukuku* (5th edn, Alkım Yayınları 1999) 190.

⁵ *Ibid.*

⁶ *Ibid.*

⁷ *Ibid.*

⁸ A. Çalık, *Ana Hatları ile Yeni TTK Hükümleri Çerçevesinde Deniz Ticaret Hukuku Değişiklikleri Genişletilmiş Konferans Metni* (1st edn, Duvar 2011) 63.



situation that the same work has two different legal qualities depending on the place where it is conducted⁹.

Unless there is evidence to the contrary, a sea protest has notable probative weight in any following settlement negotiations or litigation under Maltese law, as it is frequently taken as a correct statement of facts¹⁰. However, in the United Kingdom, unless both parties approve, they are not recognised as evidence in favour of the party filing the protest¹¹. The most common application of a protest is to strengthen a cargo owner's claim against his or her insurers¹². On the other hand, there is no legal requirement for a protest, and legal rights are unaffected if a protest is not noted¹³.

The P&I Clubs inform their members a protest may serve the purpose of either recording a disagreement with another party, for example, rough handling of cargo by the stevedores, or reporting a specific incident, such as heavy weather¹⁴.

2. The Incidents That Led to File the Sea Protest

Incidents that carry a risk of damage may cause a sea protest to be issued, especially accidents such as collisions, groundings, sinking, or extraordinary occurrences like jettison, forced docking, or bad weather. Under Turkish law, when an accident occurs during the voyage, which concerns the vessel or the cargo or is likely to cause another material damage even if the vessel is lost, the shipmaster files a sea protest¹⁵.

In the Foreign Affairs Manual (FAM) and associated Handbooks of the United States Department of State, it is stated that marine notes of protest are used to report any incident that occurred during the voyage. The operators or insurance

⁹ *Ibid.*

¹⁰ Adrian Attard: 'Malta: Failure to File the Sea Protest Correctly Can Scupper Your Case' Mondaq (14 August 2013) <<https://www.mondaq.com/marine-shipping/256746/failure-to-file-sea-protest-correctly-can-scupper-your-case>> (accessed on 21/06/2022).

¹¹ Frederick Neville Hopkins, *Business and Law for the Shipmaster* (Rev. By G.G. Watkins, 7th edn, Brown, Son & Ferguson 1998) 289.

¹² *Ibid.*

¹³ *Ibid.*

¹⁴ GARD, *Guidance Book to Masters* (2nd edn, Arendal, 2006).

¹⁵ TCC art. 1098/1; Emine Yazıcıoğlu, *Kender-Çetingil Deniz Ticareti Hukuku* (17th edn, Filiz 2022) 306; Şaban Kayıhan, *Deniz Ticareti Hukuku* (2nd edn, Umuttepe Yayınları 2022) 128.



companies could use the protest in future claims regarding damage to the vessel or cargo caused by conditions beyond the master's control¹⁶.

Under Maltese law, under Article 104 of the Merchant Shipping Act¹⁷ (MSA), the master must file a sea protest wherever a vessel flying the Maltese flag sustains damage. It will also need to be applied in cases where the vessel is stranded, abandoned, lost, or forced to enter the port of refuge due to weather or any other reason.

Under Russian Federation law, when an incident occurs, either at sea or at its moorings, which may result in property claims against the shipowner, the master files a sea protest¹⁸.

The P&I Clubs inform masters that issuing a sea protest may be appropriate and required either after an incident or to pursue a claim against a third party¹⁹. To maintain the legal standing of the shipowner, master, crew, and insurer, issuing a sea protest is necessary to hold another party responsible in writing. The Clubs state that a sea protest should be issued, for example, in the event of a collision, when a tug damages a vessel or third-party property, or when a stevedore damages a vessel, its equipment, or its cargo. And the protest should be issued when a vessel sustains damage from an unsuitable berth and in any other circumstances where the actions or inactions of another party may subject the shipowner to liability, cost, or expense²⁰. A shortlanding is an appropriate example where clubs recommend filing for a sea protest. When the cargo is lost overboard at sea, a log extract or a sea protest issued at the discharge port should support the situation to avoid a fine for shortlanding²¹.

¹⁶ United States Department of State: *Foreign Affairs Manual*, 7 FAM 772 *Marine Notes of Protest*, (CT: CON-913; 05-12-2021), <<https://fam.state.gov/search/viewer?format=html&query=marine%20pollution&links=MARIN&url=/FAM/07FAM/07FAM0770.html#M772>> (accessed on 21/06/2022).

¹⁷ Malta MSA art. 104/1.

¹⁸ Russian Fed. MSC art. 394/1.

¹⁹ GARD, 238.

²⁰ *Ibid.*

²¹ The Swedish Club P&I Rules and Exceptions, Rule 10, <<https://rulesandexceptions.swedishclub.com/part-two-comments/chapter-iii-conditions-for-cover/rule-10-conditions/>> (accessed on 21/06/2022).



3. Procedure For Issuing a Sea Protest

A. Authorised Persons to File a Sea Protest

The master of the vessel is entitled and authorised to file a sea protest. Under Turkish law, if the master dies or is in a condition that is unable to file the sea protest, the highest-ranking officer on the vessel after the master files it²². In almost every country, the authorised person is the shipmaster.

Under Turkish law, it is left to the master's discretion to evaluate whether a situation needs to be determined by a sea protest and to apply according to this evaluation²³. However, the shipowner or anyone who proves that he or she has an interest is authorised to request the master to apply²⁴. When it is requested to apply for the issuance of a sea protest, this situation ceases to be a choice for the master and becomes an obligation²⁵. It is possible to name the persons authorised to make a request as the owner of the vessel, the persons involved in the cargo, and those directly related to the incident that is the basis for obtaining the sea protest. For example, the persons who suffered damage are authorised to request the master apply for a sea protest issuance.

B. The Competent Authority to Issue the Sea Protest

The competent authority to issue the sea protest varies from country to country. Under Turkish law, the shipmaster only applies the courts within the borders of the Republic of Türkiye for the sea protest²⁶. The competent authority is the Turkish consulates abroad for Turkish-flagged vessels, without prejudice to the provisions of the local legislation. However, the fact that the provisions of the local legislation are reserved shows that filing a sea protest is a complete matter of international law.

²² Türk Ticaret Kanunu (Turkish Commercial Code – TCC), Code N.: 6102, was published in the Official Gazette 14.02.2011/27846 and entered into force on 01.07.2012. TCC art. 1098/1-2.

²³ *Ibid*, 447.

²⁴ TCC art. 1098/1.

²⁵ *Ibid*.

²⁶ TCC art. 1098/4.



As in Türkiye, in the Federal Republic of Germany²⁷ and the Republic of Malta²⁸, the master files a sea protest in court or consulate. In countries such as the United Kingdom of Great Britain²⁹, the United States of America³⁰, the Russian Federation³¹, the Argentine Republic³², the Republic of Azerbaijan³³, the Republic of Georgia³⁴, Republic of Moldova³⁵, notaries or consulates are authorised to issue a sea protest. In Panama³⁶, the Bolivarian Republic of Venezuela³⁷, and the United Mexican States³⁸, port authorities or consulates are authorised.

C. Filing Place and Time

Under Turkish law, the sea protest should be filed in one of the following places without wasting time³⁹:

- a) At the port of arrival and, if there is more than one port of arrival, at the first port arrived after the accident.
- b) At the port of refuge if the vessel is repaired or the cargo is unloaded.
- c) If the voyage ends before reaching the port of arrival due to the sinking of the vessel or for any other reason, it is filed at the first convenient place of the master or the person acting on his or her.

²⁷ John A. C. Cartner & Richard P. Fiske & Tara Leiter, *The International Law of the Shipmaster* (1st edn, Informa Law from Routledge 2009) 391.

²⁸ The Republic of Malta Merchant Shipping Act, art. 104; <<https://www.transport.gov.mt/Sea-SHIP-Registration-Merchant-Shipping-Act.pdf-f207>> (accessed on 21/06/2022).

²⁹ Hopkins, 289.

³⁰ 7 FAM 772.

³¹ Merchant Shipping Code of the Russian Federation (Russian Fed. MSC) Art. 395: “The declaration of a protest by the ship master shall be made: at a port of the Russian Federation - to a notary; at a foreign port - to an official of the consular office of the Russian Federation or to a competent official of a foreign State in the order prescribed by the legislation of the respective State.”

³² Cartner & Fiske & Leiter, 257-258.

³³ Merchant Shipping Code of the Republic of Azerbaijan, art. 304.

³⁴ Cartner & Fiske & Leiter, 385.

³⁵ *Ibid*, 527.

³⁶ *Ibid*, 561.

³⁷ *Ibid*, 704.

³⁸ *Ibid*, 522.

³⁹ TCC art. 1098.



The time limit is not included by specifying the period usually seen in other national laws, and it was stated that the sea protest should be filed without delay. In case of delay, the power of proof of the sea protest declines as the confidence of the courts in the protest decreases⁴⁰. In a decision of the Court of Cassation of Türkiye in 1970⁴¹, the sea protest was not accepted as evidence as it was not issued without delay at the place specified in the TCC. The following points were noted in the decision:

“It is understood from the examination of the sea protest dated 3.2.1966, submitted by the defendant and issued in the Iskenderun court, that the hurricane-force storms that caused the damage occurred on 23 and 27.12.1965, and the vessel arrived in Iskenderun on 2.2.1966 after stopping at many other Mediterranean ports. As such, it is not possible for the defendant to rely on the sea protest.”

Under German law, the shipmaster must file the sea protest at the first port reached after the request or the most appropriate location if the vessel is lost if it does not unreasonably delay the voyage⁴².

Under Maltese law, the master must file the sea protest within twenty-four hours after the incident if the incident happens in any port or within twenty-four hours after he arrives in any port if the incident happens elsewhere⁴³. Protests referring to logbook evidence of jettison, damage, or any other large, common, or suspected losses must be presented to the competent authorities within twenty-four hours at the first arrival port under Panamanian law⁴⁴.

Under Russian law, if an accident took place at the port, the master must file the sea protest within twenty-four hours after the accident⁴⁵. If an accident occurred during the vessel's navigation, the master must file the sea protest within twenty-four hours after the arrival of the master or the vessel at the first port after the accident⁴⁶. Under Ukraine law, in a Ukrainian port, the master must file the sea

⁴⁰ M Sami Okay, *Deniz Ticaret Hukuku* (V. I, 3rd edn, İstanbul Üniversitesi 1970) 341.

⁴¹ Commercial Chamber of the Court of Cassation, 2.10.1970, E. 4567, K. 3483 (As shown at reference, Gönen Eriş, *Açıklamalı-İçtihatlı Türk Ticaret Kanunu*, Commentary, Vol. V (2nd edn, Seçkin Yayıncılık 2010) 5464).

⁴² Cartner & Fiske & Leiter, 391.

⁴³ Malta MSA art. 104/1.

⁴⁴ Maritime Commerce Law of the Republic of Panama (Panama MCL), art. 39.

⁴⁵ Russian Fed. MSC art. 396.

⁴⁶ *Ibid.*



protest within twenty-four hours after the vessel enters the port⁴⁷. If the incident is taken place in the port, the protest must be filed within twenty-four hours⁴⁸. If a sea protest cannot be filed within the specified time frame, the causes must be mentioned in the statement⁴⁹. If there is reason to believe that the incident caused damage to cargo on board the vessel, a sea protest must be filed before opening the hatches⁵⁰. Only in the case of an urgent necessity may the cargo be discharged prior to filing the sea protest⁵¹. The same provisions are contained in article 397/2 and article 398⁵² of the Merchant Shipping Code of the Russian Federation.

Under Portuguese law, the sea protest must be filed to a maritime or consular authority in the first port of arrival where such an official with competent jurisdiction can be located, within 48 hours of arrival⁵³. If the vessel is lost, the protest must be made within 48 hours of the arrival of the master or his representative⁵⁴.

D. Actions to be Taken by the Court or the Consulate

Under Turkish law, the master applies to the court or the consulate, with the crew list, the vessel's logbook, and other available documents regarding the incident⁵⁵. In practice, in addition to the crew list and logbook, the master is expected to submit a written report containing the information that will form the content of

⁴⁷ Merchant Shipping Code of Ukraine, (Ukraine MSC) 2013, Chapter 7, cl. 343.

⁴⁸ *Ibid.*

⁴⁹ Ukraine MSC, cl. 344.

⁵⁰ *Ibid.*

⁵¹ *Ibid.*

⁵² Russian Fed. MSC art. 397/2: "If it is impossible to note a sea protest within the time, fixed by Article 396 of this Code, the reasons for this shall be stated in the declaration of the sea protest."

Russian Fed. MSC art. 398: "If there are reasons to believe that an accident has caused damage to the cargo on board a ship, the declaration of a sea protest shall be made before the opening of the ship's hatches. The discharge of cargo from the ship before the declaration of a sea protest may be launched only in case of an emergency."

⁵³ Cartner & Fiske & Leiter, 584.

⁵⁴ *Ibid.*

⁵⁵ TCC art. 1100/1. Commercial Chamber of the Court of Cassation, 14.05.1946, E. 465, K. 1250: "It is appropriate that the sea protest, which is not based on the ship's log and does not comply with the initial statements given by the master and other officers on the ship, should not be considered sufficient evidence for the verdict."; 11th Civil Chamber of the Court of Cassation, 28.02.2003, E. 10447, K. 1917: "Even if a sea protest has been issued by the notary public, if the content of the protest cannot be confirmed with the ship's log, the sea protest cannot be taken as a basis for the decision." (As shown at reference, Eriş, 5465-5466).



the sea protest. Upon application, the court or the consulate determines a day for the examination as closely as possible and announces it appropriately⁵⁶. However, the announcement may be abandoned in cases where there is a risk of delay⁵⁷.

The court hears the master and seamen on the announced day. Those involved in the vessel or cargo and other persons involved in the accident may be present at the court or consulate in person or have a proxy⁵⁸. The master makes the necessary explanations based on the ship's logbook⁵⁹. If the ship's logbook cannot be brought to the court or consulate, or if it is not obligatory to keep it, the reasons for these cases should be reported⁶⁰.

When deemed necessary, the judge or consul may listen to the seamen who did not come to the court⁶¹. The judge or the consul may ask any questions to the master and other seamen so that the events can be understood adequately⁶². The master, the other seamen, and those involved in the incident are warned to tell correctly⁶³. In Turkish practice in addition to the master and a seaman, if the event is related to the technical equipment of the vessel, the chief engineer, if the event is related to navigation, the chief officer is heard. The master and officers must state all the facts about the incident they are aware of. These should include the place and time of sailing, the nature of the cargo; the course pursued; the important events of the journey, especially the accidents; the damage sustained; the measures taken to prevent or reduce the damage and all other relevant facts relating to the casualty. The court or the consulate determines fully and clearly the critical events of the trip, especially the accidents and measures taken to prevent or reduce the damage.

⁵⁶ TCC art. 1100/2.

⁵⁷ *Ibid*; Commercial Chamber of the Court of Cassation, 8.06.1945, E. 1945/922, K. 1393: "The decision of the court to issue a sea protest by giving up announcing a day for the examination, taking into account the requirements of the situation, does not invalidate the sea protest." (As shown at reference, İsmail Doğanay, *Türk Ticaret Kanunu Şerhi*, Vol. III (Olgaç Matbaası 1979) 249).

⁵⁸ TCC art. 1100/3.

⁵⁹ TCC art. 1100/4.

⁶⁰ *Ibid*.

⁶¹ TCC art. 1100/5.

⁶² *Ibid*.

⁶³ TCC art. 1100/6.



The judge or the consul examines the oral evidence given by the seamen, and the testimony of each one is entered into the record of the court or the consulate. Thus, the sea protest consists of such record and the annexes thereof. The court or the consulate keeps the original of the protest and gives the approved samples to those who are interested⁶⁴. If the sea protest is related to the matters regulated under the Law on Protection of Life or Property at Sea⁶⁵, the master presents a certified copy of the sea protest to the port authority at the first port where he or she visited after the accident⁶⁶.

Under German law, the master may be a witness to explain the circumstances in his application for a sea protest, but his examination is unsworn, like that of others⁶⁷. When confronted with a dangerous situation, the master can consult with the vessel officers but is not constrained by their judgement⁶⁸. After an accident that damages the vessel or cargo, the master must file a sea protest in court or before an appropriate German representative at the request of the owner or those with a financial interest⁶⁹. If possible, the sea protest must contain a certified copy of the ship's log, as well as a comprehensive description of the accident and a list of the ship's inhabitants⁷⁰. If the master is unable to include the ship's log, he must explain the reason⁷¹.

Under Panamanian law, protests to prove jettison damages or other losses must be approved under oath by the master before the appropriate authority⁷². The said authority must question the master, officers, members of the crew, and passengers on the authenticity of the facts, keeping in mind the master's log if it has been saved. Any interested party may present evidence to the contrary.

⁶⁴ TCC art. 1101.

⁶⁵ Denizde Can ve Mal Koruma Hakkında Kanun (Law on Protection of Life or Property at Sea), Code N.:4922, was published in the Official Gazette 14.06.1946/6333.

⁶⁶ TCC art. 1098/3; Law on Protection of Life or Property at Sea, art. 13.

⁶⁷ Cartner & Fiske & Leiter, 391.

⁶⁸ *Ibid.*

⁶⁹ *Ibid.*

⁷⁰ *Ibid.*

⁷¹ *Ibid.*

⁷² Panama MCL art. 39.



II. DELAY AT PORT DUE TO PROCESS OF SEA PROTEST

1. Infrastructural Inefficiency and the Process of Sea Protest

With more than four-fifths of global commercial traffic (by volume) conducted by water, maritime transport is the core of globalised trade and the industrial supply chain⁷³. Volumes transported rose at a 3 per cent yearly rate on average from 1970 to 2018⁷⁴. Globalisation brought containerisation, which expanded worldwide container transport, which has risen at a 9.5% annual pace since the 1980s⁷⁵.

Delay at the port is a major cost for all industry stakeholders, from the shipowner to the port authority, from the stevedore to the shipper. Delay at the port may result in liability for the carrier. Waiting for a long time may cause the risk of deterioration of perishable cargo, even under careful maintenance. Delays may cause demurrage charges to rise and cause additional costs incurred by the shipper. Long queues at anchorage can also be a critical safety and environmental issue for ports. Delays at the port have such a negative impact on the industry that port efficiency is one of the most studied topics of the maritime sector.

Operating expenses and CO² emissions declines as port time decreases⁷⁶. This implies that effective ship operation is significantly impacted by the port time. Reducing the amount of time that a vessel spends in port can save operational expenses and boost the environmental performance of the sector⁷⁷.

Generally, the performance of ports is an essential factor in the cost of commerce for any country⁷⁸. The port, with its hinterland access infrastructure (whether inland canal, rail, or road), is a critical link to the global economy and must

⁷³ United Nations Conference on Trade and Development (UNCTAD), ‘*Review of Maritime Transport 2019*’ (New York, 2019) 4.

⁷⁴ *Ibid.*, 5.

⁷⁵ Hariesh Manaadiar, ‘Port Congestion – Causes, Consequences and Impact on Global Trade’ *Shipping and Freight Resource* (8 April 2020) <<https://www.shippingandfreightresource.com/port-congestion-causes-and-impact-on-global-trade/>> (accessed on 21/06/2022).

⁷⁶ Daniel Seong-Hyeok Moon & Jong Kyun Woo ‘The Impact of Port Operations on Efficient Ship Operation from Both Economic and Environmental Perspectives’ (2014) 41(5) *Maritime Policy & Management* 444, 459.

⁷⁷ *Ibid.*

⁷⁸ The World Bank: *Accelerating Digitization: Critical Actions to Strengthen the Resilience of the Maritime Supply Chain*, Washington DC, 2020, License: Creative Commons Attribution CC BY 3.0 IGO, 29.



function efficiently⁷⁹. The institutional infrastructure, or soft infrastructure, is as essential as the physical infrastructure⁸⁰. A shorter time in port is a good sign of a port's efficiency and competitiveness in commerce. Every hour saved in a port conserves money on port infrastructure improvements for ports, carriers, and shippers.

Bureaucratic actions, such as filing a sea protest, are within the scope of institutional infrastructure. The procedure of filing the sea protest is especially criticised by container and cruise ship owners as it causes some difficulties and delays in practice. When the port of call in Türkiye is an intermediate port, under pressure to arrive at the port of destination on time, the court's determination of a date for examination and hearing days after the application causes a delay in the itinerary⁸¹. The long court procedure of the sea protest has an effect that reduces the efficiency of the port.

2. Prevention of Delay at Port due to the Sea Protest Procedure

It should be noted that the sea protest is only a piece of evidence. It is not a judgement given after both parties have been heard and exercised their right of defence. In terms of shortening the court procedure, it would be more appropriate for the judges to use their discretion and handle the requests for issuing a sea protest as an urgent task, considering that the sea protest is only a determination of evidence and to make the determination immediately.

Announcements and trial date determination periods have the effect of increasing the waiting time. In this regard, the procedure should be simplified. For example, accelerating alternatives can be added to the legal regulation, such as accepting written statements previously prepared by the shipmaster instead of oral listening.

Finally, in the legal systems that authorise the courts or notaries to obtain a sea protest, legal amendments regarding the submission of the application for the sea protest to the port authorities may prevent such delays on holidays and weekends outside working hours. When the port authorities accept the sea protest to be submitted to the court immediately at the end of the holiday, there will be no need to wait until the end of the holiday period.

⁷⁹ *Ibid.*

⁸⁰ *Ibid.*

⁸¹ *Ibid.*, 64.



CONCLUSION

A sea protest is evidence that comprises the master's and seamen's testimony about extraordinary incidents and casualties that may occur during the journey. The shipmaster is the authorised individual in practically every country to file a sea protest. The competent authority to issue a sea protest differs per country. Courts, port authorities, and consuls may have the authority to issue the protest. A sea protest may be issued in response to incidents that pose a risk of harm, such as collisions, groundings, sinking, or unusual incidents, such as jettison, forced docking, or adverse weather.

The sea protest should be lodged as soon as possible. In the event of a delay, the power of proof of the sea protest diminishes as the courts' confidence in the protest diminishes.

Upon application, the court or consulate sets a date for the examination as soon as possible and announces it accordingly. On the appointed day, the court hears the master and seamen. When considered essential, the judge or the consul may hear from seamen who did not appear in court. The judge or the consul may ask the master and other seamen any questions to fully comprehend the occurrences.

The master and officers must provide all information they have concerning the incident. The court or consulate determines the significant events of the journey, particularly the accidents and the actions taken to prevent or lessen the damage.

The judge or the consul reviews the seamen's oral evidence, and each one's testimony is entered into the court's or consulate's record. As a result, the sea protest comprises of such record and its annexes. This process, which includes announcing a hearing date, hearing more than one person, examining the situation, and issuing the protest document, corresponds to a long time.

With the development of technology, the speed of both transportation and port operations has increased considerably. Especially in container transportation, the unloading operation is completed in a short time. On the other hand, cruise ships must complete their transactions in a very limited time at the ports they stop by and continue on their way due to the obligation to comply with the excursion programme.

However, as in Turkish Law, waiting for business hours on weekdays or waiting for the announcement and hearing day for the court or the consulate or the notary public to take action as in the laws of other countries cause great losses, as



explained above. In order to prevent this, the courts should treat the applications for the sea protest as a matter of urgency and priority. The procedure should be simplified. In my opinion, when it is necessary to apply for a sea protest outside of working days and hours, it should be possible to apply to the port authority to submit to the court after the holiday.

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