LİMANDA OLSUN OLMASIN (WIPON)/ RIHTIMDA OLSUN OLMASIN (WIBON) KAYITLARINI TAŞIYAN SÖZLEŞMELERDE AZAMİ SÜRASTARYA SÜRESİ: BEKLEMEK Mİ BEKLEMEMEK Mİ?

(Maximum Length of Demurrage in Case of Whether on Port or Not (Wipon) / Whether on Berth or Not (Wibon) Clauses: to Wait or Not to Wait?)

Yrd. Doç. Dr. Banu BOZKURT BOZABALI*

ÖZET

Eşya taşıma sözleşmelerinde yükün en kısa zamanda, en etkin biçimde teslim edilmesi amaçlanmaktadır. Bu doğrultuda, denizyoluyla yük taşımaları açısından, tarihsel gelişim içerisinde taşıyan ve taşıtanın yükleme/boşaltma işlemlerindeki yükümlülüklerini dengelemek amacıyla sefer çarterine konulacak çeşitli kayıtlar öngörülmüştür. Burada öngörülen iki önemli kayıt limana yanaşmış olsun olmasın (WIPON) ve rıhtıma yanaşmış olsun olmasın (WIBON) kayıtlarıdır. Bu çalışmanın amacını da işte bu WIPON ve WIBON kayıtlarının konulduğu çarter sözleşmelerinde azami sürastarya süresinin incelenmesi oluşturmaktadır. Bu amaçla sürastaryaya ilişkin 6102 sayılı Türk Ticaret Kanunu hükümleri ile İngiliz Hukuku'ndaki mahkeme kararları arasında mukayeseli bir çalışma yapılmıştır.

Anahtar kelimeler: Limana yanaşmış olsun olmasın (WIPON); Rıhtıma yanaşmış olsun olmasın (WIBON); Navlun Sözleşmeleri; Sefer (yolculuk) çarteri; Yükleme/boşaltma süresi (starya süresi); Sürastarya süresi; Bekleme süreleri; İngiliz Hukuku; 6102 sayılı Türk Ticaret Kanunu

Abstract

The aim of the contract of carriage of goods is the efficient delivery of transported goods within the possible shortest time. To this end, some specific clauses for voyage charterparties have been stipulated for the carriage of goods by sea. Two important clauses for this purpose are whether in port or not (WIPON) and whether in berth of not (WIBON). The aim of this article is to examine the maximum length of demurrage in case of WIPON/WIBON containing char-

* Akdeniz Üniversitesi Hukuk Fakültesi.

terparties. For this purpose a comparative analysis of Turkish and English law demurrage stipulations and case law is made.

Keywords: Whether on port or not (WIPON); Whether on berth or not (WIBON); Voyage charter; Laytime; Demurrage; Maximum Length of Demurrage; English Law; Turkish Commercial Code numbered 6102

I. Introduction

In the maritime transportation; one of the main important issue is time. In other words, the ship-owner/carrier[1] and the charterer[2] need the delivery of the transported goods within the shortest possible time.

In the execution of the charterparty, loading and discharging are the joint operations performed by the shipowner and charterer under the control of the charterer.

Regarding to prevent the time lost during the joint operations of loading and discharging some specific clauses may be foreseen in the charterparty. Laytime; demurrage and demurrage fees; whether on port or not (WIPON)/whether on berth or not (WIBON) are some of those clauses that constitute the subject of this work.

Thus, the aim of this work is to analyze in depth the maximum length of time that the ship has to wait for the conclusion of the loading and discharging operations.

Accordingly, in the first paragraph a general explanation on the basic notion of charterparties; laytime, demurrage and WIPON/WIBON clauses will be given. At the second and third paragraphs, a comprehensive analysis of the demurrage under English and Turkish law will be done. As for the last paragraph, the maximum length of the demurrage will be examined in details with possible remedy to apply English law breach of contract provisions to Turkish law demurrage system.

II. In General

It might be more explicative to define shortly the basic notions related with the demurrage and WIPON/WIBON clauses in the first instance before giving the details.

---

1 According to the circumstances one of the contracting parties in the charterparties may be shipowner or carrier. That is why both of the terms are used here. Hereafter the shipowner term would refer carrier as well.

2 According to the circumstances, the other party of the contract may be charterer or consignor or other related persons (including agents, freightforwarder etc). Hereafter the charterer term would be used as including all related persons.

That is why, under this chapter, a brief definition of charterparties (and their importance); laytime and demurrage; WIPON/WIBON clauses will be given.

A. Charterparties

The carriage of the goods by sea might be done by providing a vessel for that purpose. The legal arrangement for realizing this purpose is called as contract of affreightment[3] (or contract of freight).

Therefore, two main types of the contract of freight may be distinguished as the contract of bills of lading and the charterparties. If an amount of goods is subjected by the contract of freight, it constitutes the contract of bills of lading[4].

The charterparties are the type of contract where the entire vessel (full charter) or a substantial part of it would be used for the carriage of goods by sea. There exist different types of charterparties. If the entire vessel or a part of it is chartered for one or more voyages, it is called voyage charter. Sometimes the charterer prefers to charter the vessel for a period of time which is called time charter[5].

According to these definitions, it is obvious that the loading and discharging time is essential in voyage charterparties[6]. Furthermore, the charterparties are the essential instrument defining the duties and responsibilities of the shipowner and charterer. In this regard, a number of standard clauses are designed as WIPON/WIBON clauses.

B. Laytime and Demurrage

Regarding to the execution of a charterparty, the loading and discharging stages[7] are the joint operations that should be fulfilled by the shipowner and charterer.

The allowed period of time for the loading and discharging stages is called

---

3 For further detail please see ÇAĞA T, KENDER R, *Deniz Ticareti Hukuku II, Navlun Sözleşmesi*, (XII Levha Yayınları; 2010; 10th Edition), pp. 6 – 8 (hereinafter referred as ÇAĞA/KENDER); WILSON J, *Carriage of Goods by Sea*, (Pearson Education Limited; 7th Edition; 2010), p. 3.

4 For further detail on bills of lading contract please see BAUGHEN S, *Shipping Law*, (Routledge-Cavendish Edition; 2009; 4th Edition), pp. 8 – 9; ÇAĞA/KENDER, p. 9; WILSON J, pp. 5 – 6.

5 For further details on the charterparties please see, BAUGHEN S, pp. 9 – 10; ÇAĞA/KENDER, pp. 6 – 9; WILSON J, pp. 3 – 5.

6 That is why the voyage charter constitutes the subject charterparty of this work. Hereafter "charterparty" or "charter" would refer voyage charter as well.

7 The execution of the voyage charters may be analyzed under three or four (sometimes five) stages. For further details and different approaches on stages please see ÇAĞA/KENDER, pp. 17 – 64; ÜLGENER F, *Çarter Sözleşmeleri I Genel Hükümler Sefer Çarteri Sözleşmeleri* (Der Yayınları; 2000), pp. 340 – 341 (hereafter referred as ÜLGENER F, Çarter); WILSON J, p. 53.

laytime. Laytime is the period of time that the shipowner should wait without compensation. In other words, loss of time during the loading and discharging operations as laytime is compensated with the freight payment[8].

The length of laytime may be agreed in the charterparty. Accordingly, different types of laytime may come out as fixed, unfixed or customary laytime. Even the voyage charters are distinguished according to the laytime provisions.

As the name implies, the fixed laytime describes the loading and discharging allowed period of time fix as hours or days. Sometimes instead of fixing time, the daily loading/discharging rate of cargo (as a sum of tons per day) may be fixed as well[9]. Under the fixed laytime charterparty, the risk is on the charterer. In other words, in the fixed laytime voyage charter, the charterer has to finish loading and discharging operations within the fixed prescribed period. He may not even lay down on force majeure or cas fortuit[10].

The unfixed laytime may occur under different circumstances. If the voyage charter prescribes customary laytime or reasonable time as the length of laytime or if it concerns clauses like "*fast as can*", "*customary quick dispatch*", "*custom of the port*"; it foresees unfixed laytime. Under unfixed laytime charter, the loading/discharging operations should be terminated in a reasonable time. In the absence of the fault of the charterer or force majeure and cas fortuit; all the risks of delays (caused for instance by the strike or bad weather etc) lie with the shipowner[11].

The field of activity (or causing) principle may be classified as the third laytime regime. According to this principle, applied in Turkish/German and Scandinavian legal systems, the field of activity of each party of voyage charter is defined. Thus,

---

8 For further details please see BAUGHEN S, pp. 236 – 238; ÇAĞA/KENDER, pp. 39 – 43; DAVİES D*, Commencement of Laytime*, LLP, 1987, p. 1 – 2; GILMORE G, BLACK Jr C. L, *The Law of Admiralty*, (The Foundation Press; 1975), pp. 210 – 211; HUGHES A.D, *Casebook on Carriage of Goods by Sea*, (Blackstone Press Limited; 2nd Edition; 1999), p. 358; SHOENBAUM T, *Admiralty and Maritime Law*, (West Group Thomson Reuters; 5th Edition; 2012), p, 704; SCHOFIELD J, *Laytime and Demurrage*, (LLP, Reprinted 5th Edition; 2008), pp. 1 – 4; ÜLGENER F, Çarter, pp. 341 – 342; ÜLGENER F, *Sürastarya Süresi ve Ücreti*, (Banka ve Ticaret Hukuku Araştırma Enstitüsü; 1993), pp. 5 – 9 (Hereafter referred as ÜLGENER F, Sürastarya).

9 For further details please see BAUGHEN S, p. 237; OANA A, *Legal Provisions on Laytime and Demurrage in Charterparties*, (Constanta Maritime University Annals; Year XIII; Vol. 18), (Hereafter referred as OANA A, Laytime), p. 13; SCHOFIELD J, pp. 3, 36 – 50.

10 For further details please see BAUGHEN S, p. 237; ÇAĞA/KENDER, p. 40; GILMORE G, BLACK Jr C. L, p. 211; OANA A, Laytime, pp. 13 – 14; SCHOENBAUMT, p. 705; SCHOFIELD J, pp. 3 – 4, 9 – 36; ÜLGENER F, Çarter, pp. 346 – 349; ÜLGENER F, Sürastarya, pp. 9 – 10.

11 For further details please see BAUGHEN S, p. 238; ÇAĞA/KENDER, p. 40; OANA A, Laytime, p. 14; SCHOFIELD J, pp. 3 – 5, 50 – 67; ÜLGENER F, Çarter, pp. 349 – 350; ÜLGENER F, Sürastarya, pp. 10 – 12.

the cause of the delay would occur under the field of activity of one party who should bear the consequences[12].

The laytime would start when the vessel is an *arrived ship*[13]and the notice of readiness[14] is given if prescribed in the charterparty.

Once the laytime is expired, the demurrage would start to run if agreed in the charterparty. The demurrage is the amount payable unless the reason of the delay may not attribute to the shipowner[15].

The rate of the demurrage should be prescribed in the charterparty. The rate may be determined according to daily basis or with a method of calculating[16]

---

12 For further detail please see ÜLGENER F, pp. 343 – 346; ÜLGENER F, Sürastarya, p. 12.

13 The vessel may become an arrived ship when it arrives to the loading/discharging place prescribed in the voyage charter. Accordingly the voyage charter may specify a dock, port or berth as loading/discharging place. The vessel would be an arrived ship when it arrives to this specified place in the charterparty and ready for the loading and discharging operations. Regarding the readiness for loading/discharging operations, the seaworthiness and cargo worthiness of the vessels should be fulfilled as well. For further details and related case laws please see ASPRAGKKATHOU D, *Review of the GENCON Charter Clauses For the Commencement of Laytime: Analysis of the "Time Lost In Waiting For A Berth To Count As Lay Time Or Time On Demurrage*, (Journal of Maritime Law and Commerce; 2007; Vol: 38; No: 4), p. 606; DAVIES D, p. 2 – 20; LESNI C. I, *The Ship Owner's Obligation to Ensure Seaworthiness of the Ship – Implicit Obligation of the Ship Owner in the Charter Party*, (Contemporary Readings in Law and Social Justice; 2012; Vol: 4/1), pp. 563 – 565; OANA A, *Standard Clauses of Voyage Charter Shifting Risk of Delay and Readiness*, (Constanta Maritime University Annals; Year XIII; Vol. 18), p. 18 (Hereafter referred as OANA A, Voyage Charter);SHOFIELD J, pp. 69 – 117; TODD P, *Laytime, Demurrage and Implied Safety Obligations* (Journal of Business Law; Vol: 8; 2012; Westlaw – online), pp. 671 – 672, 678 – 679; TÜYSÜZ M, *Deniz Ticaret Hukukunda Staryanın Başlaması*, (Gazi Üniversitesi Hukuk Fakültesi Dergisi; 2012; Vol: XVI; No: 2), pp. 38 – 48 (Hereafter referred as TÜYSÜZ M, Starya); ÜLGENER F, Çarter, pp. 350 – 357;ÜLGENER F, Sürastarya, pp. 27 – 57; WILSON J, pp. 53 – 58.

14 For further details on the notice of readiness and the related case laws please see ASPARAGKATHOU D, p. 605 – 606; BAUGHEN S, pp. 239 – 241; DAVIES D, p. 64 – 71; LESNI C. I, p. 564; OANA A, Voyage Charter, pp. 18 – 19; SCHOFIELD J, pp. 117 – 142; TÜYSÜZ M, *Deniz Ticareti Hukukunda Hazırlık İhbarı*, (Erzincan Üniversitesi Hukuk Fakültesi Dergisi; 2010; Vol: XIV; No: 1 – 2), pp. 313 – 347, (Hereafter referred as TÜYSÜZ M, Hazırlık İhbarı); TÜYSÜZ M, Starya, pp. 48 – 52; WILSON J, pp. 58 – 62. It should be noted here that the notice of readiness should be given according to the article 1152 of Turkish Commercial Code unless a specific date is not determined by the charterparty (even it is not stipulated).

15 KENDER/ÇAĞA, p. 43; OANA A, Laytime, p. 14; SHOENBAUM T, p. 705; SHOFIELD J, pp. 6 – 7; ÜLGENER F, Çarter, p. 342; ÜLGENER F, Sürastarya, p. 6. For further detail on the nature of demurrage please see below paragraphs III/A and IV/A.

16 For further detail on the stipulations of demurrage and its rate please see below paragraphs III/B and IV/B.

C. Whether on Port or Not (Wipon)/Whether on Berth or not (Wibon) Clauses

In order to harmonize Anglo-Saxon and Continental law, some specific charterparty clauses appears[17]. Whether on port or not (WIPON) and whether on berth or not (WIBON) may be cited as examples[18].

According to a voyage charter containing WIPON clause; even the vessel may not enter to the port specified in the charterparty; it would be accepted as an arrived ship. In other words, the WIPON clause enables the shipowner to give the notice of readiness (if agreed in the charterparty) even the vessel is "off the Port". Under WIPON clause, the laytime would begin once the vessel enters to the port line and anchors to the customary waiting place[19].

In case of the determination of specific berth by voyage charterparty; the vessel has to anchor to the berth for the beginning of the laytime. Therefore in case of the existence of the WIBON clause, the vessel entered to the port line of the specified berth would be accepted as arrived ship even it may not come alongside the specified berth. In other words regarding to the beginning of the laytime under WIBON clause, the vessel has to enter to the port line of the specified berth however may not come alongside the berth due to congestion[20].

III. Demurrage Under English Law

Under this chapter, the nature, the charterparty's stipulations and the maximum length of demurrage in English law would be examined successively.

---

17 For further detail on the different approaches of English and Turkish law please see below paragraphs III/A and IV/A.

18 ATAMER K, *"Whether in berth or not" Klozunun Uygulama Alanı ve Davada İleri Sürülmesi – Aynı Zamanda "Charterparty Laytime Definitions" ve İngiliz Hukukunun Sürastaryaya İlişkin Sorunlardaki Zorunlu Yol Göstericilikleri Üstüne* - , (İstanbul Barosu Dergisi; 1991), p. 66.

19 OANA A, Voyage Charter, p. 18; SHOFILED J, pp. 158 – 159; ÜLGENER F, Sürastarya, pp. 47 – 48. Regarding the definition and further explanation of WIPON clause please see the Laytime Definitions for Charter Parties 2013 published by Baltic and Maritime International Council (hereafter referred as BIMCO) with the special circular No: 8 (hereafter referred as BIMCO's 2013 Definitions).

20 WIBON clause was firstly cited in the Charterparty Laytime Definitions 1980 of BIMCO (hereafter referred as BIMCO's 1980 Definitions). Therefore, after the publication of the Definitions 1980, the content of the WIBON clauses was severely discussed by the Courts and Arbitrators. The main discussion was if the WIBON clause would be applied in every case where the vessel might not come alongside the berth or if there should be some exclusive case(s). Accordingly, an amendment is foreseen in the BIMCO's 2013 Definitions and the WIBON clause is related exclusively to delays due to congestion of the berth (not bad weather or so). For further detail and case laws please see ASPRAGKKATHOU D, pp. 607 – 608; ATAMER K, pp. 67 – 74; DAVIES D, p. 26 – 33; SHOFIELD J, pp. 159 – 163; ÜLGENER F, Sürastarya, pp. 47 – 51; WILSON J, pp. 60 – 61 and the Laytime Definitions for Charter Parties 2013 published by BIMCO with the special circular No: 8.

A. Nature of Demurrage

Under English law, voyage charters, without prejudice to the exceptions in the law, are the charterparties determining a specific place of loading/discharging (as berth or port)[21].

BIMCO's 1980 Definitions do not contain a reference on the nature of the demurrage; it states only that the demurrage is "*the money payable to the owner for delay for which the owner is not responsible*".

Therefore, in line with this definition, it should be stated that the demurrage constitutes a breach of contract. More explicitly, in case of a fixed laytime charterparty, overrunning the allotted laytime would constitute a breach of contract[22].

Furthermore, regarding to oblige the shipowner to wait after the termination of laytime, the demurrage should be stipulated in the charterparty. That is why it should be classified as the liquidated damages. In other words, demurrage is liquidated damages arising from the breach of the voyage charter; more specifically compensation of the damages arising from holding the vessel more than the laytime agreed by charterparty[23].

Regarding to concretize the liquidated damages character of the demurrage; it should be underlined here that in case of no provision of demurrage in the charterparty; the charterer would be liable for the damages for detention[24].

B. How to Stipulate?

As the demurrage is classified under liquidated damages (or in other words "*agreed damages for detention*"); it should be stipulated expressly in the charterparty.

Furthermore, once the laytime is expired; the demurrage starts to run continuously through Sundays, holidays and other periods excluded from laytime unless

---

21 That is also one of the reasons that the fixed laytime system is mostly applied under English law. For further details please see SCHOFIELD J, pp. 69 – 82; ÜLGENER F, Çarter, pp. 355 – 356.

22 As another example, in case of an unfixed laytime charterparty, overrunning the reasonable time would be also a breach of contract. For further details please see HUGHES A. D, pp. 402 – 403; SCHOFIELD J, p. 343; ÜLGENER F, Sürastarya, pp. 130 – 134; WILSON J, pp. 76 – 77.

23 For further detail please see HUGHES A. D, pp. 402 – 403; GILMORE G, BLACK Jr C. L, p. 211; OANA A, Laytime, pp. 14 – 15; SCHOENBAUM T, pp. 704 – 705; SCHOFIELD J, pp. 343 – 344; TETLEY W, *Marine Cargo Claims* (International Shipping Publications, 1988), pp. 460 – 461; TODD P, 670 – 674;TREITEL G.H. *"Fundamental Breach"*, (The Modern Law Review; Vol: 29; No: 5, 1966), pp. 547 – 548; ÜLGENER F, Sürastarya, pp. 128 – 138; WILSON J, pp. 76 – 78.

24 For further detail on the damages for detention please see GILMORE G, BLACK Jr C. L, p. 212; OANA A, Laytime, pp. 15 – 16; SCHOENBAUM, p. 706; SCHOFILED J, pp. 423 – 438; WILSON J, p. 78.

otherwise specified expressly in the charterparty[25]. In other words, the express stipulation of the demurrage clause should include laytime suspending and amending charter clauses if the parties agree on the application of such clauses to the demurrage time as well[26].

Therefore, under the stipulation of the demurrage, the rate of demurrage should be specified as well. The rate may be determined on a daily or hourly basis or with method of calculating (i.e. on a loading/discharging weight per day basis)[27].

Lastly, it should be underlined here that the rate of the demurrage should be determined reasonably. In other words, if the demurrage rate is fixed unreasonably higher than the possible lost in case of the detention of the vessel more than the agreed laytime; it might be decreased[28].

C. Maximum Length

As the rate, the length of the demurrage might be determined under the stipulation of demurrage as well. The determination of time might be done as specific period of days or hours[29].

In case of non-determination of specific period of time; in other words, in case of the stipulation of demurrage rate but not the length of it, how long does the shipowner should wait?

During the late 19th and early 20th century; the Courts decided that in such cases of non-determination of specific period of time; the shipowner should wait for a reasonable period and afterwards might claim his damages for detention[30].

In a case in early 20th century, during the hearing of a Court of Appeal, one

---

25 This rule of continuous run of demurrage is summarized as "*Once in demurrage; always in demurrage*". For further detail on the case and the subject please see HARDY – IVAMY E. R, *Clauses and the Liability for Demurrage* (The Modern Law Review; Vol: 23; No: 4, 1960), pp. 437 – 439; HUGHES A. D, pp. 404 – 406; OANA A, Laytime, p. 15; SCHOFIELD J, pp. 363 – 367.

26 For further detail on the express stipulation and case law please see BAUGHEN S, pp. 251 – 252; HARDY – IVAMY E. R, pp. 438 – 440; HUGHES A. D, pp. 404 – 409; GILMORE G, BLACK Jr C. L, pp. 213 – 215; OANA A, Laytime, p. 15; SCHOFIELD J, pp. 365 – 367.

27 For further detail please see OANA A, Laytime, p. 15; SCHOFIELD PP. 348 – 349; WILSON J, p 77. According to the *Suisse Atlantique Société d'Armement Maritime SA v. NV Rotterdamsche Kolen Centrale* decision, the rate of the demurrage specified in the charterparty constitutes the limit of the damages occurred by the detention of the vessel more than the agreed laytime. For further detail on the case please see HUGHES A.D., p. 403; SCHOFIELD J, pp. 352 – 353; TREITEL G.H. pp. 546 – 550; WILSON J, p. 77.

28 For further detail and *Dunlop v. New Garage* case please see OANA A, Laytime, p. 15; WILSON J, p. 77.

29 For further detail please see OANA A, Laytime, p. 15; SCHOENBAUM J, p. 345.

30 For further detail and related case law please see SCHOENBAUM J, pp. 345 – 347.

of the judges pointed out the difficulty to determine the exact length of this ambiguous reasonable time[31] . Subsequently, the reasonable time is concretized by the length of time that might cause to the frustration or the repudiation of the contract[32].

Accordingly, charterparty laytime and demurrage provisions should be classified as the warranties rather than the conditions and their breach causes to the payment of the liquidated damages, in other words to the demurrage. Therefore, the shipowner should wait until such breach of contract may be classified as the repudiation or frustration of the charterparty; the concretization of reasonable period[33].

The classification of the demurrage clause as warranty should not be enough for discharging the other party (not in default) from execution of all outstanding obligations. More specifically, in case of the demurrage, as warranty, the shipowner would not be released from his other contractual obligations[34]. The shipowner might only leave the loading port before the completion of loading or might form claims for detention[35].

Finally, the demurrage time might be classified as condition and the shipowner might terminate the contract on the basis of fundamental breach. Thus, the intention of the parties to treat the demurrage clause as condition might be implied from the nature of the stipulation (i.e. the determination of the demurrage period as an exact time) or from the surrounding circumstances (i.e. in case of the successive voyage charterparties, the delay in loading exceeding the demurrage time may give the right to terminate the charterparty)[36]

---

31 More specifically in 1917; in the case Inverkip Steamship Co. v. Bunger & Co; Judge Scrutton L. J. had pointed out the issue. For full text of his speech, please see SCHOENBAUM J, pp. 346 – 347.

32 SCHOENBAUM J, pp. 345 – 347.

33 SCHOFIELD J, pp. 347 – 348.

34 For further detail on warranties and conditions and their effects on the breach of the contract please see SAMUEL G, *Law of Obligations and Legal Remedies*, (Cavendish Publishing Limited, 2nd Edition, 2001), pp. 350 – 351; WILSON J, pp. 347 – 350. For further detail on the fundamental breach and the right to repudiate the contract please see TREITEL G. H, pp. 547 – 549, 553 – 554.

35 In case of the discharging, the shipowner might not have the possibility to leave the discharging port without fully discharging the vessel as he may want to use the full capacity of his ship for the execution of the successive charterparty. That is why, in discharging, the shipowner may discharge the resting load to a warehouse (if any, the rent of it might be included to the claims of detention) and form claims for detention or he may wait until the full discharge of the ship and claim his damages for detention. For further detail on the claim on detention please see OANA A, Laytime, pp. 15 – 16; SCHOFIELD J, pp.345– 348; WILSON J, p. 78.

36 For further detail on the condition and its effect on the repudiation of the contract please see SAMUEL G, pp. 348 – 350; SCHOFIELD J, pp. 347 – 348; WILSON J, pp. 348 – 349.

IV. Demurrage Under Turkish Law

Under Turkish law, the nature, the stipulations and the maximum length of demurrage would be explained with special emphasize on the differences between Turkish and English legal system.

A. Nature Of Demurrage (Legal Nature Of Demurrage)

The nature of demurrage under Turkish law was a much discussed subject since the adoption of the new Turkish Commercial Code numbered 6102 in July 2012.

The situation before the adoption of the new Turkish Commercial Code should be explained briefly regarding to give a general overview.

According to the case laws of the Turkish Court of Cassation in 1960 and 1980's the demurrage was classified as the indemnity for the damages of detention or of delay[37].

In spite of the Court of Cassation's indemnity classification; according to Turkish doctrine it was accepted that the demurrage was an amount to be paid in respect of the detention of the vessel more than the agreed laytimes; in other words an amount to be paid for the detention of the vessel more than the agreed laytimes[38].

The new Turkish Commercial Code stipulates the nature of the demurrage in its article 1155. According to the argument of the article, under Turkish law it is not possible to accept the nature of the demurrage as an amount. The argument classified the demurrage as the default of the creditor and therefore stipulates that the amount of the demurrage, if not agreed in the charterparty, may not be more than the mandatory and beneficiary expenses.

Accordingly, the demurrage is not an indemnity or an amount to be paid in

---

37 There was not any detailed explanation if this classification was caused of detention or delay. Regarding the full text of the case laws; please see the judgments numbered 1960/1182; 1980/3314 and 1986/60. (www.kazanci.com online 03.03.2015) It should be noted here that the judgments of the Turkish Court of Cassation is listed according to the numbers given by the date instead of the names of the parties as in Anglo-Saxon law. For further explanation on the subject please see OKAY S, *Deniz Ticareti Hukuku II, Navlun Mukaveleleri, Denizde Yolcu Taşıma ve Deniz Ödüncü Mukaveleleri*, (İstanbul Üniversitesi Yayınları, No: 1683, 2nd Edition), pp. 133 – 134; SARAÇ Ş, *Deniz Ticaret Hukukunda Yükleme Hazırlığı, Yükleme, Yükleme Limanı, ve Yeri, Yüklemede Müddetler, Kırkambar Mukavelesinde Yüklemenin Hususiyetleri, Yükleme Masrafları*, (Ankara Barosu Dergisi; Vol: 25; No: 4; 1968), p. 673; ÜLGENER F, Çarter, pp. 415 – 416.

38 The reason of this classification was due to the other provisions of the ex-Turkish Commercial Code as the right of charterer to demand the waiting of the vessel till the end of the demurrage or as limiting the claim of the shipowner with the amount of the demurrage. For further detail please see AKINCI S, *Deniz Hukuku Navlun Mukaveleleri*, (İstanbul Üniversitesi Yayınları; No: 1314; 1968) p. 129; ÇAĞA/KENDER p. 48; SARAÇ Ş, pp. 673 – 674; ÜLGENER, Çarter, pp. 414 – 416; ÜLGENER F, Sürastarya, pp. 114 – 117.

respect of the detention of the vessel more than the agreed laytimes; it is an amount covering the mandatory and beneficiary expenses made by the shipowner on the basis of the default of the creditor/charterer.

B. How to Stıpulate?

As in English law, according to article 1154 of Turkish Commercial Code, in order to bind the shipowner to wait more than the agreed laytimes; the demurrage should be stipulated in the charterparty. Differently from English law, the express stipulation of demurrage is not an obligation in Turkish law[39].

Therefore, it should be underlined here that the stipulations of the charterparty on demurrage have their precedence over the Turkish Commercial Code demurrage provisions.

Under Turkish Commercial Code, the parties are not obliged to agree on the rate of the demurrage.

Therefore, the rate of the demurrage may be agreed under the stipulation of the demurrage. The rate, as in English law, may be determined on a daily or hourly basis or with method of calculating (i.e. on a loading/discharging weight per day basis)[40]. Furthermore, the rate might be determined after the conclusion of the charterparty. In other words, the rate should not have to be determined during the establishment of the charterparty[41].

In accordance with the recognition of the nature of the demurrage as the default of the creditor[42], the rate of demurrage, if not agreed in the charterparty, has changed as well. Accordingly, the third paragraph of article 1155 stipulates that in case of the indetermination of the rate of the demurrage in the charterparty, the amount should be calculated according to the mandatory and beneficiary expenses of the shipowner. The shipowner may not claim any further damages for delay or detention.

The Turkish Commercial Code does not regulate the cases where the demurrage rate is determined excessively high. In other words, what would happen if the rate of the demurrage is determined unreasonably high under the charterparty? As Turkish Commercial Code does not provide any response to this question; it

---

39 SÖZER B, *Deniz Ticareti Hukuku I*, (Vedat Kitapçılık; 2013) p. 361.

40 AKINCI S, p. 129; ÇAĞA/KENDER, p. 49; OKAY S, pp. 130 – 131; ÜLGENER F, Çarter, pp. 440 – 443.

41 SÖZER B, p. 362.

42 For further detail on the different approach during the ex-Turkish Commercial Code and the actual situation please see above Paragraph IV/A.

should be solved according to the general principles of Turkish law of obligations. Accordingly, if the rate is unreasonably high, it might be decreased according to the principle of unjustifiable enrichment[43].

As it was mentioned above, Turkish maritime law accepts the principle of the field of activity. Accordingly, the party under whose field of activity that the cause of delay had occurred, should bear the consequences. The Turkish Commercial Code has accepted the same principle for the demurrage as well[44]. In other words, according to the provisions of the Turkish Commercial Code, if the cause of delay occurs in the field of activity of the shipowner, he should bear the consequences and the demurrage time would be suspended till the end of the cause.

According to the above mentioned article(s), the demurrage time would not be suspended unless the cause of it would not result by the fault of the shipowner.

Turkish Commercial Code does not regulate the effect of the laytime amending and suspending clauses on demurrage. Therefore, as the provisions of the Turkish Commercial Code are not mandatory; the parties may agree on the application of laytime amending and suspending clauses to demurrage as well. The agreement of the parties on the application of laytime amending and suspending clauses should be expressly regulated in the charterparty. As in English law, the demurrage time runs days/hours continuously.

Fourth paragraph of article 1156 (and 1172 about discharging) has an important regulation underlining (concretizing) the field of activity principle of Turk-

---

43 For further detail on unjustifiable enrichment under Turkish law of obligations and Turkish Code of Obligations please see ANTALYA G, *Borçlar Hukuku Genel Hükümler*, (Beta Yayınları; 2013; 2nd Edition) pp. 815 – 850; HATEMİ H, GÖKYAYLA E, *Borçlar Hukuku Genel Bölüm*, (Vedat Kitapçılık; 2011), pp. 188 – 202; KILIÇOĞLU A, *Borçlar Hukuku Genel Hükümler*, (Turhan Kitabevi; 201;, 18th Edition), pp. 511 – 539; REİSOĞLU S, *Türk Borçlar Hukuku Genel Hükümler*, (Beta Yayınları; 2014; 25th Edition), pp. 274 – 289; OĞUZMAN K, ÖZ T, *Borçlar Hukuku Genel Hükümler*, (Vedat Kitapçılık, 2014; 11th Edition), Vol: 2, pp. 305 – 400. Therefore, it should be borne in mind that the charterer might be a businessman (as in most of the cases) and he should act as a prudent businessman according to the second paragraph of article 18. Accordingly, the decrease based on unjustifiable enrichment might be limited with the expected prudent businessman behavior. For further detail on the prudent businessman please see ARKAN S, *Ticari İşletme Hukuku*, (Banka ve Ticaret Hukuku Araştırma Enstitüsü; 2011; 15th Edition), pp. 137 – 140; ASLAN İ. Y, *Ticaret Hukuku Dersleri*, (Ekin Basım Yayın Dağıtım; 2012; 6th Edition), pp. 77 – 78; KARAHAN S, *Ticari İşletme Hukuku*, (Mimoza Yayınları; 2013; 25th Edition), pp. 98 – 101; POROY R, YASAMAN H, *Ticari İşletme Hukuku*, (Vedat Kitapçılık, 2010, 13th Edition), pp. 157 – 160.

44 According to the third paragraph of article 1036 and 1055 of the Ex – Turkish Commercial Code, if the loading and discharging activities may not be performed due to the fortuitous events under the field of activity of the shipowner, he may not claim the payment of demurrage fee. For further detail on the field of activity principle and WIBON clause please see ATAMER K, pp. 86 – 93.

ish Commercial Code. Accordingly, if the loading (and discharging according to 1172/4) may not be performed because of the fortuitous event(s) (as storm, ice storm or military mobilization) under the field of activity of each party; the laytime would be suspended however the charterer should pay demurrage to the shipowner for the suspension of the laytime unless otherwise regulated in the charterparty.

As the last paragraph of this chapter, it should be underlined that the field of activity principle may not be compatible with the principle of "*Once in demurrage always in demurrage*"[45]. Therefore, with the stipulation of article 1156/6 (and 1172/6) of Turkish Commercial Code on the continuously running of demurrage might be interpreted as a divergence from the principle of the field of activity. In other words, in the light of the actual stipulation of article 1156/6 (and 1172/6) of Turkish Commercial Code, "*Once in demurrage always in demurrage*" principle should be accepted for Turkish maritime law as well.

C. Maximum Length

Firstly it should be underlined that under the provisions of the Turkish Commercial Code, the parties are not obliged to agree on the maximum length of the demurrage.

In the light of the principle of the field of activity, the maximum length of demurrage, if not determined in the charterparty, is regulated under the provisions of Turkish Commercial Code.

Correspondingly, if the parties have agreed on the length of the demurrage, the parties should have to wait till the end of this agreed period of time.

Accordingly, the second paragraph of article 1154 (and 1170/2 for discharging) of the Turkish Commercial Code states that the maximum length of demurrage, if not agreed in the charterparty, would be ten days[46].

Furthermore, the last paragraph of the above mentioned article(s) stipulate(s) that the demurrage would start to run instantly after the termination of laytime without any further notification[47].

---

45 For further detail please see ÜLGENER F, Çarter, pp. 426 – 428.

46 This is a new stipulation. The argument of the article stipulates that the amendment of the article was accomplished in accordance with the German Commercial Code. Therefore, according to the argument, 14 days, as stipulated in German Commercial Code, was considered too long. Thus it was agreed to fix the maximum length of demurrage as 10 days. It should be underlined here that according to the second paragraph of article 1031 and 1053 of the ex-Turkish Commercial Code, the maximum length of demurrage, if not agreed in the charterparty, should be not more than the half time of the laytime.

47 This is a new stipulation as well. Ex- Turkish Commercial Code made a distinction on the commencement of the demurrage according to the fixed and unfixed laytime. For further detail please see article 1032 of the ex-Turkish Commercial Code.

Lastly it should be mentioned that the demurrage would be suspended unless the loading or discharging activities should be stopped due to a reason caused by the fault of the shipowner according to the last paragraph of article 1156 (and 1172 for discharging).

V. Wipon/Wibon and Demurrage

The application of the above explained rules may be differentiated in case of the specification of the loading/discharging port/berth in the charterparty and the acceptance of the vessel as arrived ship without the arrival to the specified port/berth.

That is why, under this chapter after the general explanation of the demurrage under WIPON/WIBON clause; the maximum length of demurrage under WIBON/WIBON clause in Turkish and English law would be examined. As the last paragraph, the possibility to apply the English law rule of maximum length causing the breach of contract to Turkish law would be discussed.

A. Demurrage Under Wipon/Wibon

As explained under the first paragraph, two important charterparty clauses were foreseen for harmonizing English law and Continental law.

Accordingly, WIPON/WIBON clause regulates the starting moment of the laytime and demurrage. More specifically under a voyage charterparty containing WIPON/WIBON clause, the laytime would start to run even the ship may not arrive to the specified port or berth because of the congestion[48].

Under a charterparty containing WIPON/WIBON clause, if the laytime is terminated before the arrival of the ship to the specified port/berth due to congestion, the demurrage would start to run. In other words, unless otherwise agreed by the parties, the existence of WIPON/WIBON clause would not constitute a reason to make an exception to the general rule on the commencement of the demurrage.

B. Maximum Length of Demurrage Under Wipon/Wibon

i. Turkish Law

As explained under the paragraph above[49] Turkish Commercial Code stipulates under its articles 1154/2 and 1172/2 that the maximum length of demurrage would be ten days unless otherwise agreed by the parties.

---

48 For further detail please see above Paragraph II/C.

49 Please see above Paragraph IV/C.

There exists any clear provision that may cause to break the general rule of maximum length of 10 days under WIPON/WIBON containing charterparty.

The question that may arise here is if the shipowner should continue to wait these 10 days in case of the non-commencement of the loading/discharging till the end of the laytimes under WIPON/WIBON clause containing charterparty. More specifically, in case of the existence of a voyage charterparty containing WIPON/WIBON clause, even the ship may not enter to the specified port/berth till the end of the laytimes; does the shipowner should wait until the termination of 10 days?

The provision of articles 1154/2 and 1172/2 is clear and mandatory unless otherwise agreed by the parties. In the light of above mentioned articles the shipowner should wait until the end of 10 days; even the ship may not enter to the specified port/berth under the WIPON/WIBON clause containing voyage charterparty till the end of laytimes

Lastly, it should be mentioned here that applying English law maximum length causing breach of contract rule by analogy to Turkish law under specific circumstances might be possible by accepting the duty of charterer to load/discharge in a reasonable time as a condition[50].

ii. English Law

Under the normal circumstances, the general rule of maximum length of demurrage that may repudiate or frustrate the contract rule should continue to be applied for English law even the existence of the WIPON/WIBON clause in the charterparty[51].

Therefore, the question that may rise here is the maximum length of demurrage in case of the termination of the laytimes by waiting the turn for port/berth. More specifically if the laytimes are terminated by waiting the turn of the ship for the specified port/berth with WIPON/WIBON clause and under the existent circumstances it is obvious that the ship would continue to wait for quite more times, may the shipowner, despite the existence of demurrage stipulations without the fixation of the length, leave the specified port/berth shortly after the termination of laytimes on the basis of the frustration or repudiation of the contract? In other words, it should be asked that if the explained circumstances (exceeding of reasonable time) may give the shipowner the right to terminate the contract by changing the nature of demurrage from warranty to condition.

---

50 For further detail and discussion please see hereunder Paragraph V/C.

51 For further detail on the maximum length of demurrage under English law please see above Paragraph III/C.

The response of this question would depend on which stage the exceeding of reasonable time has arise. More precisely, in case of the loading, if the shipowner may not arrive to the specified port/berth where the charterer insists on[52]; the right to terminate the contract should be recognize for shipowner because he performed his duty to arrive to the specified place to the charterparty but due to the congestion he may not anchor to the specified port/berth that the risk is undertaken by the charterer by including WIPON/WIBON clause to the voyage charter.

In the discharging, if the shipowner may not anchor to the specified port/berth, the right to terminate the contract may not be used by the shipowner because he needs to discharge the shipment for successive loading operations as the capacity of the vessel is limited. In other words, if such incident arrives during the discharging operations, the possibility of shipowner to terminate the charterparty may be accepted. Therefore, the shipowner would not be willing to terminate the contract as he needs to discharge the shipment. More specifically, the arrival of such incident during the discharging operations does not change the approach to accept the nature of demurrage as condition. Therefore, the insistence of the continuation of the execution of the contract duties by the shipowner may constitute the affirmation of the contract[53] and the charterparty would continue to exist.

C. Possibility To Apply Length Causing Breach Of Contract Rule Under Turkish Law

As explained in the paragraphs above[54], Turkish Commercial Code has express provision on the maximum length of demurrage as ten days.

The question that may rise here is the existence of the possibility of applying English law maximum length condition to Turkish law and exonerate the shipowner from his duty to wait at least ten days unless otherwise agreed. In other words, in case of the existence of a voyage charterparty containing WIPON/WIBON clause, even the ship may not enter to the specified port/berth till the end of the laytimes and under the existent circumstances it is obvious that the ship would continue to wait for quite more times, does the shipowner should wait until the termination of 10 days or may the shipowner leave the specified port/berth shortly after the termination of laytimes on the basis of English law principle of the frustration or repudiation of the contract?

---

52 The lack of the charterer to specify a new port/berth may also be interpreted as his persistence.

53 For further detail on the affirmation of the contract please see SAMUEL G, pp. 349 – 350; WILSON J, p. 352.

54 Please see above Paragraph IV/C and V/B/i.

According to article 1159, if the loading is not started till the end of the agreed laytimes and demurrage, the shipwoner may terminate the contract or may continue to wait. Accordingly, in case of the termination of the contract, regarding to claim the loss of profit (earnings) and other expenses, the shipowner, after the end of the bounding laytime (and demurrage if agreed), should inform the charterer in written. Correspondingly, under such circumstances, in case of the indetermination of the demurrage length in the charterparty does the shipowner should continue to wait ten more days as stipulated in article 1154/2 and 1170/2 of Turkish Commercial Code?

Under Turkish law, it should be accepted that in case of the existence of the WIPON/WIBON clauses in the charterparty, the charterer undertakes to terminate the loading in the shortest reasonable time. Furthermore, in accordance with the field of activity principle accepted by Turkish maritime law, the existence of the WIPON/WIBON clause in the voyage charter confers the liability of the congestion of the specified port/berth to the charterer. In the light of these explanations it might be possible to consider that the termination of the loading in the shortest possible time constitutes the substantial condition of such WIPON/WIBON clause containing charterparty[55]. Accordingly, under such circumstances, the shipowner should, at first ask to the charterer to specify another port/berth and in case of the insistence of the charterer to the specified port/berth, he may, without waiting till the end of the ten days demurrage time, terminate the contract. In other words, in case of the existence of a WIPON/WIBON containing voyage charter, if the loading is not started till the end of the laytimes and it was obvious from the circumstances that waiting ten more days as legal demurrage time is useless, the shipowner, without waiting till the end of the demurrage, may terminate the charterparty in accordance with article 1159 of Turkish Commercial Code.

Another question might be that if the parties have agreed on a maximum length of demurrage in the voyage charter; under the above mentioned circumstances, does the shipowner should still wait till the end of the agreed demurrage length? Under such circumstances, the general principle of precedence of charterparty stipulations should continue. In other words, if the charterparty has stipulations over the maximum length of demurrage, the shipowner, even it is obvious that he may not start to load till the end of this period of time, should wait till the end[56].

---

55 Under Turkish law of obligations, the conditions of a contract may be distinguished as substantial and secondary conditions. The substantial conditions are such kind of conditions that the non-existence of them would frustrate the intent of one of the parties (or may be both of them) to conclude the contract. For further detail please see ANTALYA G, pp. 164 – 166; HATEMİ H, GÖKYAYLA E, pp. 29 – 31; KILIÇOĞLU A, pp. 188 – 189; OĞUZMAN K, ÖZ T, Vol: 1, pp. 101 – 107; REİSOĞLU S, pp. 120 – 122.

56 More explicitly, in the operation of a vessel, a detailed scheduled should be made regarding

The discharging is regulated under article 1174 of the Turkish Commercial Code. Accordingly, if the discharging is not terminated till the end of the agreed laytimes (and demurrage if agreed), the shipowner, in accordance with article 107 and 108 of the Turkish Code of Obligations, may consign the shipment (or the rest of it) to a warehouse or if the consignment is not possible[57] he may, with the decision of the judge, sell the shipment by auction[58].

Therefore, regarding to consign or to sell the shipment by public auction, firstly the vessel needs to anchor to the port/berth. Under the above mentioned circumstances, the impossibility to the arrival to the specified port/berth due to the congestion prevents the discharging. Accordingly, the above mentioned articles on the consignment or selling by public auction may be applied by analogy.

More specifically, under the above mentioned circumstances, if the vessel may not arrive to the specified port/berth due to the congestion till the end of the laytimes for discharging, the shipowner should ask to the charterer to specify another port/berth. In case of the insistence of the charterer to the specified port/berth, the shipowner, in accordance with the stipulation of the above mentioned articles, may consign the shipment to a warehouse situated in the nearest port/berth of the charterparty's specified port/berth. In other words, under the above mentioned circumstances, in case of the insistence of the charterer on the specified port/berth; the shipowner may have the possibility to discharge and consign the shipment to a warehouse in the nearest port/berth or if the consignment if not possible, with the decision of the judge, he may sell the shipment by public auction in the nearest port/berth in accordance with the articles 1174 of Turkish Commercial Code and 107 – 108 of Turkish Code of Obligations.

Furthermore, under such circumstances, in the application of article 1174, as in article 1159 explained above under loading, the shipowner's possibility of consignment or selling by public auction would be possible unless an express stipulation of the length of the demurrage is foreseen in the charterparty. In other words,

---

to optimize the earnings. Therefore, in the schedule, the performance time of every charterparty should be foreseen in accordance with the stipulations of them. Accordingly, in case of a WIPON/WIBON containing charterparty stipulating a maximum length of demurrage, it might not be possible to consider that the schedule is made without paying attention to this stipulation of the length of demurrage.

57 According to article 108 of the Turkish Code of Obligations, if the consignment to a warehouse is not suitable for the subject of the contract (i.e. the goods may be deformed) or if it is too expensive; the consignment would not be applied. For further detail please see HATEMİ H, GÖKYAYLA E, pp. 241; KILIÇOĞLU A, pp. 683 – 685; OĞUZMAN K, ÖZ T, Vol: 1, pp. 372 – 374; REİSOĞLU S, p. 341.

58 For further detail on articles 107 and 108 of the Turkish Code of Obligations please see HATEMİ H, GÖKYAYLA E, pp. 241 – 242; KILIÇOĞLU A, pp. 680 – 685; OĞUZMAN K, ÖZ T, Vol: 1, pp. 370 – 374; REİSOĞLU S, pp. 339 – 341.

the application of article 1174 by analogy to the WIPON/WIBON clause containing charterparty under the above mentioned circumstances would be possible only if the length of demurrage is not fixed in the voyage charter.

Briefly, in case of the existence of a voyage charterparty containing WIPON/WIBON clause, during the loading if the ship may not enter to the specified port/berth till the end of the laytimes and under the existent circumstances it is obvious that the ship would continue to wait for quite more times, the shipowner might be released from his obligation to wait ten days of legal demurrage time and may terminate the contract. In the discharging, the shipowner should not terminate the contract however might discharge the shipment to a warehouse in the nearest port/berth and claim for detention for his further expenses.

Thus, under the existing legal provisions it might not be possible to apply English law breach of contract period of time rule to Turkish law as Turkish Commercial Code stipulates a maximum length of demurrage time. Therefore, similarly to English law, in the existence of WIPON/WIBON clause containing voyage charter, the shipowner might be released from his obligation of waiting ten days legal demurrage in loading.

VI. Conclusion

The demurrage is the agreed rate to be paid to the shipowner in case of the exceeding of the laytimes during the loading and discharging operations.

Under a charterparty containing WIPON/WIBON clause, the demurrage may start to run after the termination of the laytimes even the vessel may not arrive to the specified port/berth due to congestion.

The maximum length of demurrage might be agreed in the charterparty. Turkish and English law has different solutions in case of the indetermination of the length of the demurrage in the voyage charter. According to English law, if the length of demurrage is not fixed, the shipowner should wait for a reasonable period of time concretized as the period of time that may cause the repudiation or frustration of the contract. Under Turkish law, Turkish Commercial Code foresees a maximum length of ten days in case of the indetermination.

The maximum length might be important to discuss under some specific circumstances in case of the existence of a voyage charterparty containing WIPON/WIBON clause and the possibility to apply English legal system's rule of maximum length causing the breach of contract by frustration or repudiation to Turkish system.

Correspondingly, during the loading if the ship may not enter to the specified port/berth in accordance with the WIPON/WIBON clause till the end of the lay-

times and under the existent circumstances waiting ten more days according to Turkish law would be useless, according to the application of article 1154 of the Turkish Commercial Code by analogy, the shipowner might be released from his obligation to wait ten days of legal demurrage time and may terminate the contract.

Under Turkish law, the possibility to terminate the contract might not be possible during the discharging. In the discharging, by the application by analogy of the article 1174 of Turkish Commercial Code, the shipowner might discharge the shipment to a warehouse in the nearest port/berth and claim for detention for his further expenses.

Accordingly, under the existing legal provisions it might not be possible to apply English law's maximum length causing breach of contract rule to all sorts of circumstances in Turkish law as Turkish Commercial Code stipulates a maximum length of demurrage time. Therefore, similarly to English law, in the existence of WIPON/WIBON clause containing voyage charter, the shipowner might be released from his obligation of waiting ten days legal demurrage in loading under some specific circumstances.

REFERENCES

AKINCI S, *Deniz Hukuku Navlun Mukaveleleri*, (İstanbul Üniversitesi Yayınları; No: 1314; 1968)

ANTALYA G, *Borçlar Hukuku Genel Hükümler*, (Beta Yayınları; 2013; 2nd Edition)

ARKAN S, *Ticari İşletme Hukuku*, (Banka ve Ticaret Hukuku Araştırma Enstitüsü; 2011; 15th Edition)

ASLAN İ. Y, *Ticaret Hukuku Dersleri*, (Ekin Basım Yayın Dağıtım; 2012; 6th Edition)

ASPRAGKKATHOU D, *Review of the GENCON Charter Clauses For the Commencement of Laytime: Analysis of the "Time Lost In Waiting For A Berth To Count As Lay Time Or Time On Demurrage*, (Journal of Maritime Law and Commerce; 2007; Vol: 38; No: 4)

ATAMER K, *"Whether in berth or not" Klozunun Uygulama Alanı ve Davada İleri Sürülmesi – Aynı Zamanda "Charterparty Laytime Definitions" ve İngiliz Hukukunun Sürastaryaya İlişkin Sorunlardaki Zorunlu Yol Göstericilikleri Üstüne -* , (İstanbul Barosu Dergisi; 1991)

BAUGHEN S, *Shipping Law*, (Routledge-Cavendish Edition; 2009; 4th Edition)

ÇAĞA T, KENDER R, *Deniz Ticareti Hukuku II, Navlun Sözleşmesi*, (XII Levha Yayınları; 2010; 10th Edition) (ÇAĞA/KENDER)

DAVİES D*, Commencement of Laytime*, LLP, 1987

GILMORE G, BLACK Jr C. L, *The Law of Admiralty*, (The Foundation Press; 1975)

HATEMİ H, GÖKYAYLA E, *Borçlar Hukuku Genel Bölüm*, (Vedat Kitapçılık; 2011)

HARDY – IVAMY E. R, *Clauses and the Liability for Demurrage* (The Modern Law Review; Vol: 23; No: 4, 1960)

HUGHES A.D, *Casebook on Carriage of Goods by Sea*, (Blackstone Press Limited; 2nd Edition; 1999)

KARAHAN S, *Ticari İşletme Hukuku*, (Mimoza Yayınları; 2013; 25th Edition)

KILIÇOĞLU A, *Borçlar Hukuku Genel Hükümler*, (Turhan Kitabevi; 201;, 18th Edition)

LESNI C. I, *The Ship Owner's Obligation to Ensure Seaworthiness of the Ship – Implicit Obligation of the Ship Owner in the Charter Party*, (Contemporary Readings in Law and Social Justice; 2012; Vol: 4/1)

OANA A, *Legal Provisions on Laytime and Demurrage in Charterparties*, (Constanta Maritime University Annals; Year XIII; Vol. 18), (OANA A, Laytime)

OANA A, *Standard Clauses of Voyage Charter Shifting Risk of Delay and Readiness*, (Constanta Maritime University Annals; Year XIII; Vol. 18), (OANA A, Voyage Charter)

OKAY S, *Deniz Ticareti Hukuku II, Navlun Mukaveleleri, Denizde Yolcu Taşıma ve Deniz Ödüncü Mukaveleleri*, (İstanbul Üniversitesi Yayınları, No: 1683, 2nd Edition)

OĞUZMAN K, ÖZ T, *Borçlar Hukuku Genel Hükümler*, (Vedat Kitapçılık, 2014; 11th Edition), Vol: 1 – 2

POROY R, YASAMAN H, *Ticari İşletme Hukuku*, (Vedat Kitapçılık, 2010, 13th Edition)

REİSOĞLU S, *Türk Borçlar Hukuku Genel Hükümler*, (Beta Yayınları; 2014; 25th Edition)

SAMUEL G, *Law of Obligations and Legal Remedies*, (Cavendish Publishing Limited, 2nd Edition, 2001)

SARAÇ Ş, *Deniz Ticaret Hukukunda Yükleme Hazırlığı, Yükleme, Yükleme Limanı, ve Yeri, Yüklemede Müddetler, Kırkambar Mukavelesinde Yüklemenin Hususiyetleri, Yükleme Masrafları*, (Ankara Barosu Dergisi; Vol: 25; No: 4; 1968)

SHOENBAUM T, *Admiralty and Maritime Law*, (West Group Thomson Reuters; 5th Edition; 2012)

SCHOFIELD J, *Laytime and Demurrage*, (LLP, Reprinted 5th Edition; 2008)

SÖZER B, *Deniz Ticareti Hukuku I*, (Vedat Kitapçılık; 2013)

TETLEY W, *Marine Cargo Claims* (International Shipping Publications, 1988)

TODD P, *Laytime, Demurrage and Implied Safety Obligations* (Journal of Business Law; Vol: 8; 2012; Westlaw – online)

TREITEL G.H. *"Fundamental Breach"*, (The Modern Law Review; Vol: 29; No: 5, 1966)

TÜYSÜZ M, *Deniz Ticaret Hukukunda Staryanın Başlaması*, (Gazi Üniversitesi Hukuk Fakültesi Dergisi; 2012; Vol: XVI; No: 2), (TÜYSÜZ M, Starya)

TÜYSÜZ M, *Deniz Ticareti Hukukunda Hazırlık İhbarı*, (Erzincan Üniversitesi Hukuk Fakültesi Dergisi; 2010; Vol: XIV; No: 1 – 2), (TÜYSÜZ M, Hazırlık İhbarı)

WILSON J, *Carriage of Goods by Sea*, (Pearson Education Limited; 7th Edition; 2010)

www.kazanci.com (online 03.03.2015)

ÜLGENER F, *Çarter Sözleşmeleri I Genel Hükümler Sefer Çarteri Sözleşmeleri* (Der Yayınları; 2000), (ÜLGENER F, Çarter)

ÜLGENER F, *Sürastarya Süresi ve Ücreti*, (Banka ve Ticaret Hukuku Araştırma Enstitüsü; 1993), (ÜLGENER F, Sürastarya)