

MEMBER ALERT



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MARITIME POLLUTION IN TURKEY – CRIMINAL LIABILITY

Members are alerted to the fact that recent amendments to the Turkish Criminal Code (TCC) incorporate two new articles (Articles 181 and 182) which expressly establish criminal liability for both intentional and negligent acts causing marine pollution.

The relevant articles read, in translation, as follows:

Article 181 – “polluting environment intentionally”.

- (1) *“Person, who intentionally dumps wastes or leftovers to land, water or air in a way against the technical procedures determined by relevant laws that will harm the environment, shall be punished with penalty of imprisonment between 6 months to 2 years.*
- (2) *Person, who imports wastes or leftovers into country without permission, shall be punished with penalty of imprisonment between 1 year to 3 years.*
- (3) *In case wastes or leftovers show a permanent characteristic on land, water or air, above mentioned punishments shall be doubled.*
- (4) *In case the acts mentioned under 2nd, 3rd and 4th paragraphs here above are committed by wastes or leftovers that have features to cause illnesses to human beings or animals which are hard to treat, that cause atrophy to breeding capability, change animals’ or plants’ natural characteristics, punishment of imprisonment not less than 5 years and payment of judicial fine for 1000 days shall be judged.*
- (5) *Regarding the acts mentioned under 2nd, 3rd and 4th paragraphs of this article, security measures particular to legal entities shall be judged concerning those entities.”*

Article 182 – “polluting environment by negligence”.

- (1) *“Person, who negligently causes dumping wastes or leftovers to land, water or air in a way which will harm environment, shall be punished with judicial fine.*

In case those wastes or leftovers leave permanent effect on land, water or air, punishment of imprisonment between 2 months to 1 year shall be judged.

- (2) *Person who negligently causes dumping wastes or leftovers that have features to cause illnesses to human beings or animals which are hard to treat, that cause atrophy to breeding capability, change animals' or plants' natural characteristics, punishment of imprisonment between 1 to 5 years shall be judged."*

Experience to date indicates that while the authorities at Istanbul, Kocaeli and Ismia have not so far been minded to issue criminal proceedings in consequence of cases of marine pollution, those in Iskenderium and Antalya have taken a more aggressive stance.

However, your Managers have been informed that the Ministry of Environment and Forestry recently issued a circular (No. 2009/13 of May 15, 2009) authorizing and instructing relevant port, Coast Guard and metropolitan authorities to file criminal complaints with public prosecutors in accordance with the above articles in addition to the imposition of administrative sanctions.

The upshot of these new instructions is that public prosecutors will most likely initiate criminal proceedings against masters of vessels responsible for maritime pollution in Turkish ports.

It would appear that payment of an administrative fine will not prevent the initiation of criminal proceedings. Consequently, notwithstanding such payment, it is likely that further action as the basis for a criminal prosecution will be taken by local authorities in such cases. This will entail the collection of all relevant evidence, including the taking of statements from masters etc.

This extension of the criminal system beyond the operation of administrative procedures will create the very unwelcome probability of vessels being more extensively delayed in Turkish ports in the event of maritime pollution. It goes without saying, therefore, that Members and their crews are urged to exercise the greatest of caution in avoiding polluting incidents in Turkish ports – or anywhere else for that matter – in view of the criminal implications described above.

Your Managers are grateful to Omur Marine Ltd. – specifically Ahmet Can Bozkurt & Benek Guvenilir Erdemir – for providing them with the information upon with this Alert has been based.