

Arbitration - Turkey

Court of Appeals finds disputes regarding liens over ships unarbitrable

Contributed by **Cerrahoglu Law Firm**

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In a decision dated December 10 2009, the Turkish Court of Appeals ruled that disputes regarding the establishment of liens over ships should be resolved exclusively by Turkish courts, despite an existing explicit arbitration agreement.⁽¹⁾

The dispute in question arose as a result of goods being damaged during shipment overseas. The importer of the goods argued before the first instance court that the goods, which were free of damage when they were loaded onto the ship, were damaged during the trip. The importer claimed that the carrier was liable for the damage. Accordingly, the importer requested damages and the establishment of a lien over the relevant ship. The carrier made a jurisdictional objection on the grounds that it was agreed between the parties that any disputes arising out of the shipment would be resolved in arbitration in London, and that such agreement was referred to in the bill of lading. The court of first instance accepted the jurisdictional objection and ruled that the dispute should be resolved in arbitration in London under English law. The importer appealed the decision.

The Court of Appeals overruled the court of first instance decision and decided that the dispute should be resolved before Turkish courts under Turkish law for the following reasons:

- The establishment of a lien over a ship, which is an immovable, is a right *in rem* under Turkish law and is governed by Article 23 of the International Private and Procedural Law (2675).⁽²⁾
- The lien follows the ship and the goods according to Article 1236(2) of the Turkish Commercial Code.⁽³⁾
- In the case at hand, an injunction was issued for the arrest of the ship in order to execute the right of establishment of the lien; however, such injunction was lifted on guarantee. In such case it is mandatory that the lawsuit initiated in due course for continuation of the injunction for the establishment of the lien over the ship is handled before the Turkish courts.

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Endnotes

(1) Decision of the 11th Civil Chamber of the Turkish Court, December 10 2009, E 2008/7283, K 2009/12746.

(2) The International Private and Procedural Law was revised after the date of the decision. The corresponding article is Article 21 of the International Private and Procedural Law (5718) as published in *Official Gazette* 26728 on December 12 2007. According to Article 21(1) of Law 5718, the ownership and other rights *in rem* regarding movable and immovable properties are subject to the laws of the country in which they are located at the time of the transaction.

(3) Article 1236/2 of the Commercial Code states that liens can be enforced against all third parties which possess the ship.