

Some legal issues regarding salvage in Turkish Straits

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Case History – M/T GS

- M/T GS was sailing from Kertch to USA-Corpus Christi port with 85.893 mtns of FUEL OIL on board.
- Started Bosphorus passage as of 13.54 hrs with pilot on board.
- Temporary steering gear failure at 14:54 hrs, Master ordered full astern and pilot asked tug assistance from VTS.

Case History – M/T GS

- Succeeded to reduce speed with full astern and vessel dropped starboard anchor at 15:00 hours.
- Vessel safely secured at 15.02 hours with 10 shackles in water. Master and pilot checked and confirmed that M/E and steering gear were working in good order.
- As vessel was anchored, 3 tugs assisted her during sailing manoeuvre and escorted her to the anchorage area.

Case History – M/T GS

- Towage and escort fee charged three times more than usual tariff and paid. She was allowed to sail.
- Vessel then arrested by Turkish Coastal Safety (TCS) who alleged that services provided were not usual towage services but extraordinary assistance and asked for salvage security of USD. 10.500.000.-
- Bank guarantee provided, vessel sailed, TCS started legal action for collection of a salvage fee of USD. 4,000,000.-

Case History – M/T GS

- Court accepted “extraordinary assistance” allegation due to size of tanker, place of incident, tanker being loaded and ordered owners to pay USD. 958,000.-
- Judgment appealed by both parties. Owners argued that same is not salvage or extraordinary assistance. TCS argued that amount is too low for services provided.
- Court of Appeal dismissed judgment stating that another expert opinion had to be taken about the objections of both parties.

Case History – M/T GS

- File sent to another team of experts. One of the experts accepted services as salvage / extra ordinary assistance and other expert did not agree.
- File sent to a second team of experts and technical experts have concluded that there is salvage and assistance. They have also pointed out the market application for salvage fee is between 3 -5 percent of salved values. Legal expert within the team stated that there is no salvage.

Case History – M/T GS

- Court decided to follow the opinions of the technical experts and ordered owners to pay 3 percent of salvaged values as salvage fee.
- Judgement has been appealed by the owners.
- Parties agreed on an amicable settlement before return of file from the Court of Appeal in the year 2013.

Case History – M/T GS

- Judgment has been appealed by the salvors.
- Court of Appeal approved the first degree court judgment.

Case History – M/V AR

- Container vessel berthed to berth no.10 at Haydarpasa port.
- Upon completion of discharging and loading operations, vessel started sailing manoeuvres with pilot on board and with usual assistance of two tugs.
- Turkish Maritime Organization (TMO) as a state owned institution had monopoly in that area for towage and compulsory pilotage.
- Vessel sailed 10 meters from bow and 40 meters from aft and stopped. Rope of one of the tugs cut off.

Case History – M/V AR

- Pilot asked third tug . 15 mins later, third tug arrived. In the meantime, ballast operation performed.
- With the assistance of third tug and others, vessel continued sailing in 15 minutes.
- TMO arrested vessel stating that salvage services provided to the vessel
- Owners released vessel by providing USD. 3,000,000 bank guarantee.

Case History – M/V AR

- Owners have started legal action for determination of services as towage and pilotage rather than salvage.
- TMO started legal action for payment of salvage fee.
- Both cases united by Istanbul Admiralty Court.
- Owners have succeeded to reduce the amount of security to TL 2,000,000 during litigation.
- Court accepted owners' argument and decided that the services were only towage and pilotage, not salvage.

Case History – M/V AR

- Main reasonings of court:
- Vessel arranged sailing drafts according to the information given by Haydarpasa Port Authorities.
- Any changes of seabed within port and berth area needs to be known by port authority. Vessel arrivals and departures have to be programmed accordingly.
- Negligence in this incident belongs to Port Authority.
- Vessel was not under danger.

Case History – M/V AR

- Master was not informed of any danger and that third tug was in fact being requested for salvage reasons.
- If there was a salvage situation, master should have been granted with usual 6 hours time to refloat vessel by her own means.
- Services provided were towage and pilotage not salvage.

Case History - KT

- Turkish flag fully laden tanker "KT" while her passage through the Bosphorus has an engine failure at 08.15. Towage service is requested from a tugboat of the TMO which was rendering at that time pilotage service to another vessel.
- Hawser is tightened at 08.30. KT is towed to a cove (which is not an anchorage area) and anchored there at 09.05. TMO has drafted and sent a "Towbill".
- The engine failure was already remedied before completion of the towage approximately at 08.45.
- Sea and weather conditions remained appropriate on the day of the incident. TMO claimed salvage remuneration.....

Danger- in general

- Bosphorous and Dardanelles amongst the dangerous sea ways.
- Narrow places, strong surface and deep currents
- Towage and pilotage are means to minimise the danger
- Although according to Montreux Convention, both towage and pilotage are voluntary.

Grounding

- Grounding into the Strait under circumstances may be seen as a "dangerous situation"
- An interesting example of salvage: Grounding on a not deep sandy bottom
- Salvage company holding the monopoly of salvage sends a tug and offers to initiate a salvage operation

Grounding

- Another vessel of the same owner comes along and by continuous running of the propeller disperses the sand and as a result the grounded "sister" vessel is again afloat.
- The salvage company holding the monopoly of salvage within the Straits claims for breach of the monopoly.

Engine failure

- Vessels may have engine failure while transiting the strait
- A vessel incapable of maneuvering may be considered in danger
- What if the vessel requests a tug?
- What if the vessel's engine restarts normally while being towed or at the very beginning of the towage?

Anchoring

- A vessel that may be regarded as in danger (for example due to her sudden incapacity of maneuvering) may drop anchor to avoid (possible) collision or grounding.
- Or the vessel may be towed to a place where she can drop anchor.
- Is a vessel anchored in the Strait in danger? This is a technical issue.

Towage or salvage?

- In some instances it is difficult to draw a line between towage and salvage
- A tug may agree to render salvage service to a vessel in distress
- But instead, a tug may agree to tow the vessel in distress under a towage contract (towage may be agreed in presence of the danger).
- A tug may provide service without "clarification" as to its nature by the parties.

towage

- Where towage is agreed by the tug without being aware of the distressed state of the vessel, the tug can be allowed to ask more than the consented remuneration (for the towage).
- Where salvage is agreed under duress, the law enables the salvaged property to ask for reduction of the salvage reward.

towage

- Where ordinary towage service has been agreed, towage may become salvage after the danger arises (less probable in Turkish Straits) if
- The tow is in danger by reasons of un contemplated circumstances
- Risks are incurred or duties are performed beyond the scope of the towage.

towage

- A tug is neither required to accomplish the towage in any case and whatever happens after the contract nor allowed to abandon the towed vessel to her fate after the performance of the towage has become impossible in the mode originally intended.
- If the tug, after the towed ship falls in distress, does not do everything it can to protect that ship, it may be liable for the subsequent necessary salvage provided by a third party.

towage

- For performances agreed in the towage contract, only the towage fee
- But in case of towage agreed after the distress has appeared aiming to save the vessel, salvage reward (if success is achieved).
- Salvage performed after the agreed towage ended or abandoned (for example where the master of the tow has agreed a salvage reward with the tug)
- Article 17 of the 1989 Salvage Convention: Salvage services rendered after distress has arisen (services under an existing contract)

towage

- Article 17 Salvage Convention: Towage contract made before the distress + towage contract still not terminated when distress appeared.
- The tug must assist the tow during towage (in order to be able to fulfil its contractual commitment).
- The tug may bring exceptional performance in that respect.
- If the exceptional performance can be regarded (in accordance with good faith and fair dealing) as beyond the fulfillment of the towage contract, entitlement to salvage reward.

Towage

- Turkish law is similar. The only provision we have reads as follows:
"Services rendered or to be rendered pursuant to a contract entered into before the danger arose.... Shall not constitute salvage".

Towage as salvage from the outset

- When towage is agreed after the distress (conditions for salvage being prima facie fulfilled), two factors are relevant (for allowing salvage reward):
 - Does the agreement expressly exclude the salvage
 - Is that exclusion agreement inequitable
- Example: Towage agreement for a partially disabled vessel with master and crew on board providing "no claim to be made for salvage". Salvage claim allowed (master and crew having subsequently abandoned the towed vessel).

Service provided without clarification

- If there is no towage contract existing between the parties, it is reported that courts are/will not be reluctant to admit salvage service provided to a vessel in danger (Kennedy & Rose no. 621).
- This view refers, we believe, to a towage contract at the moment when the distress has first appeared.
- Onus of proof that conditions for salvage remuneration are fulfilled lies on the tug.

Requested (engaged) services

- Salvage remuneration awarded for services to property in danger despite the ineffectiveness of those services.
- Salvage remuneration allowed if the service provider was called to render service (standing by or bringing an anchor from the shore).
- In Turkish Straits, the problem is that often the pilot calls a tug boat.

Pilot

- Turkish pilots render service to transiting vessels and to vessels entering or leaving the port/berth.
- Can pilots be rewarded for salvage?
- Pilotage is a dangerous job (Pilots are engaged to conduct the vessel in dangerous waters). The provision of the same service by another person, might have entitled that person to salvage reward.

Pilot

- Pilots are not members of the crew. They perform their duties on board pursuant to a service providing contract
- They may be entitled to salvage reward if they render service beyond their contractual commitment in case of distress (*beyond the line of their appropriate duties*)
- However Turkish Code of Commerce does not seem very clear (*Article 1298(4)(b) states that "acts of persons employed on the vessel in distress shall not constitute salvage activity"*).

Pilot

- Test to adopt?
- Agreement of a fair and reasonable pilot and shipowner? *Would they agree under the prevailing circumstances that the services to be performed should be performed for ordinary pilotage fees? Or even extraordinary pilotage reward? Or for salvage reward?*
- In deciding whether salvage reward is deserved, the state of the vessel (badly damaged), the place of call (outside from pilot grounds) may be relevant.
- Also relevant: whether in the absence of a pilot, somebody else knowing the local waters would be called?

Pilot

- Danger alone is not sufficient
- The vessel must be in such distress as to be in danger of being lost
- And the pilot must have been called upon to run such unusual danger or incur such unusual responsibility or exercise such unusual skill or perform such an unusual kind of service
- So that it reveals unfair and unjust to pay less than salvage reward.

Pilot

- If danger exists at the outset, the pilot may propose salvage reward (instead of pilotage fee). If he does not he will be regarded as consenting to pilotage fee
- If danger (transforming the character of the service) appears later , the pilot will be bound to stay on board but will be entitled to ask for salvage remuneration.

Pilot

- Pilot on board a salving vessel: Pilot may require his share from the owner (of the salving vessel) if he rendered services beyond his contractual obligations.
- Pilot on board a salved vessel (the frequent case in Turkish Straits)
- The fact that the pilot has assumed the role of "acting master": Giving commands (for example to tug boat masters)? Not enough per se.

Pilot

- Pilot's giving advice (may be enough for admitting salvage)
- Pilot's restoring morale and maintaining discipline (may also be enough).

Pilot

- Onus of proof that the pilot has rendered salvage service and deserved salvage reward will be on the pilot when evidence is "equivocal".