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DESTRUCTION OF CARGO AS ONE OF THE TYPES OF IMPOSSIBILITY OF PERFORMANCE OF THE CONTRACT OF CARRIAGE OF GOODS BY SEA

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Introduction

Maritime transport as one of the most important modes of transport plays an important role in the implementation of international economic relations. Sea has been used for centuries in order to carry out various international trade relations, especially transportation activity. Despite the existence of other means of transport such as air, rail and land in modern time, sea transport preserves its significance. According to estimates, it captures the most widely used place for transportation in comparison with the other types of transport due to the features such as being cheaper, eco-friendly, having capacity to carry huge amount of goods and so on. In terms of the subject maritime transport can be divided into two forms: carriage of persons and carriage of cargoes. Today, carriage of goods by sea is particularly necessary as one of the most profitable areas. It is carried out in accordance with the contract of carriage of goods by sea between the parties. In addition to the completion of transportation of goods under this contract, there may also be a number of events such as destruction of cargo that make it impossible to perform the contract. Therefore, the determination of these issues has an importance in this article. Since the restoration of independence of the Republic of Azerbaijan maritime transport has achieved economic independence at the result of a number of changes carried out in the economic, technical, organizational and legal contents of the management of this area. The expansion of international relations carried out by Azerbaijan with foreign countries around the world has had a positive impact on the activities of maritime transport, as in other areas. Taking into account that the Republic of Azerbaijan participates in the international trade relations, also the process of transportation by sea, it can be said that the topic of this article takes a significant place both at national and international level.

The parties of carriage transactions must have a binding agreement for the transportation of goods by sea which creates and regulates rights, obligations and liabilities for them. Principally, the parties of this agreement are a shipper and a carrier. A contract of carriage of goods by sea is agreed for transportation of a bulk or general cargo between the parties. Let's look through how expressed this matter in the national legislation and different conventions.

According to the article 1 of the Hague-Visby Rules "a contract of carriage" applies only to contracts of carriage covered by a bill of lading or any similar document of title, in so far as such document relates to the carriage of goods by sea, from the moment at which such bill of lading or similar document of title regulates the relations between a carrier and a holder of the same [1]. In the Hamburg Rules the article 1 defines that "a contract of carriage by sea" means any contract whereby the carrier undertakes against payment of freight to carry goods by sea from one port to another [2]. In accordance with the Rotterdam Rules "a contract of carriage" means a contract in which a carrier, against the payment of freight, undertakes to carry goods from one place to another [3].

In the legislation of the Republic of Azerbaijan the definition for a contract of carriage of goods by sea is reflected in the article 87 of the Merchant Shipping Code. This article defines that a contract of carriage of cargo by sea is any contract under which a carrier is obliged to transport the cargo (provided or to be provided by the shipper) to the destination port and deliver it to the person authorised to accept the cargo (referred to as a consignee) and payment of the transportation costs (freight) will be borne by the shipper or consignee [4].

As can be seen from the above mentioned provisions a contract of carriage of goods by sea is one under which the carrier undertakes to carry the goods from one place to another and deliver them to the consignee, in return for which the shipper is obliged to pay freight to the carrier. If the parties fulfill these obligations in a safe and efficient manner, the carriage relations between them are satisfied. Consequently, the contract of carriage of goods by sea agreed by the shipper and the carrier is terminated. However, in some cases, unexpected events may occur without any default of either party to the contract, as a result of which the contract

can be automatically terminated. Such a principle is called as frustration of the contract. In the words of Lord Radcliffe, "frustration occurs whenever the law recognises that without default of either party, a contractual obligation has become incapable of being performed because the circumstances in which performance is called for would render it a thing radically different from that which was undertaken by the contract. Non haec in foedera veni. It was not this that I promised to do" [5, p. 38].

One of the types of frustration of the contract of carriage of goods by sea is impossibility of performance. So, such an event may occur without neglect or fault of any party to the contract that it makes the situation radically different from that which has been agreed under the contract by the parties. At the result of impossibility of performance the parties are discharged from their obligations and the contract of carriage of goods by sea will be automatically terminated. This matter is also reflected in the article 556 of the Civil Code of the Azerbaijan Republic. This article defines that in the event, it is impossible to perform the obligation, namely when the non-performance results from a case, when neither of the parties is responsible, the obligation shall be terminated [6].

It is important to identify the events that make it impossible to perform a contract of carriage of goods by sea. These events may include destruction of the ship, capture of the ship by force, consideration of the ship unfit for sea navigation, destruction of the cargo established in accordance with its individual properties and so on [7, p. 209]. The article 121 of the Merchant Shipping Code clarifies them and notes that the contract will be terminated upon execution of the contract of carriage of goods by sea and before the departure of the ship from the port of loading for the reasons not depending upon the parties without the liability of compensation for the other party for the losses in connection with termination of the contract as follows:

- if the ship is destroyed or captured by force;
- if the ship is deemed unfit for sea navigation;
- ruin of the cargo established in accordance with its individual properties;
- in case that a cargo identified in accordance with the brand features is ruined upon delivery for loading and the shipper does not timely hand over any other cargo instead of the ruined cargo [4].

Accordingly, destruction of cargo which one must be carried or being in carriage under a contract of carriage of goods by sea can result with impossibility of performance of it. This case must not be depended on fault or neglect of either party. Otherwise, either party may be liable for loss of or damage to goods, unless this party proves that the event has not occurred for the reason of his fault or neglect.

Ruin of cargoes can be in various forms, for instance: their stealing, burning, spoiling, rusting, freezing and other cases that lead to loss or reducing of economic value of goods. As the purpose of the contract of carriage of goods by sea is transportation of certain cargoes, carriage of the destructed goods will not have significance for the parties. Therefore, it is important to determine destruction of cargo as one of the types of impossibility of performance of this contract.

Destruction of cargo can be looked through in two aspects for the ground of the time of occurence: before and after departure of the ship from the loading port. Before looking through the first aspect, it is necessary to determine kinds of cargo such as non-substitutable and substitutable. Because the conditions for delivery for carriage by the shipper may vary depending on what kind of cargo agreed to be transported. Definitions of such types of goods are reflected in the article 135.7 of the Civil Code. It notes that non-substitutable tangible objects are individually defined objects which are distinguishable from other goods because of their specific features. Movable property distinguishable by typical features and usually defined in turnover by quantity, size or weight is a substitutable object [6]. So, as the goods distinguished by specific features cannot be changed with exactly same others they are called as non-substitutable cargo. Because it is impossible to find the other with the feature of being completely same with the goods must be carried. However, substitutable goods are different. As they are defined in reference to typical features such as quantity, weight, size and etc. of contracted - for goods of a certain class (rather than a single object) they can be substituted with the same ones. This feature of substitutable goods is defined as "genus non perit" in Roman law [8, p.106].

If the cargoes described with specific features in the agreement between the parties have been ruined without fault of either party before departure of the ship from the loading port, the contract of carriage of goods by sea will be automatically terminated without obligation to compensate each other. This event is mentioned as one of the grounds for impossibility of performance of the contract in the article 121.1.3 of the Merchant Shipping Code such as "ruin of the cargo established in accordance with its individual properties" [4]. In this case, performance of the contract will be impossible because the destructed cargo is non-substitutable object and another one cannot be provided instead of it. If the shipper wants to deliver other goods instead of the destructed specific cargo then a new contract of carriage of goods must be agreed by the parties in order to carry them [8, p.107].

In the other case that if cargo has been described with the general features in reference to kind or class of goods in the agreement by the parties, it is important to know how a contract of carriage of goods by sea will result after ruin of this cargo. If the substitutable cargo has been destroyed as a result of reasons beyond the control of any party after delivery for carriage to the carrier before departure of the ship from the loading port, performance of the contract can be impossible, therefore, it can be terminated without compensation. But the shipper may provide the carrier with the other cargo in same quantity or other feature. In this case, the contract of carriage of goods by sea will not be terminated. This matter is noted in the article 121.1.4 of the Merchant Shipping Code such as in case that a cargo identified in accordance with the brand features is ruined upon delivery for loading and the shipper does not timely hand over any other cargo instead of the ruined cargo [4]. The shipper must give the notice that he is ready to deliver the new goods and start to load these goods during the time considered for loading of the cargo called as lay time. According to the article 97 of this Code lay time is the period when the carrier brings up for loading and keeps the ship under the load without extra payment for freight [4]. But the shipper must not impede the carrier by loading of new ones instead of destructed goods. The shipper must deliver to load the other goods as soon as possible and bear the additional expenses, furthermore if the waiting time for the completion of the loading extends and the carrier is damaged as a result, the shipper must compensate it [9, p.243]. The article 98 of the Shipping Merchant Code determines this period such as demurrage - upon completion of the lay time additional waiting period. According to the article 99 of this Code amount of the costs to be paid to carrier for the ship demurrage period (delay) will be defined with the mutual consent of the parties [4]. Consequently, if the shipper follows these terms, the contract of carriage of goods by sea remains in force, otherwise it will be automatically terminated.

Let's look through destruction of cargo which occurs before the delivery for carriage. If the intended cargo is destroyed before shipment, there is usually no frustration since it is normally possible for the shipper to obtain a substitute cargo of the same type [10, p.370]. Thus, if the shipper has not delivered cargoes for carriage and they have been destructed, this event does not influence to the result of the contract because these cargoes are considered as in possession of the shipper. The shipper can waive from performance of the contract by compensation to the carrier if he cannot use to substitute the destroyed goods with new ones. This situation is also reflected in the article 529.8 of the Civil Code such as payment of compensation instead of performance of the obligation under the agreement between the parties, may terminate the obligation [6].

Partially destruction of cargoes before departure of the ship from the loading port does not result with termination of the contract. In this case, the shipper can choose one of two ways: to load new cargo instead of the destructed part of the goods and to waive from performance of the contract by compensating [8, p.109-110]. If the shipper chooses the first way, it must not make difficult the situation for the carrier and the shipper must pay extra expenses for loading of new goods. The article 119 of the Merchant Shipping Code notes that the shipper will be authorised to waive from execution of contract, on conditions of payment of all costs incurred by the carrier in connection with the execution of this contract, demurrage costs and or freight or part of it [4]. As can be seen if the shipper chooses the second way, he must compensate the carrier.

Let's look through the second aspect of destrution of cargo which occurs after departure of the ship from the loading port. The article 121.2 of the Merchant Shipping Code defines that in accordance with the article 121.1 of this Code, contract of carriage of goods by sea might also be terminated during sailing [4].

If whole cargo have been destroyed after the time of leaving of the ship from the loading port, the contract of carriage of goods by sea will be automatically terminated without compensation. Contrary, unless there is the term about it between the parties, the shipper will not be obliged to pay freight for the destructed cargo and if freight has been paid before, it must be returned. Otherwise, if the parties have agreed to pay freight in case of destruction of the goods, the shipper must pay freight although the contract cannot be performed [8, p.113].

Destruction of some parts of the cargoes being in carriage does not influence the contract. It can be possible to perform the contract with the other safe parts of the goods. According to the article 121.2 of the Merchant Shipping Code in this case the carrier depending upon the amount the salvaged cargo and freight handed over, will be delivered in an amount proportionate to actual transportation distance [4]. Consequently, the shipper must pay the freight to the carrier for the delivered goods in accordance with the actual distance of carriage.

Conclusion

Transportation of cargo is carried out on the basis of a contract of carriage of goods by sea. In some cases, destruction of cargo may result with the impossibility of performance of this contract. Therefore, it is important to determine these cases in accordance with the doctrine and legislation. In order to consider the performance of the contract impossible, the event of ruin of cargo must be unexpected and not be depending upon any neglect or fault of either party to the contract. As a result, the parties are discharged from their obligations such as compensation. The results of impossibility of performance of the contract of carriage of goods by sea can range due to the cases for destruction of cargo depending on being completely or partially, the time of occurrence such as before and after the departure of the ship from the loading port, determination of cargo such as non-substitutable or substitutable in the contract and so on.

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Yükün məhv olması dənizlə yük daşınması müqaviləsinin icrasının qeyri-mümkün olmasının növlərindən biri kimi

Xülasə

Dəniz yolu ilə nəqliyyat milli və beynəlxalq səviyyədə iqtisadi, xüsusilə də ticarət münasibətlərinin həyata keçirilməsində mühüm rol oynayır. Dənizlə yüklərin nəql edilməsi üçün tərəflər, yəni yükgöndərən və daşıyıcı dənizlə yük daşınması müqaviləsi bağlamalıdır. Məqalədə bu müqavilənin anlayışı barədə milli qanunvericiliyin və beynəlxalq konvensiyaların müddəaları nəzərdən keçirilir və onun əhəmiyyəti qeyd olunur. Elə hadisələr ola bilər ki, onların baş verməsi nəticəsində dənizlə yük daşınması müqaviləsinin icrası qeyri-mümkün olar. Bu səbəbdən müqavilə xitam oluna bilər. Məqalədə müqavilədə daşınması nəzərdə tutulmuş yükün məhv olması bu hallardan biri kimi nəzərdən keçirilir, onun baş vermə zamanı, yükün növü və sair cəhətlərə görə fərqli nəticələri təhlil olunur.

Уничтожение груза как один из невозможных способов исполнения договора о морской перевозки

Резюме

Морские перевозки играют важную роль в реализации экономических, в особенности, торговых отношений на национальном и международном уровнях. Для перевозки товаров морским путем стороны, то есть грузоотправитель и перевозчик, должны заключить договор. В статье рассматриваются положения национального законодательства и международных конвенций по определению этого соглашения и подчеркивается его важность. Могут возникнуть события, которые впоследствии повлияют на невозможность исполнения договора о морской перевозки. По этой причине договор может быть расторгнут. В статье рассматривается уничтожение груза, подлежащего перевозке в договоре, как один из этих случаев, анализируются последствия его возникновения, в зависимости от типа груза и других аспектов.

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