

UNOFFICIAL TRANSLATION

İZMİR 2ND ADMINISTRATIVE COURT
CASE NO: 2002/496
DECISION NO: 2003/1184

PLAINTIFF: Cemsan Ship Dismantling Metal and Steel
Industry Trade Limited Company

REPRESENTATION: Attorney Ufuk Engin Can
1378 Sokak No:4/1 D-408 Kordon İşhanı,
Konak/İZMİR

DEFENDANT: 1- Ministry of Environment/ANKARA
2- Governorship of İzmir/İZMİR
3- Sub-Provincial Governorship Aliağa/ALİAĞA

INTERVENING PARTY: Halis Güzeler-İbrahim Doğangül

REPRESENTATION: Attorney Gökhan Candoğan
Tarlabaşı Bulvarı Kamer Hatun Mahallesi
Altunhan Sokak No:27/3 Beyoğlu/İstanbul

SUMMARY OF THE CASE: Demand by the plaintiff for the cancellation of the decision taken to stop the import of the vessel The Sea Beirut on the basis that it contained high amounts of asbestos and to return the vessel to the country of origin. The demand of the plaintiff is founded on their arguments that they were not notified of analysis reports, the Ministry of Environment does not have the authority under the regulation on Hazardous Wastes to send back wastes to the exporting country, the ship does not contain any waste material, the export of the vessel can be concluded following the removal of the two steam pipes containing asbestos, steam pipes of a similar kind exist in all vessels, no measures are taken about ships dismantled by the MKE although they contain more pipes, all waste was removed from the ship during the importing procedures of the ship, due to the vessel containing 99% metal it should be considered as metal scrap-the export of which is not prohibited, the facts of the matter will be revealed following the expert analysis and as a result of the analysis carried out the company reached the conclusion that "the vessel is not considered as hazardous waste and asbestos is not waste"

SUMMARY OF THE DEFENSE OF THE
SUB-PROVINCIAL GOVERNORSHIP
OF ALİAĞA: Notification was made of the correspondence from the Ministry and the Provincial Directorate of Environment. The Sub-Provincial Governorship has not carried out an inspection related to the issue. All transactions are legal and appropriate; therefore the case should be dismissed.

SUMMARY OF THE DEFENSE OF THE
GOVERNORSHIP OF İZMİR: All notification was made in line with the letters by the Ministry. The vessel was subject to transboundary movement and contains material

which is considered to be hazardous waste under the Basel Convention and the Regulation on Hazardous Wastes. A document proving the removal of hazardous wastes from the vessel was not provided. Therefore the demand of the plaintiff is unfounded and the case should be dismissed.

SUMMARY OF THE DEFENSE OF THE

MINISTRY OF ENVIRONMENT AND FORESTRY: The import of all wastes is prohibited. A definition of "hazardous waste" is provided in the Regulation on the Control of Hazardous Wastes and according to this definition "asbestos" is classified under hazardous wastes. Customs procedures have not been completed regarding the import of the vessel. Permission was not given for the dismantling of the ship; therefore the case should be dismissed.

SUMMARY OF THE DEFENSE OF THE

INTERVENING PARTY: All activities threatening human health and the environment should be prevented.

ON BEHALF OF THE TURKISH NATION

2nd Administrative Court of İzmir has considered the facts of the case:

The case was filed with the demand for the cancellation of the decision taken to stop the import of the vessel The Sea Beirut, on the grounds that it contained high levels of asbestos. The ship was brought to the Sub-province of Aliğa to be dismantled by the plaintiff.

Annex-I of the Basel Convention on the Control of Transboundary Movement of Hazardous Wastes and Their Disposal, published in the Official Gazette No. 21935, dated 15/5/1995 lists asbestos under the code Y36 and among the substances which are subject to transboundary movement and defined as hazardous waste.

Article 4 of the Regulation on the Control of Hazardous Wastes published in the Official Gazette No: 22387 dated 27/8/1995 defines "hazardous waste" as any substance considered to be waste under Annex-I, which is listed under Annex-5 and Annex-6 and/or possesses the characteristics of hazardous wastes stated in Annex-7". Article 5/a of the regulation stipulates that "the import of any kind of waste is prohibited, without prejudice to the provisions in Article 38 (of the Regulation)". Furthermore, Article 38 states that "It is prohibited for wastes to be imported to areas under Turkish jurisdiction and to free areas. However the Ministry can issue permits in accordance with published communiqués, for the import of wastes that are of economic value and have sectoral importance, provided that it is documented that such wastes will be used for health, research purposes". Asbestos was indicated under the code Y36 in the Annex-5 of the Regulation.

Upon the examination of the information, it was concluded that following the protest carried out by Greenpeace on 4/5/2002 in the ship dismantling area of Aliğa to prevent the dismantling of the vessel, 3 samples from the isolation material on the ship were taken and the vessel was sealed by the employees of the Provincial Directorate of Environment, after determining that the customs procedures for the vessel of French origin, the Sea Beirut had not yet been completed. As a result of the analysis carried out by the İzmir High technology

Institute-Centre for Material Analysis, it was established that 2 samples taken from the boiler of the ship contained high amounts of asbestos. It is upon this development that the decision, called into question in this case, was taken to stop the import of the vessel and return it to the country of origin. It is indisputable that the parts of the vessel the Sea Beirut, brought to be dismantled, contain high amounts of asbestos which is classified as hazardous waste under the above mentioned legislation.

Therefore, it is concluded that the decision to stop the import of the vessel containing the hazardous waste asbestos and to return it back to the country of origin is not against the legislation and law.

Despite claims by the plaintiff that the criteria differentiating waste and product are listed in Annex-I of the Regulation on the Control of Hazardous Wastes and that the expert analysis demonstrates that the ship cannot be considered as waste, under the Basel Convention- to which France is also a Party- and the Regulation on the Control of Hazardous Wastes asbestos is classified as hazardous waste. Due to the fact that asbestos is not a product and that the ship is contaminated with asbestos, and therefore is considered as hazardous waste itself, the claims of the plaintiff have not been accepted.

Based on the above mentioned reasons, it was unanimously decided on 30/9/2003 that the legally unfounded case BE DISMISSED, that expenses of the case should rest on the plaintiff that the expenses made by the intervening party should rest on the intervening party, and the outstanding from postal fees should be paid to the plaintiff.

PRESIDENT
Mehtap CAYNAK
(27752)

MEMBER
M. Kemal AKA
(28015)

MEMBER
Hasan UZUNOVA
(38008)