

## CAN LANGUAGE OF INSURANCE POLICY CONDITIONS AFFECT THE COVERAGE?

*Pelin BAYSAL & Ilgaz ÖNDER*

Turkish courts, with due respect to party autonomy, have no hesitation in applying standard special clauses recognised in international practice that are incorporated into the insurance policies.<sup>1</sup> But their application has been not entirely clear when these standard clauses were written in foreign languages. This controversy was exacerbated following the enactment of Insurance Act no. 5684 (“**Insurance Act**”) in 2007.

The Insurance Act, Art 11/5 provides that “[A]n insurance policy cannot contain any word other than those in Turkish. When drafting the insurance policy, it is essential to use the words recognised by Turkish Language Institute corresponding the words in a foreign language”. Yet, the Insurance Act attaches no explicit sanction to violation of this provision, other than a regulative fine to be imposed on the underwriter insurance company. Apart from the archaic substance and rationale of the said provision, the fact that the Insurance Act has not stipulated the sanction of the violation of this article has been considered by scholars as a major lacking point.

It is noteworthy that Law no. 805 on Compulsory Usage of Turkish by Commercial Enterprises, enacted in 1926 (“**Law no. 805**”), has already required any contract to be executed in Turkish. However, this requirement had not prevented the courts from recognising and enforcing special clauses in foreign language incorporated into insurance policies. Turkish court, in 1977, had ruled that Institute Standard TLO Clauses written in English and enclosed to the insurance policy in dispute should be deemed valid. This was in view of the customary international practice that such English special conditions are very often and directly inserted into the hull insurance policies. Turkey, as part of this international practice, was no exception. The court justified why such insurance policy conditions cannot be avoided as per Law no. 805 by emphasizing that the insurance policy was executed in Turkish; and an attachment in English does not necessarily mean that the parties intended to execute a contract in English.<sup>2</sup>

---

<sup>1</sup> Court of Cassation, 11<sup>th</sup> Civil Division; Case no: 2018-3001, Decision no: 2019-4565, dated 18.06.2019.  
Court of Cassation, General Civil Division; Case no. 2014-716, Decision no: 2016-572, dated 04.05.2016.

<sup>2</sup> Kerim Atamer; Maritime Law, 2017, p. 75, 76.

Against this background, the Insurance Act's entry into force seems to have a fallback effect on Turkish courts' long-lasting and established practice. Indeed, the Turkish court, in 2016, approved a decision whereby Institute Yacht Clauses in English incorporated in a hull insurance policy were deemed null, and the insurance claim was accepted under the insurance policy, which survived without its exclusions.<sup>3</sup>

Whether Turkish courts' shifted stance will gain ground is yet to be seen. As a considerable number of scholars so far aptly pointed out, the Insurance Act on its own does not justify the nullity of clauses written in English.<sup>4</sup> The court rendering the award in 2016, for the sake of a reasonable justification, should have rather referred to Law no. 805, which expressly provides that contracts written in a foreign language cannot be construed in favour of the party who drafted the contract. It seems that the Court, in 2016, found it easier to refer to the Insurance Act, albeit at the expense of a coherent interpretation. Otherwise, the Court, would be required to introduce reasoning as to its deviation from the practice to avoid strict application of Law no. 805.

The enactment of the Insurance Act, for the above reasons, unfortunately, overshadowed the debate as to how archaic Law no. 805 has become over time. The jurisprudence of 1977 mentioned above had already given the early hints that Law no. 805 started failing to meet contemporary needs of everchanging commercial needs. The scholars, since then, have been speaking up to encourage the courts to disregard the compulsory requirement of using Turkish in commercial contracts where possible. This is the case especially in insurance practice, where large-scale insurance contracts are seldomly executed without back-to-back reinsurance coverage. The scholars further showed the courts the way to get there by advocating that a party challenging a contractual provision written and agreed in a foreign language would most likely be acting in bad faith unless it was defrauded during the negotiation stage.<sup>5</sup>

The courts in disputes that are unrelated to insurance law and therefore out of the Insurance Act's ambit have the tendency to follow this route, stating that a party which relies on the contract as the basis of its claims cannot invoke nullity due to the use of foreign language in principle. Further, the courts in some occasions narrowed down the scope of Law no. 805, stating that the use of the Turkish language is a must only for transactions between two Turkish commercial enterprises.<sup>6</sup> It is hard to mention a consistent and reliable practice yet. When it comes to insurance practice, the Insurance Act stands as an additional hurdle which the courts struggle to overcome.

---

<sup>3</sup> Samim Ünan, Turkish Commercial Code, Book Six: Insurance Law, Vol VI: Court Decisions, 2020, p. 422

<sup>4</sup> Samim Ünan, Turkish Commercial Code, Book Six: Insurance Law, Vol VI: Court Decisions, 2020, p. 428, 429.

<sup>5</sup> Pınar Çağlayan Atasoy, Construction and Validity of Smart Contracts, 2021, p. 105, 106.

<sup>6</sup> Istanbul Regional Civil Court, 12<sup>th</sup> Civil Division; Case no. 2021/205, Decision no. 2021/185, 11.02.2021.

Given the evolving Turkish jurisprudence and inconsistencies, it would be prudent for the insurance and reinsurance companies underwriting risk in Turkey to execute the Turkish version of the standard special clauses and exclusions together with the English version.

***For further information, please contact:***



**Pelin BAYSAL**  
[pelin@baysaldemir.com](mailto:pelin@baysaldemir.com)



**Ilgaz ÖNDER**  
[ilgaz@baysaldemir.com](mailto:ilgaz@baysaldemir.com)