



Wheelhouse

Shipping Law Firm

Blocked Waterways

- The Legal Situation of Third Parties Affected -

Dr. Dr. Jan R. Lüsing

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Outline

- Scenarios & affected parties
- Liability under German law towards vessels prevented from continuing their voyage
- What about other affected parties ?

Scenarios & Affected Parties

Scenarios

- The demolition of bridges or locks along with the related salvage work usually means a temporary blockage of the waterway.

- Beyond collisions with bridges and locks, there are other incidents that can result in the blockage of a waterway, such as :
 - Salvage operations following a ship accident (capsizing, grounding, collision)
 - Technical defect in a lock without external interference
 - Water engineering measures (repair work on the bank reinforcement)

Affected Parties

- Affected by the blockage of a waterway are in particular:
 - Other vessels prevented from continuing their voyage

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 - Port facilities that are temporarily inaccessible by waterway

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 - Production facilities that are temporarily inaccessible by waterway
 - Cargo interests of a vessel prevented from continuing her voyage

Liability under German law towards vessels prevented from continuing their voyage

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- Some principles of German tort liability:
 - No general liability for damages

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⇒ No liability for pure economic losses

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- Spheres of protection: Required is the infringement of a specific legal interest or an absolute right (e.g. life, body, property, legitimate possession, established and exercised business)

⇒ No liability for pure economic losses

- Liability only towards persons whose spheres of protection were directly infringed

Liability under German law in such cases ?

- Set of possibly infringed “absolute rights” discussed in court decision:
 - Property ?
 - General Use of public infrastructure (waterways) ?
 - Privileged Resident Use of public infrastructure (waterways) ?
 - Established and executed business (ship operation business) ?

Liability towards – Vessels prevented from continuing their voyage

- Infringement of Property ?

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Is affirmed by German courts in case of

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➤ Infringement of Property ?

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- A temporary suspension of usability, i.e. the impairment has the effect as if the item had been temporarily taken away

Not required is:

- Actual physical damage or destruction of an item
- A minimum duration for the impairment (Federal Court of Last Instance, 2016)

Liability towards – Vessels prevented from continuing their voyage

➤ Infringement of Property ?

Is denied by German courts if

- the vehicle's usability is merely restricted / e.g., the ship is merely prevented from undertaking a particular planned voyage.

Liability towards – Vessels prevented from continuing their voyage

- In conclusion infringement of Property is affirmed by German courts in case of
 - A temporary suspension of usability, i.e. the impairment has the effect as if the item were temporarily being taken away
 - No Physical damage or destruction of an item
 - No minimum duration for the impairment necessary (Federal Court, 2016)

is denied by German courts if

- the vehicle's usability is merely restricted / e.g., the ship is merely prevented from undertaking a particular planned voyage.

Liability under German law in such cases ?

- Absolute rights discussed in court decision:
 - Property → depending on the facts of the case
 - General Use of public infrastructure (waterways) ?
 - Privileged Resident Use of public infrastructure (waterways) ?
 - Established and executed business (ship operation business) ?

Liability towards – Vessels prevented from continuing their voyage

➤ Infringement of the right to General Use of public waterways ?

Is denied by German courts, because

- Right to General Use of public waterways is not deemed to be an „absolute right“.

➤ Infringement of the right to Privileged Resident Use of public infrastructure ?

Not applicable, as travelling vessels are not residents.

Liability under German law in such cases ?

- Set of possibly infringed “absolute rights” discussed in court decision:
 - Property → depending on the facts of the case
 - General Use of public infrastructure (waterways)
 - Privileged Resident Use of public infrastructure (waterways)
 - Established and executed business (ship operation business) ?

Liability towards – Vessels prevented from continuing their voyage

➤ Infringement of the right to the ship operation business?

Is denied by the German courts, because

- the navigability (useability) of a waterway is not part of a ship operating business.
- required would be an impairment directly related to the ship operating business.

Cases – Vessels prevented from continuing their voyage

- Example 1: Federal Court 1970 – Mill-Canal Buxtehude
 - Collapse of the canal wall
 - Closure of the canal for about 8 months
 - Remaining space of mobility: non
 - ⇒ Compensation granted due to infringement of property

- Example 2: Higher Regional Court Cologne 1975 – Rhine-Ruhr Harbour
 - Collision with the Harbour lock
 - Downtime of the lock lasted 24 days
 - Remaining space of mobility : ca. 10 km (but: court applied practical-economic criteria to assess remaining usability of the trapped vessels)
 - => Compensation granted due to infringement of property

Cases – Vessels prevented from continuing their voyage

- Example 3: Central Commission for Rhine Navigation 2013 – Rhine near Loreley
 - Official closure due to capsized inland barge WALDHOF
 - Full blockage of the Rhine at the accident site for 7 days
 - Remaining space of mobility: Rhine above and below the accident site
 - => No compensation granted (no infringement of property)

- Example 4: BGH 2016 – Xantener marina (Rhine)
 - Harbour exit blocked by anchor chain
 - Blockage for only 2 hours
 - Remaining space of mobility: non
 - => Compensation granted due to infringement of property

What about other affected parties ?

Cases – Facilities that are temporarily inaccessible by waterways

- Example: BGH 1982 – Harbour Lüneburg (Elbe-Lateral Canal)
 - Closure due to collapse of canal bank on 18.11.1976 northerly of Lüneburg
 - Port facility was left with no water-side access for ca. 9 months
- => No compensation granted

Liability towards— Facilities that are temporarily inaccessible by waterways

- Infringement of an absolute right → Property ?
Was denied in the Lüneburg-Case, because
 - the facility remained accessible to other means of transportation

- Infringement of an absolute right → General Use of public waterways ?
Is denied by the German judiciary, because
 - Right to General Use of public waterways is not deemed to be an „absolute right“.

Liability towards— Facilities that are temporarily inaccessible by waterways

- Infringement of an absolute right → Privileged Resident Use of public waterways?
Is denied by the German judiciary, because
 - there is no right to Privileged Resident Use at waterways used for shipping.

- Infringement of an absolute right → Established and executed business ?
Was denied in the Lüneburg-Case, because
 - the blockage of the water-side access to the port facility was a general consequence of the incident and therefore not a specific impairment of the business.

Liability towards— Cargo interests of a vessel prevented from continuing her voyage

- Infringement of an absolute right → Ownership or Possession on the goods?
 - No case law, so far
 - the crucial question would be:
 - > Can the goods be deemed as if temporarily been taken away?

Summing-up

When is liability affirmed ?

- Set of possibly infringed “absolute rights” discussed in court decision:
 - Property
 - yes, in case of a temporary suspension of usability, i.e. the impairment has the effect as if the item were temporarily being taken away
 - no, if the vehicle's usability is merely restricted, e.g. the ship is merely prevented from undertaking a particular planned voyage
 - ~~Common Right to Use public waterways~~
 - ~~Privileged Right to Resident Use of public infrastructure~~
 - ~~Established and executed business~~

Towards whom does liability exist ?

- Other vessels prevented from continuing their voyage:
 - recognised by case law under the strict conditions of a violation of property.
- Port facilities that are temporarily inaccessible by waterway:
 - denied by case law in cases where the business remained accessible by other means of transport.
- Production facilities that are temporarily inaccessible by waterway:
 - so far, there is no German case law;
 - presumably treated in the same way as port facilities
- Cargo interests of a vessel prevented from continuing her voyage:
 - so far, there is no German case law;
 - arguable for very special circumstances, where cargo cannot be discharged.

Thank you

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