

# THE PRESTIGE CASE

## THE FORTHCOMING JUDGEMENT



The story of the oil tanker Prestige is notorious.

You will recall that in November 2002 this vessel experienced difficulties off the coast of Spain, her captain's request to bring the ship into port was refused, the Spanish government ordered Prestige to be towed out to sea and there, battered by the winter Atlantic seas, she broke in two and sank on 19th November 2002.

The incident resulted in what has been considered the worst environmental disaster that Spain has ever seen.

Before this, our country had seen big disasters as those of the “Urquiola”, the “Andros Patria” or the “Aegean Sea” to mention some.

The casualty was in the front pages of the press and led to a review of several issues including the obligation on States to provide a port of refuge, rights of passage for ships in territorial waters and the European ban on single sink tankers



Possibly in response to the Prestige case, in 2004 the European Union also issued the Directive on Criminal Sanctions for ship-source pollutions, which was contested by numerous maritime organizations, including the International Transport Federation.



Nearly a decade after this environmental disaster of epic proportions that clogged the coasts of Spain and France with thick black oil, after a long investigation the criminal trial began in October 2012 and after nine months of hearings listening more than 140 witnesses, 90 experts and a lot of lawyers, the court case considering the Prestige Oil disaster ended in July 2013.

Plaintiffs have called for sentences of jail for the captain Apostolos Mangouras (and other two crew members) and the head of the Spanish Merchant Navy at that time, José Luis López Sors.



The prosecutor and other plaintiffs have put all the blame on the captain of the “Prestige” and is accusing him for a crime against the environment and another for damaging a protected space.

The prosecutor and other plaintiffs claim that the captain, the owners and/or the vessel's P&I Club must also pay € 4,328 billion, in spite of the limitation sum under the CLC Convention (around € 22 million).



Captain Mangouras blamed the spill on the Spanish Authorities which ordered the ship out to the sea after it sent out a distress call due to the crack in its hull, saying that the order caused the stricken vessel to break up in a storm and spill its load over six days adrift.

José Luis López Sors, ex Director of the Spanish Merchant Navy, was the public authority who ordered Prestige to be towed out to sea and is also accused by some plaintiffs for a crime against the environment.



If found guilty, the Spanish administration would have to subsidiarily pay the damages of the environmental disaster, including € 115 millions already paid by the 1992 Fund.

Under Spanish law criminal courts decide not only on criminal liability but also on civil liability derived from the criminal action.

Accordingly, the forthcoming judgement in the Prestige case will review the criminal liabilities and decide on the compensation due.

Under Spanish law, like in many other legal regimes, causing pollution could be a criminal offence.

Article 325 of the Spanish Criminal Code, which is the basic provision of law to be taken into account, provides that  
*“whoever breaking the laws or other provisions of a general nature that protect the environment directly or indirectly causes or makes spillages that may seriously damage the balance of the natural system shall be punished with sentence of imprisonment from two to five years.....”*

The criminal court which started the investigation into the cause of the incident to establish whether any criminal liability could arise from the event decided in 2010 that the master of the Prestige and two other members of her crew together with the former General Director of the Merchant Navy should stand trial for criminal and civil liability.

Will these gentlemen be held liable in the forthcoming judgement, expected for November, after the long and excessive trial which has taken place during 9 months?

I'm not a fortune-teller  
and unfortunately  
cannot anticipate the  
contents of the  
verdict.

Definitely, I should not like to be the magistrate dealing with the case and who has to digest many testimonies and many experts' reports having indeed a very difficult task and not exempted of pressures of all kinds.

Any verdict is possible but if I were the magistrate, I would have difficulties, strictly speaking, in holding Captain Mangouras and/or the former General Director of the Spanish Merchant Navy criminal liable.

Personally, I cannot see how Captain Mangouras, whose vessel suffered a sea accident, could be held criminal liable.

The same is to be said  
as far as the former  
General Director of the  
Spanish Merchant Navy  
is concerned.

His initial order to tow the Prestige out to sea, battered by the Atlantic sea, was kept in a stubborn way without hearing the experts recommending to study to bring the stricken tanker into a place of refuge and this was a highly controversial move and, in my opinion, an error.

This view, is the opinion of many experts, including those of Smit Salvage, as it was seen during the trial.

That said, it is also my opinion that the conduct of this civil servant, not allowing the ship into a place of refuge in Spain, cannot be criminalized as it should also be the case with Captain Mangouras.

However, any verdict is possible and it would not be a surprise that in the judgement both or one of them are or is held criminal liable.

If the captain is held criminal liable then the judgement will contain a decision as to the civil liability for the damages arising from the accident including the one of the shipowner, the P&I involved and the Fund. Then, a relevant and controversial issue would be whether or not the civil liability of the shipowners / P&I involved to compensate the victims should be limited in accordance to the CLC Convention.

If the former General Director of the Spanish Merchant Navy is found criminal liable, then the Spanish State would be held subsidiary civil liable to compensate the victims.

Let's see what happens in the next days when the forthcoming judgement is issued and apologies for not being able to anticipate its contents!

Thanks  
for your  
attention