

EU Court of Justice and jurisdictional immunity in maritime disasters: denial to private entities performing classification and/or certification activities on behalf of a State

Judgment in Case C-641/18, LG and Others v Rina SpA and Ente Registro Italiano Navale

ECLI:EU:C:2020:349

7th May 2020



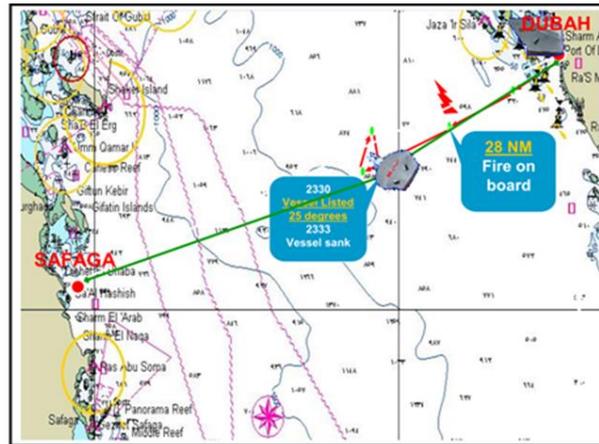
The relatives of more than 1,000 people killed in a deadly ferry accident in the Red Sea in 2006 are allowed to pursue their claims for damages in Italy against the Italian classification/certification companies RINA S.p.A. and Ente Registro Italiano Navale based in Genoa.

The Court of Justice press release no. 56/20 dated 7th May states: «*The victims of the sinking of a vessel, which sailed under the flag of Panama, may bring an action for damages before the Italian courts against the Italian organisations which classified and certified that vessel*».

This judgment of the Court of Justice addresses the case involving redress claims by a large number of Egyptian survivors and relatives of the victims of the sinking of the Al Salam Boccaccio 98 ferry (Arabic: عبارة السلام 98, Salam سلام means “peace”) brought before Genoa Court against the above companies that carried out classification and certification services for Al Salam Boccaccio, a ship sailing under the flag of the Republic of Panama, but formerly . Victims are represented by a team of lawyers, including the **PEOPIL members Marco Bona (IT), Carlos Villacorta-Salis (ES) and Jean-Pierre Bellecave (F)**, together with Stefano Bertone (IT), Nigel Taylor (UK), Robert Lieff (USA) and Yasser Fathy (Egypt).

Earlier this year the Advocate General Maciej Szpunar issued a similar opinion suggesting that Italy should be the forum for such claims.

More than 1,000 people were killed when the Al Salam Boccaccio 98 suffered a fire onboard, capsized and sank on Feb. 3, 2006 in the Red Sea en route to Egypt from Saudia Arabia. It was one of the worst maritime accidents in modern times, and the the ship was allegedly operating despite serious defects.



In 2013, hundreds of survivors and victims' relatives filed a common multiparty action for damages before the Court of Genoa against. The plaintiffs argued that certifying/classifying the ship as suit for use caused the shipwreck.

The defendants argued they were acting on behalf of Panama and therefore should be legally shielded on the ground of jurisdictional immunity.

Even though the ship was registered in Panama, Szpunar said the disaster's victims should be allowed to seek damages in Italian courts against RINA and its affiliate.

The defendants did not seek immunity for claims of negligence related to surveys dating up to 1999, when the ship was still under Italian flag. Such pre-1999 claims would have therefore continued before Italian Courts anyhow.

Plaintiffs repeatedly requested the Genoa Court to refer the case to the Court of Justice and this eventually was granted in 2018 only.

The Genoa Court lodged the request for a preliminary ruling with reference to the interpretation of the Articles 1(1) and 2(1) of Regulation No. 44/2001 — particularly in the light of Article 47 of the Charter of Fundamental Rights of the European Union, Article 6(1) of the European Convention on Human Rights and recital 16 of Directive 2009/15/EC — therefore the acknowledgement of jurisdictional immunity to private entities and legal persons that perform classification and/or certification activities on behalf of a non-EU State, in a dispute about liability for negligent conduct and compensation for damages caused by the shipwreck (Case C-641/18).

The European Commission in November of 2019, too, argued that the plaintiffs were right and the case should proceed in the merits before Italian Courts and not in Panama.

The Advocate General Maciej Szpunar delivered his opinion on the 14th January 2020 in the sense of recognizing the right of the relatives of the victims and the survivors of the sinking of Boccaccio, to have their claims ascertained before Genoa Court. In his view, the principle of customary international law concerning the jurisdictional immunity of States does not preclude the application of Regulation No. 44/2001 in proceedings relating to «*action[s] for damages brought against private-law bodies in respect of classification and certification activities carried out by those bodies as delegates of a third State, on behalf of that State and in its interests*», in reason that such activities fall within the concept of «*civil and commercial matters*».

Szpunar argued that on matters that «*do not fall within the competence of public powers*», immunity does not necessarily apply. The Italian entities were delegated by Panama the power to classify and certify the

vessel, but their work *«cannot be regarded as proceeding from the exercise of public powers»* and therefore cannot benefit from immunity, the opinion stated.

At the hearing before the Court of Justice the presentation of the arguments for the plaintiffs was conducted by Professor Fausto Pocar with the lawyers Marco Bona and Stefano Bertone.

Finally, the European Court of Justice sided with the Advocate General's opinion and the plaintiffs' arguments.

The Court acknowledged that jurisdictional immunity does not apply to such conducts, hence to negligence claims as those brought by the victims of the sinking of a vessel against a classification society and/or a recognized organization.

A comment from the Italian lawyers for the plaintiffs, Marco Bona (Bona Oliva Associati, MB.O) and Stefano Bertone (Ambrosio & Commodo) states that *«this puts and an end to a 8 years battle showing that Genoa Court and Genoa Court of Appeal were wrong whenever they did not reject RINA's forum shopping motions»*.

The Italian-made ship sank during an overnight crossing between Saudi Arabia and Egypt with more than 1,400 people aboard, most of them Egyptians returning home from work in Saudi Arabia. A fire aboard the vessel and weather conditions are believed to have contributed to the ship's sinking.

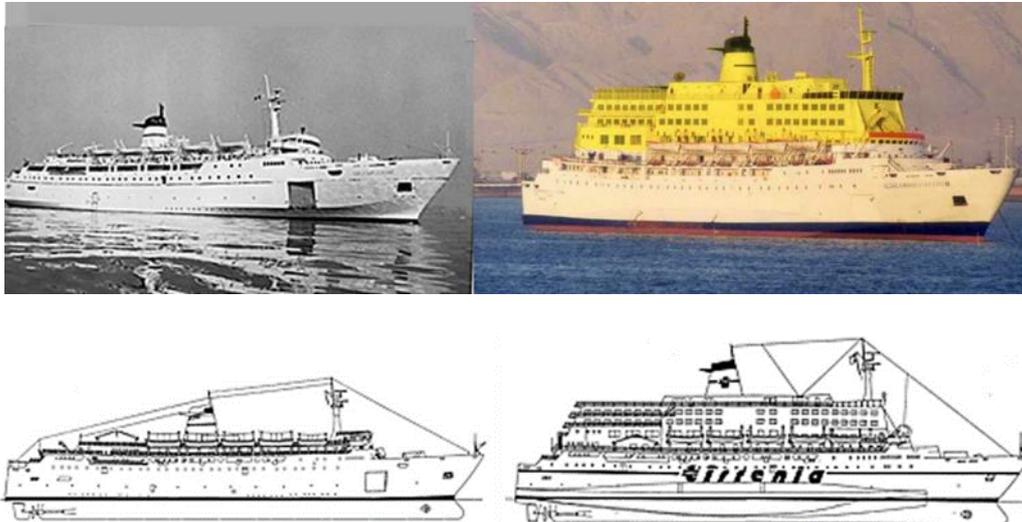
Four years before the Al Salam Boccaccio 98, a sister vessel named Al Salam Petrarca 90 suffered a fire onboard, capsized and sank in the Red Sea en route to Egypt from Saudia Arabia. Al Salam Petrarca 90 was part of the same fleet and it was classed and certified as safe by the same RINA companies.

Plaintiff lawyers now expect Italian Courts to go rapidly into the merits of the case and that a technical investigation into the fire and the sinking should confirm that RINA has a share of liability in the disaster, as Egyptian investigators have assessed in the aftermath of the tragedy pointing in particular on the defectiveness of the drainage system. *«After so many years, the interest of the families we represent in the case is intact and we strive to deliver what they deserve»*. The lawyers recovered some scuppers of the sister ship Al Salam Carducci that in the aftermath of the tragedy had been promptly sent to India to the Port of Alang to be demolished.



In 1991 - some years before Tirrenia, the former owner, sold Boccaccio to the Panama-based owner (1999) - three decks were added causing critical issues with stability. RINA inspected and approved such

modifications. Boccaccio, built by the Italian company Italcantieri in 1970 with IMO number 6921282 for Tirrenia di Navigazione and originally intended for Italian domestic service, was purchased in 1999 by El Salam Maritime Transport, headquartered in Cairo, the largest private shipping company in Egypt and the Middle East, and renamed al-Salam Boccaccio 98; the registered owner was Pacific Sunlight Marine Inc. of Panama.



The case was brought under Italian law of joint and several liability, which means that if plaintiffs win the case they will be allowed to recover the whole amount of compensation from RINA.

For a positive comment on the judgment see Professor Andrew Tettenborn, *Classification societies are commercial — OK?*, May 10, 2020, in International Maritime and Commercial Law, The Official Blog of the Institute of International Shipping and Trade Law (<https://iistl.blog/2020/05/10/classification-societies-are-commercial-ok/>).

Note from Editor: Congratulations to Marco, Carlos and Jean-Pierre! We look forward to further updates as the case proceeds through the Italian courts.

Rebecca Gilmore, Co-editor