

CMI International Working Group on the Fair Treatment of Seafarers

Responses of the Italian Maritime Law Association to the Questionnaire

Question 1:

Who has responsibility for administering and enforcing maritime safety and marine pollution prevention and control in the waters under the jurisdiction of your State?

The responsibility for administering and enforcing maritime safety and marine pollution under Italian jurisdiction rests on the Port Authority competent for the relevant area, who may avail itself of the Criminal Police and of the N.A.S. (Nucleus Anti Sophistication) of the Carabinieri.

Question 2:

When maritime accidents and/or marine pollution incidents occur within the waters under the jurisdiction of your State, what process of accident investigation is legally required?

Competent for the administrative investigation are the Ministry of Infrastructures and Transport and, if criminal violations are envisaged, the local Procura della Repubblica, assisted by the Criminal Police. If the accident or marine pollution incident has occurred in international waters and involves an Italian vessel, should a criminal violation be envisaged, the competent Procura della Repubblica is that in whose jurisdiction is situated the Port Authority in whose ship register the vessel in question is registered or that where notice of the criminal violation was first received.

Question 3:

Do your State's maritime accident and/or marine pollution investigative processes contemplate criminal charges against any ships' personnel involved and, if so what action may be involved?

If from the investigation it will emerge a possible criminal violation committed by the Master or by members of the crew notice must be given by the Authority that has carried out the investigation to the competent Criminal Court who will take action in compliance with the provisions of the Code of Criminal Procedure.

Question 4:

If there is no criminal process, what other investigative process is utilized?

Normally the initial investigation is carried out by the Port Authority, first through a Summary Enquiry and then through a Formal Enquiry who will be competent to sanction the possible administrative violations. An additional Authority that may be competent is the Prefecture having jurisdiction on the relevant area.

Question 5:

Does your State's investigative process permit detention of seafarers and, if so, under what circumstances and with what safeguards?

Detention of seafarers may take place in the same situations in which detention of any person is permitted under the rules of the Code of Criminal Procedure. See response to Question 13. The safeguards are those generally provided by the Code of Criminal Procedure in case an order of detention is issued.

Question 6:

If seafarers are required to be present for an investigation, trial or other hearing will they be permitted to leave your State until such investigation, trial or other hearing takes place?

The general rule under the new Code of Criminal Procedure is that the persons against whom a criminal (as opposed to an administrative) investigation is carried out may leave the country. If the public prosecutor in charge of the proceedings considers that there is a danger of escape he may ask the Judge in charge of the Preliminary Enquiry to take action in order to prevent the person in question to leave the country (e.g. seizure of the passport or I.D.). These rules apply also to seafarers.

Question 7:

Does your State require a financial surety to ensure that seafarers return for any subsequent hearing and, if so, how is the amount of such a surety determined and what form is required?

Under Italian law if the conditions for an order of detention materialize, detention cannot be avoided by providing surety. This would appear to be strange, because it would favour a wealthy person as opposed to a poor.

Question 8:

Is your State's maritime administration or other authority given legal responsibility for the protection, rights and welfare of all seafarers and, if so, how is this responsibility administered?

A distinction must be made between the right of seafarers to payment of wages and other remuneration and their welfare. As regards the former right, besides the protection of the Unions, article 4 of law 4 April 1977, No. 135 on Maritime Agents provides that the agent who hires seafarers for embarkation on vessels of a nationality different from the nationality of the seafarers shall provide to the local Port Authority evidence that the shipowner has supplied an appropriate bank or insurance guarantee for the payment of the wages during the period of employment on board. As regards the seafarers welfare, social security is compulsory in respect of all seamen embarked on Italian flag ships, irrespective of nationality. In addition, Article 4 of Law 135/1977 provides that the agent who hires seafarers for embarkation on vessels of a different nationality shall ascertain and attest to the local Port Authority of the port of embarkation that such seafarers have been insured against accidents and illness with the Italian or other social insurance institution for the whole period of employment on board.

Question 9:

If a maritime accident resulting in serious pollution occurs in waters under the jurisdiction of your State that involves a foreign-flag vessel with a crew of different nationalities, what is the expected role of vessel crew members held responsible in the subsequent investigative process?

The crew of a foreign-flag vessel is bound, when the vessel is in Italian territorial waters, to comply with applicable Italian laws. In case of an accident resulting in pollution, the members of the crew of a foreign flag vessel may be required to give evidence on the accident, both in the administrative enquiry conducted by the Port Authority and in the possible subsequent criminal proceedings. This, as previously stated, does not entail their obligation not to leave the country, but may be requested to return in order to give evidence. If certain seafarers are held personally responsible for the pollution they may be condemned to pay fines or even to prison (albeit this has never happened, to our knowledge).

Question 10:

If the accident, as outlined in Question 10 (probably 9), is due to negligence but not wilful misconduct by responsible crew members, will your State proceed only with pollution damage claims under the accepted international civil liability and compensation system?

Article III.4(a) of the 1992 CLC, ratified by Italy, provides that no claim for compensation for pollution damage may be made against members of the crew unless the damage resulted from their personal act or omission, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result. Since the Convention applies, pursuant to its Article II, to pollution damage caused in the territory, including the territorial sea, of a Contracting State, the above provision prevails over any provision of Italian domestic law.

Question 11:

If the answer to Question 10 is 'No', what other processes or procedures will be undertaken by your State?

Not applicable.

Question 12:

If the maritime accident outlined in Question 9 occurred outside your State's Territorial Seas, although damage occurs in areas under your State's jurisdiction, would the procedures involved be different?

The CLC 1992 applies also to the exclusive economic zone and, in Italy where the EEZ has not been established, in an area beyond and adjacent to the 12 miles territorial sea extending not more than 200 nautical miles (see Article II(a)(ii) of CLC 1992).

Question 13:

Regardless whether your State's investigative process utilizes the criminal justice system or any other system, will the relevant vessel crew members be detained? If so:

- a. What is the legal reason for such detention?*
- b. What rights will the accused/detained crew member have during the process, and do such rights differ from those available to citizens of your State?*
- c. Will full reasons and/or charges be provided to those detained?*
- d. What is the expected length of such detention?*
- e. Where and how will the seafarers involved be detained?*
- f. What access to legal advice and/or defence will such personnel have available to them?*

- g. *Will the vessel's representatives, agents, family members, labour organisation representatives, or lawyers be given immediate and full access to those detained?*
- h. *Will the relevant seafarers have the legal right not to answer questions that may be considered self-incriminating, if so advised?*

Detention prior to a final judgment is permitted in case a person is caught in the act of committing a crime. It is compulsory in case the claim is punishable with life imprisonment or imprisonment for more than 5 years, as well as in respect of specific crimes. It is permitted in respect of crimes punishable with imprisonment up to 3 years. There are then a number of other situations, specified in the Code of Criminal Procedure, in which arrest is permissible, in which event notice must be given to the Public Prosecutor, but within 48 hours validation of the arrest by the Court must be requested.

- (a) See comment in the preamble to Question 13.
- (b) Foreign citizens have the same rights of Italian citizens.
- (c) Yes. A foreign citizen is entitled to have the reasons translated in his mother language or in a language known by him. Interrogatories are conducted with the aid of an interpreter.
- (d) The length of the detention is determined by the continuing existence of the reasons for which it was decided.
- (e) There is no special rule for seafarers. Detention may take place in prison, at the domicile of the person detained, or at a different temporary domicile.
- (f) Legal assistance may be provided by an advocate appointed by the person incriminated or, failing any such appointment, by a lawyer appointed by the Magistrate.
- (g) Except in some very limited cases, a person who is detained is entitled to visits of persons of his family and of his lawyer, in accordance with the regulations of the prison where he is detained. Following the express authorization of the Magistrate, the right of visit may be granted also to the agent of the shipowner and labour organisations.
- (h) Yes. There is a general right not to answer to any question.

Question 14:

Does your Association have any other comments, suggestions or recommendations on this subject?

No.