

# ITALY

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## SURVEY OF ITALIAN MARITIME LAW – 1984

### 1. Statutes

Not many novelties may be found in the production of last year's Italian legislation, since many statutes were meant to complete complex frameworks began earlier. On this line, several decrees containing technical provisions to align Italian law to EEC and international uniform rules have been issued. Among them, quite a number of provisions on carriage by sea of dangerous goods, and new dispositions on the procedure to get the tonnage certificate for ships longer than 24 meters (President Decree 2.2.1984, No. 46).

State financial contributions by the Italian Government to several sectors suffering from the deep economical maritime crisis were granted by another group of statutes. Among them, Law No. 396 of 27 July 1984 has extended validity to the dispositions of Law Nos. 598, 599 & 600 of 1982 which had helped to sustain the Shipbuilding Industry. Interventions in favor of shipowners were later made by Statute No. 848 of 11 December 1984.

The Parliament has also issued statutes in order to stop the serious crisis of Italian harbours. Law No. 468 of 13 August 1984 set urgent measures to cope with the difficult situation, while Law No. 859 of 20 December 1984 provided the financial resources to relieve them from their debts.

In order to save the 'Flotta Lauro' from the serious crisis which lead the Neapolitan company under 'State Controlled Administration', a new Law (the third one, No. 618 of 28 September 1984) has given a new governmental contribution to the company.

Law No. 381 of 27 July 1984 has set urgent provisions in order to save the environment; the Decree of 20 November 1984 has established a fishing reserve along the Italian territorial sea.

On international carriage by sea, the Italian Parliament authorized (on 12 June 1984, Nos. 243 & 244) the Government to ratify the protocols signed in Bruxelles on 23 February 1968 and 21 December 1979 (Visby Rules) modifying the Brussels Convention of 1924 on Bill of Lading.

## 2. Case law

### a) ARBITRATION

Two interesting decisions of 'Corte di Cassazione' on international arbitration ruled on the New York Convention of 1958, which, even if not directly dealing with maritime law, has a great importance in this world wide kind of proceeding. The first one (19 January 1984, No. 465, *Dir. mar.* 1985, 302, annotated by La China) has punctualized the peculiar proceeding of enforcement of foreign arbitral awards in Italy, where Italian Courts can not re-open the trial on the merits of the case. It has also been stated that formal requirements on arbitration clauses are required only in accordance with the uniform rules of the New York Convention.

The second decision (21 February 1984, No. 1234, *Dir. mar.* 1985, 39) has confirmed this last consolidated position and has solved some questions on the applicability of the Conventional rules.

### b) INSURANCE

The *Appeal Court of Florence* (9 March 1984, *Dir. mar.* 1985, 354) has dealt with sea carriage in containers insured under Institute Cargo Clauses – All Risks, and has stated some new principles on the burden of proof of damages.

A peculiar case following an illegal vessel arrest made by the police authority of an African Country has been solved by 'Corte di Cassazione' (25 October 1984, No. 5437, *Dir. mar.* 1985, 45, annotated by Balestra). Costs sustained by owners to free the ship from the illegal arrest were considered covered by the Institute War and Strike Clauses – Hull, and the relevant claim recoverable from underwriters as 'value debt'.

In another case, 'Corte di Cassazione' (27 January 1984, No. 651 *Dir. mar.* 1985, 308) has confirmed the limits of the rules on terms of the starting of prescription and has stated some rules on the burden of proof relevant to damages due to devaluation in favor of the creditor.

#### c) EMPLOYMENT/LABOUR

Quite interesting is the decision of *Pretura of Trieste* (5 April 1984, *Dir. mar.* 1985, 112, annotated by Enrico Lugifredi) on the discharge of a master. It has been stated that the speciality of this kind of job, and any master's behaviour which may diminish the unconditional trust in him of the owners has been considered as sufficient and legal cause for dismissing him.

*Pretura of Genoa* (9 March 1984, *Dir. mar.* 1985, 384) has confirmed that ship agents can not be considered as employees of the owners.

#### d) CARRIAGE

The *Appeal Court of Milan* (23 March 1984, *Dir. mar.* 1984, 890) has rendered an interesting decision on a case about a collect freight relevant to a maritime carriage. When not paid by the consignee, the carrier has the right to get the freight from the shipper, even if he has not exercised his lien on goods. Then, in this case, the lien is only a faculty of the carrier and not a condition to get paid from the shipper.

On the Brussels Convention of 1924 on Bills of Lading, a recent decision of '*Corte di Cassazione*' (27 April 1984, No. 2643, *Assicurazioni*, II, 1985, 10, annotated by Ferrarini) has come to contradict the commonly accepted principle (now explicitly set by the Visby rules) that a liability limit can not be applied in the case of wilful misconduct of the carrier. In this decision, dealing with an unauthorized carriage of a container on deck, the court has also substantially followed the new principles set by the Visby rules (not in force in Italy yet) on the liability limitation for containers, and has calculated the amount of limit referring once again to the price of gold on the free market.

Again on the Brussels Convention, another judgment (*Corte di Cassazione*, 5 March 1984, No. 1536, *Dir. mar.* 1985, 312) has confirmed that terms set by article 3, para 6 to bring suit against the carrier is a forfeiture and not a prescription, but may be extended by agreement of parties.

The decision No. 6298 of '*Corte di Cassazione*' (3 December 1984 *Dir. mar.* 1985, 317, annotated by Balestra) has dealt for the first time with the applicability of the Brussels convention of 1924 to bills of lading released for carriage in bulk connected with a charter party, and between parties of this last contract. The answer has been negative, since it has been stated that only the charter party may decide such kind of carriage between carrier and charterer. The same decision has also dealt with terms to bring suit against the carrier under the Italian Navigation Code.

The *Court of Milan* (13 March 1984, *Dir. mar.* 1984, 910) has once again repeated the exact definition of forwarding agent, which is often confused, in Italian Law, with the contractual carrier.

The *Court of Leghorn* (15 October 1984, *Dir. mar.* 1985, 372, annotated

by Vincenzini) has stated that Certificates released by the U.S. Federal Grain Inspection Service are not conclusive as to the quality of goods, which can be proved also by any other means. This decision, the first in Italy on the matter, is very important because it is contrary to the different principle commonly accepted by English courts.

### 3. Bibliography

On Maritime insurance, Ferrarini, '*Le assicurazioni marittime*', 2nd vol., Giuffré, Milano, 1984 has come to complete a work which has already become a classic on the subject. This further part deals with the new contractual forms recently adopted, such as the 1983 edition of the Italian Standard Form for Goods Insurance, and the last Institute Clauses.

Migliorino, '*Il recupero degli oggetti storici ed archeologici sommersi nel diritto internazionale*', Giuffré, Milano, 1984 gives a long awaited and up-to-date survey of the international rules relevant to the submerged archeological and historical objects.

On the continental shelf and its increasing problems, Del Vecchio, '*Zona economica esclusiva e stati costieri*', Le Monnier, Firenze, 1984, provides a detailed exposition of the last developments of international law.

Scovazzi, '*La pesca nell'evoluzione del diritto del mare*', volume II, Giuffré, Milano, 1984 offers the recent history on the evolution of fishing in maritime law.

The last work of Carbone, '*Le regole di responsabilità del vettore marittimo*', Giuffré, Milano, 1984 is an interesting survey on the liability rules of the maritime carrier, updated with the most recent case law on the matter.

A comprehensive and detailed analysis of contribution to general average is given by Pullio in his last study, titled '*La contribuzione alle avarie comuni*', Cedam, Padova, 1984.

Last but not least D'Alessio, '*Nazionalità della nave*', Jovene, Napoli, 1984 covers the several problems arising on nationality of ship.