



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUNDS

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INCIDENTS INVOLVING THE 1992 FUND

Prestige – Judgment of Spanish Supreme Court

Submitted by the International Group of P&I Associations

Summary:	<p>The Spanish Supreme Court has given judgment in an appeal from the decision of the trial court in the criminal proceedings arising from this incident. The Court has reversed the master's acquittal of any criminal liability for damage to the environment. The judgment gives rise to various concerns outlined in this document, including:</p> <ul style="list-style-type: none">(i) the adverse impact that such judgements have on the morale of seafarers and on the attraction and recruitment of young people into the seafaring profession; and(ii) the findings of the Supreme Court that the London Club is directly liable not only under 1992 Civil Liability Convention (1992 CLC) but also up to the limit of cover provided by the International Group Clubs for oil pollution damage.
Action to be taken:	<p><u>1992 Fund Executive Committee</u></p> <p>Information to be noted.</p>

1 Introduction

- 1.1 The Spanish Supreme Court has given judgment in an appeal from the decision of the trial court in the criminal proceedings arising from the incident.
- 1.2 Overturning the decision of the trial court, the Supreme Court has decided that the master, Captain Mangouras, was guilty of the crime of reckless damage of the environment. That decision is based on findings of fact which are contrary in numerous respects to those of the trial court, which acquitted the master of any such offence.
- 1.3 On the basis of its finding of criminal liability on the part of the master, the Supreme Court has imposed civil liability on the master, the owners, their P&I Club, and the 1992 Fund for the pollution.
- 1.4 Further appeal proceedings are anticipated as indicated in this document. Apart from the immediate implications for the parties involved, the judgment gives rise to various wider concerns. The International Group of P&I Associations (International Group) is currently reviewing the judgement, but has significant concerns for the future viability of the compensation system as a whole and the pressures faced by insurers (and their reinsurers) in light of this judgment.

2 Background: judgment of the trial court

- 2.1 The trial court in the criminal proceedings – the Audiencia Provincial in La Coruña – held a nine-month oral hearing between November 2012 and July 2013. The Court's judgment was issued on

13 November 2013. The Court found that the master and other defendants were not criminally liable for damages to the environment. The master was convicted of disobeying the Spanish authorities during the crisis, but the Court found that this was not the cause of the pollution.

2.2 The basis for, and the background to, the Court's decision was summarised in a note by the Secretariat dated 1 April 2014 (document [IOPC/MAY14/3/3](#), paragraph 4.3.3.) Among other things, the Court found that the vessel's structural weakness was not visible, and there was no evidence that the master or crew could have been aware of it.

2.3 As regards damages arising out of the incident, the Criminal Court held that it could declare civil liability only for the consequences of a criminal offence. As the defendants were acquitted of any criminal liability for damages to the environment, and the master's disobedience was not the cause of the damage, the Court could not award any compensation to claimants. Claims for compensation would therefore have to be pursued in the civil courts.

3 Judgment of the Supreme Court

3.1 The Supreme Court conducted a hearing on 29 September 2015 which lasted less than one day. None of the defendants or other witnesses were heard, and only brief oral submissions were permitted. The Court's judgment dated 14 January 2016 was published on 26 January 2016.

3.2 In its judgment the Supreme Court has recited rules of Spanish legal procedure which require it, when dealing with acquittal verdicts, to respect the findings of fact made by the trial court, and which restrict grounds of appeal to issues of law. It has then made various findings of fact which in several respects differ from, and are directly opposed to, those of the trial court. On the basis of these new findings the Supreme Court has held that:

- by undertaking the voyage the master committed a reckless crime against the environment;
- the incident was caused by misconduct of the master which deprived him of immunity from civil liability under the 1992 CLC;
- the owners incur subsidiary civil liability for the consequences of the master's crime;
- the incident was caused by misconduct of the owners which deprived them of the right to limit liability for pollution damage under the 1992 CLC;
- the London Club is directly liable not only under the 1992 CLC but also under other laws, up to the US\$1 billion limit of cover, irrespective of the 'pay to be paid' rule, with which it acted inconsistently by paying the 1992 CLC limitation fund into court.

3.3 The Supreme Court's conclusion that the master committed a reckless crime against the environment is based on new findings as to –

- factors which in the opinion of the Court made the voyage an imprudent or risky one to undertake;
- factors which in the opinion of the Court provided grounds for criticism of the master's handling of the incident after the structural failure occurred;
- the causative role which in the Court's opinion these factors might have played in contributing to or aggravating the incident, or in affecting the master's ability to respond to it;
- the awareness of these matters to be imputed to the master and/or owners;
- the culpability to be attributed to them in the light of such knowledge.

- 3.4 The Supreme Court stated that ‘all parties concur that [the master] committed a reckless crime against the environment, by undertaking the journey under the conditions in which he did.’ It is not clear on what basis the Supreme Court made this statement, given that this view was not shared by the master or owners, the trial court, or the experts whose evidence it accepted. Although it did not expressly say so, the Supreme Court may have intended to indicate that all accusing parties made an allegation to this effect. If so, it is not clear why the Court considered this to be relevant when that allegation had been rejected by the trial court for lack of evidence.
- 3.5 In reversing the master’s acquittal of this charge the Supreme Court has relied on a theory that the ship was overladen when she sailed. An allegation to this effect was disputed at the trial as an incorrect application of the Load Line Rules, involving failure to take into account differences in the density of water in different zones through which the vessel sailed after loading in the Baltic Sea. The official inquiry reports did not question the master’s draft calculations or suggest that the vessel had been overloaded. The evidence relied on in support of this theory was a view suggested in one of the expert reports submitted at the trial. In its judgment the trial court noted that no documentary support had been given for this view, and it concluded that ‘the report is simply theoretical.’ The Supreme Court has quoted an earlier section of the trial court’s judgment where reference is made to this allegation, and where it may appear on first reading to have been accepted; however it is clear from later passages in the trial court’s judgment that it was in fact rejected as an unsupported theory.
- 3.6 The Supreme Court has commented adversely on the master’s decision to order the crew’s evacuation of the ship by air-sea rescue, leaving on board only the master himself and two other officers. Whilst acknowledging that ‘it is possible that the evacuation was appropriate’ in order to save human lives, the Court notes that this left the ship insufficiently manned to operate the ship’s emergency stern towing gear. The trial court found that the master’s actions were entirely correct.
- 3.7 The Supreme Court has made a number of other findings which appear inconsistent with the trial court’s assessment of the evidence. Its judgment is subject to further appeal proceedings, as explained below.

4 Implications of the judgment

- 4.1 Several features of the Supreme Court judgment give rise to concern. Apart from those affecting seafarers, and Captain Mangouras in particular, there are various wider implications which appear to affect the compensation regime.

Criminal proceedings

- 4.2 In 2014, following the judgment of the trial court, the Director expressed the view that the proceedings had demonstrated that a criminal court was not the appropriate forum for dealing with compensation for oil pollution (document [IOPC/MAY14/10/1](#), paragraph 3.4.18). The International Group agrees with that view, which it believes to be equally valid whether defendants are acquitted or convicted. In the one case the Criminal Court is unable to award compensation, to the dissatisfaction of multiple parties with financial claims; in the other it is not always easy to be confident that a guilty verdict was uninfluenced by concern to avoid dissatisfaction of this kind.
- 4.3 Naturally this confidence is even more problematic if a conviction is based on a view of the facts which is contrary to that of the court which heard the evidence, and if it relies on grounds which people familiar with shipping either believe to be ill-informed or find hard to understand.
- 4.4 As the Director has previously stated, there is no need for compensation awards to depend on a criminal conviction, given that the 1992 Conventions establish strict liability for pollution damage irrespective of fault. The international regime works better if civil courts deal with claims for compensation.
- 4.5 The master’s conviction by the Supreme Court appears to set a precedent for imposing criminal liability on seafarers in circumstances where they have simply been doing their job. The Supreme Court criticised Captain Mangouras for undertaking the voyage in the light of the vessel’s age and of the fact that it did not meet the chartering criteria of two oil companies. Criteria of this kind vary from company to company, and other major operators had more recently approved the vessel’s use. As it was trading

lawfully, was fully certificated, and in the view of the trial court gave no visible reason to doubt its seaworthiness, it appears unrealistic to suggest that the master should not have sailed, let alone that he was criminally reckless in doing so. Similar comments apply to criticisms of his response to the incident, which the expert witnesses and trial court agreed to be completely professional.

- 4.6 Having convicted the master of criminal liability for damage to the environment the Supreme Court ruled that he should bear various penalties, including a term of two years' imprisonment. The Court made no reference to Article 230 of the United Nations Convention of the Law of the Sea (UNCLOS), which provides that:

‘Monetary penalties only may be imposed with respect to violations of national laws and regulations or applicable international rules and standards for the prevention, reduction and control of pollution of the marine environment, committed by foreign vessels in the territorial sea, except in the case of a wilful and serious act of pollution in the territorial sea.’ (Article 230.2).

- 4.7 Although the Supreme Court convicted the master of recklessness, there was no finding that he committed a wilful act of pollution. Spain is a party to UNCLOS, and it is not clear on what basis a custodial sentence was imposed.

Civil liability

- 4.8 In 2005, following the decision of the investigating court in Corcubión to refer compensation claims as well as criminal charges to criminal trial, the then Director of the 1992 Fund expressed concern that this was not in conformity with the 1992 CLC. He pointed out that it did not appear to respect either the immunity from suit of the master (under the channelling provisions) or the exclusion of liability of the owner otherwise than under the 1992 CLC. These concerns were echoed by several delegations at the 29th session of the 1992 Fund Executive Committee ([92FUND/EXC.29/6](#), para. 3.2.28-35).
- 4.9 The judgment of the trial court in November 2013 meant that these concerns did not at that stage materialise. However the decision of the Supreme Court does now bring them to the fore – its approach to the Conventions has much in common with that taken by the Venezuelan Supreme Court in the *Nissos Amorgos* incident, save that in this instance the 1992 CLC applies, with its more rigorous test of conduct barring limitation and more extensive channelling provisions.
- 4.10 The Court appears to have interpreted this test in the light of Spanish criminal law, and it has also referred to the 2005 EU Directive on criminal sanctions for ship-source pollution. The Court noted that this creates criminal liability for pollution caused by ‘serious negligence’, and it appears to have treated such conduct as sufficient to bar immunity under the 1992 CLC or the right of limitation. This reasoning appears to be contentious on a number of grounds.
- 4.11 The implications of the judgment for insurers and for the proper functioning of the compensation regime are naturally a concern. In the *Prestige* case itself the judgment against the London Club should not be enforceable in the UK as the English High Court has previously ruled, in proceedings in which both Spain and France participated, that any claim against the Club outside the 1992 CLC could be made only in accordance with the Club’s rules, which provide for arbitration in London and are subject to the ‘pay to be paid’ principle. However the judgment of the Spanish Supreme Court is nevertheless a troubling precedent which could seriously undermine the compensation regime if followed in future. The potential implications are being considered and may be the subject of further comment later.

5 Further appeal proceedings

- 5.1 In its judgment the Court has expressed the view that its findings were a permissible juridical analysis of the facts found by the trial court. Appeal proceedings are now anticipated on the grounds that the Court has, on the contrary, exceeded its powers by undertaking a wide-ranging re-evaluation of the facts of the case; by substituting its own view of the facts for the trial court’s assessment of the evidence; and by reversing the master’s acquittal without re-hearing his evidence.

5.2 In accordance with Spanish procedural rules an application has been made by the master to the Supreme Court for a reconsideration of its decision. Depending on the outcome of this application further appeal proceedings may be brought before the Spanish Constitutional Court and, if necessary thereafter, before the European Court of Human Rights (under the fair trial and other provisions of the European Convention on Human Rights).

5.3 If the appeal proceedings succeed, and the master's conviction by the Supreme Court of a reckless crime against the environment is quashed, it is understood that civil liabilities based on that conviction will likewise be annulled.

6 Action to be taken

The 1992 Fund Executive Committee

The 1992 Fund Executive Committee is invited to take note of the information contained in this document.
