



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUNDS

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1992 Fund Executive Committee	92EC58	•
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INCIDENTS INVOLVING THE IOPC FUNDS – 1992 FUND

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Submitted by France

Objective of document:	This document informs the 1992 Fund Executive Committee of the judgement rendered by the Court of Appeal on 25 September 2012.
Action to be taken:	<u>1992 Fund Executive Committee</u> Information to be noted.

1 **Introduction**

- 1.1 On 12 December 1999, the tanker *Erika*, flying the Maltese flag, broke in two off the Brittany Coast, polluting 400 kilometres of shoreline and causing the biggest oil spill experienced in France since the *Amoco Cadiz* incident on 16 March 1978.
- 1.2 One hundred and fourteen victims, including the French State and 65 local authorities, joined the action as civil parties in order to obtain compensation for their physical, moral and environmental damage.
- 1.3 On 16 January 2008, the Criminal Court of First Instance in Paris found the shipowner, the management company, the classification society RINA and TOTAL SA guilty of the offence of unintentional pollution and ordered them to pay the maximum fines applicable. The Court also ordered them to jointly compensate the civil parties.
- 1.4 On 30 March 2010, the Paris Court of Appeal upheld the criminal sentences pronounced in the Court of First Instance. However, it found that claims for damages and interest could not be made against TOTAL SA as charterer of the ship.
- 1.5 On 25 September 2012, the Court of Cassation quashed in part the judgement of the Paris Court of Appeal, confirming the criminal liability of the accused and ordering TOTAL SA, jointly with the other defendants, to pay compensation for the damage caused by the oil spill from the *Erika*.

2 **The competence of the French criminal judge to try those responsible for an oil spill affecting the French coasts.**

- 2.1 Throughout the proceedings, the crux of the argument was whether the French criminal judge was competent to try those responsible for an oil spill caused outside French territorial waters by a foreign ship. The accused considered that due to its position at the time of the incident and its nationality, the incident of the *Erika* fell only within the jurisdiction of the flag State.

- 2.2 Relying on an application of both Articles 220.6 and 228 of the United Nations Convention on the Law of the Sea, the Court of Cassation considered that the competence of the coastal State was acquired when an act of pollution committed outside its territorial waters caused major damage.

3 Compensation for damages caused by the oil spill from the *Erika*

Competence of the criminal judge to rule on actions for compensation

- 3.1 The accused contested the competence of the criminal judge to rule on the compensation for damages suffered by the victims of pollution which fell within the scope of the CLC Convention, arguing that only the civil courts had jurisdiction.
- 3.2 The Court of Cassation confirmed the competence of the criminal judge in proceedings for unintentional pollution, to rule on compensation for damages, relying on Article IX.2 of the CLC Convention according to which:

"Each Contracting State shall ensure that its Courts possess the necessary jurisdiction to entertain such actions for compensation".

Scope of channelling of liability defined in the CLC Convention

- 3.3 The Court of Cassation ruled on the application of the provisions of the CLC Convention, in particular Article III.4 which bars the filing of the claim for compensation against certain persons:

"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".

- 3.4 The Court of Cassation held that the persons whose liability was claimed, namely the shipowner's agent, the management company, the classification society and the ship's charterer fell within the list of persons set out in Article III.4 of the Convention, and could enjoy the channelling of liability, unless they had committed an inexcusable fault which caused the damage.
- 3.5 Noting that these persons had acted recklessly and thus caused the damage, the Court of Cassation found that they could not rely on the provisions of the CLC Convention. Consequently, in their case, it was the national law, ie, the common law of civil liability that was applied to them by the Court of Cassation for compensation for damages resulting from the *Erika* oil spill.

Immunity from the jurisdiction of the classification society

- 3.6 The classification society RINA, which issued the ship's classification certificate allowing the *Erika* to sail despite general corrosion, claimed that it should be granted the same immunity from the jurisdiction as enjoyed by the State of Malta, considering that it had the prerogatives of a public authority delegated by that State in the framework of its statutory ship certification activities.
- 3.7 In its judgement of 30 March 2010, the Paris Court of Appeal granted immunity from the jurisdiction to the classification society, RINA, on the grounds that issuing the classification certificate contributed to the provision of a public service, namely improvement of safety of navigation. However, the Court of Appeal considered that RINA had unequivocally renounced the immunity of jurisdiction that it might have enjoyed by participating in the report that led to its summons before the Criminal Court and invoking an Italian jurisdiction.
- 3.8 The Court of Cassation confirmed RINA's unequivocal renunciation of immunity of jurisdiction but did not rule on the question of whether RINA could enjoy such immunity. The wording chosen by the Court of Cassation in this regard is significant, since it merely recalled that RINA:

"claims to benefit from sovereign immunity."

Recognition of the environmental damages suffered by the victims

- 3.9 In its judgement of 16 January 2008, the Criminal Court recognised the principle of compensation for damage resulting from pollution of the environment for certain local authorities and associations. Only local authorities which had received special statutory powers relating to environmental matters, conferring on them particular responsibility for the protection, management and conservation of an area, and associations whose collective interests in protecting the environment had been directly or indirectly infringed, had obtained compensation for that damage.
- 3.10 On 30 March 2010, the Court of Appeal not only confirmed the existence of environmental damage in French law, but also extended the scope of its application to all local authorities and all environmental protection associations.
- 3.11 The Court of Cassation confirmed this interpretation, considering that:

"The Court of Appeal has, both adequately and without contradiction, responded to the compelling grounds in the conclusions presented to it and so justified its awards of proper compensation to make good the environmental damage, consisting of direct or indirect damage to the environment arising from this offence".

4 The judgement of the Court of Cassation has no impact on the CLC/IOPC Fund regime

- 4.1 The compensation for moral and environmental damage of the victims of the *Erika* by the Court of Cassation has no consequences for the application of the international compensation regime based on the CLC/IOPC Fund Conventions, and does not conflict with the principles of the CLC Convention, which does not provide for compensation for damages on these grounds.
- 4.2 The Court of Cassation applied the French law on civil liability, which allows full compensation for damage suffered by the victims. Indeed, the accused could not rely on the provisions of the CLC Convention in the light of the inexcusable faults which they committed.

5 Action to be taken

1992 Fund Executive Committee

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