

THE ITALIAN SUPREME COURT OF CASSATION DENIES THE ENTITLEMENT OF PILOTS TO SALVAGE REMUNERATION

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At dawn of 29 May 2009 the ro/ro pax Vincenzo Florio caught fire off Ustica Island whilst en route from Naples to Palermo. The passengers were transshipped to a vessel which was navigating nearby and all crewmembers then abandoned the ferry.

The Vincenzo Florio was towed to Palermo by tugs of the local tug company, which had pilots on board to assist in the manoeuvring. The pilots also assisted in directing the positioning of floating pontoons alongside the breakwater of the port of Palermo where the Vincenzo Florio was to be moored as she had her fin stabilisers locked outboard.

The pilots' claim for salvage remuneration made to the Judicial Administrator of Tirrenia di Navigazione spa in extraordinary administration was rejected. The subsequent appeal of the pilots to the Supreme Court of Cassation was dismissed with judgment no. 7150 of 13 March 2020, on the ground that when pilotage is compulsory by law, as was the case in the port of Palermo, pilots are bound to assist the ship.

In fact, in complying with their duties, pilots fulfil the purpose of ensuring safe navigation in the public interest. Their activity which, with greater reason, is to be provided and is to be performed when a ship is in danger, is framed within ordinary pilotage services.

The article criticises the reasoning of the Supreme Court of Cassation.

Keywords: *compulsory pilotage; salvage; ship in danger; 1989 Salvage Convention; duties of pilots under the Italian Code of Navigation; Law 28 January 1994, no. 84 on the reorganization of port legislation.*

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1. THE FACTS AND JUDICIAL PROCEEDINGS

At dawn of 29 May 2009, whilst the ro/ro pax *Vincenzo Florio* was off Ustica Island, navigating on the line between Naples and Palermo, a severe fire broke out on board. A distress signal was sent and in the morning all passengers were transhipped to another vessel which was sailing nearby, to fire brigade motor-boats and to coast guard patrol boats arriving from Palermo.

After the passengers had disembarked, and when two tugs came alongside, the master and all crewmembers also abandoned ship.

In the course of the day and further to operational meetings at the Harbour Office of Palermo, attended also by representatives of the Pilots Association, it was decided to tow the *Vincenzo Florio* inside the port of Palermo and to have her moored alongside the breakwater.

For that purpose, two pilots embarked on a tug to direct the manoeuvrings, the approach and the mooring operations. To proceed accordingly, the pilots had to deal with both the positioning of two pontoons between the quay and the ship, as her fin stabilisers were locked outboard, and the mooring, since the ship, without electric power, had winches which were not working.

The Pilots Association then applied for the arrest of the *Vincenzo Florio* to secure its maritime lien for salvage remuneration as provided under Art. 552.4 of the Code of Navigation. The application, initially dismissed, was then allowed on appeal in the sum of EUR 200,402.25, reflecting 0.50% of the salvaged value.¹

Proceedings on the merits were subsequently filed. However, at the first hearing they were interrupted as a consequence of the entry of the owners of the *Vincenzo Florio*, Tirrenia di Navigazione SpA, into an extraordinary administration procedure.

The Pilots Association therefore applied to have its salvage claim, calculated in the sum of EUR 1,800,000.00, i.e. 3% of the salvaged value, included within the liabilities of Tirrenia di Navigazione SpA.

However, the application, as well as a subsequent opposition, was dismissed by the Tribunal of Rome on the ground that the services provided by the pilots could not qualify as salvage, merely coming within the institutional duties of compulsory pilotage in force in the port of Palermo.

¹ The judgment is published in *Il Diritto Marittimo*, 2012, p. 547 with a comment by Berlingieri, G., Jr., observing that there is quite a difference between a situation when danger arises with the pilot already on board and a situation with the pilot boarding a ship already in danger.

The Tribunal of Rome in fact noted that the Pilots Association had simply performed the said duties in the public interest of safe navigation, under the control of the Harbour Master. In the decision of the Tribunal it was underlined that “as all ships entering or departing from Palermo are to be compulsorily assisted and are to make use of the services of the pilots of the port of Palermo”, the said activity “even more so is to be provided and put in place in a situation of danger such as that which originated this litigation”. The Pilots Association then appealed to the Supreme Court of Cassation, but the appeal was dismissed.²

2. COURT PRECEDENTS

There seem to be no precedents of the Supreme Court of Cassation regarding salvage remuneration for services rendered by pilots. The only related decision of the judges of the Supreme Court concern the tasks and activities of pilots.³

There are, however, a number of first-instance and appeal court judgments.

The oldest one is that of the Court of Appeal of Cagliari on 11 March 1911,⁴ which decided on the salvage claim made by a fisherman. Whilst on his fishing boat, he observed a ship navigating with difficulty close to a shoal. He therefore offered his services to pilot the ship into the port of La Maddalena in Sardinia. The offer was accepted by the master of the ship, who promised a reward as there was a risk of sinking due to a break in the hull caused by the ship previously hitting a rocky seabed near the Strait of Bonifacio in Corsica.

However, the demand of the fisherman for salvage remuneration was dismissed as he was considered to be acting as a pilot and, as such, was considered a crewmember.

The Court also observed that any promise of reward made in a situation of danger was not valid, adding that the pilot cannot disembark before giving assistance to the ship and removing her from danger.

² The judgment is published in *Il Diritto Marittimo*, 2021, p. 561 with a case note by Berlingieri, G., Jr., *Pilotage Does Not Rhyme with Salvage*.

³ Supreme Court of Cassation 27 May 1955, *Il Diritto Marittimo*, 1955, p. 14. There it was said that, according to Art. 92 of the Code of Navigation, approved by Royal Decree of 30 March 1942, no. 327, the pilot is only to suggest the heading and to assist the master in determining the manoeuvres necessary to make it. Reference was also made to Art. 295 of the Code of Navigation, which provides that the direction of the heading belongs only to the master personally, whilst Art. 298 clarifies that this takes place also when the master is bound to avail himself of a pilot, in entering or leaving ports, channels, rivers, and on any occasion when the navigation presents particular difficulties.

⁴ The judgment is published in *Il Diritto Marittimo*, 1911, p. 164.

The judgment was favourably commented on by Francesco Berlingieri, Sr., who observed⁵ that entitlement to a reward was excluded as the pilot, having to set the course of the ship and direct the manoeuvring, could encourage him to aggravate the danger instead of avoiding it in order to obtain remuneration.

No other decisions followed for some time. In fact, there was a long wait until the end of the 1960s when, in a judgment of 23 January 1969,⁶ the Tribunal of Messina granted a reward to a pilot who, after a ship had stranded, with her crewmembers failing to cooperate and many having abandoned ship, intervened and cooperated with tugs, assisting on board the ship.

A few years later, the Court of Appeal of Venice delivered a judgment on 7 June 1983⁷ which, although just describing the duties of pilots, as done by the Supreme Court of Cassation in a previous judgment, is worth mentioning. It outlines very clearly the duties and the services to be rendered by a pilot.

A number of decisions by the Tribunal of Brindisi and the Court of Appeal of Lecce followed.

In the first,⁸ the cooperation of a pilot with tugs to keep a ship alongside her berth, after the breakage of one of the two ropes which were keeping her moored at a buoy field, was considered to give the right to a percentage of the reward paid for the entire salvage services.

⁵ *Il Diritto Marittimo*, 1911, p. 165. It is to be noted that the decision of the Court of Appeal of Cagliari and the comments of Professor Francesco Berlingieri, Sr., refer to the provisions of law applicable at the time, namely to the articles on pilots contained in the Code of Merchant Marine, approved by Royal Decree of 24 October 1877, no. 4146. In particular, Art. 66 provides that the pilot is under the authority of the master for the entire time he is entrusted with the direction of the ship, Art. 196 prescribes that any promise of remuneration to the pilot higher than that of the tariff and made whilst the ship is in danger is unreliable, Art. 201 that the pilot is to direct the heading and to command all the manoeuvring and what pertains to the safety of the ship, and Art. 202 that pilots cannot leave the ship they are directing until moored and safe in the place of destination. The said provisions seem to conflict with what was prescribed in Art. 504 of the Code of Commerce, approved by Royal Decree of 31 October 1882, no. 1062, i.e., that the master is to personally command the ship at the entrance and exit of ports, harbours, channels or rivers, and that he is compelled to avail himself of a pilot.

⁶ *Il Diritto Marittimo*, 1969, p. 437.

⁷ *Il Diritto Marittimo*, 1984, p. 616. *Inter alia*, it was said that there is an “indisputable functional dependence of the pilot from the master sanctioned by precise provisions of the code of navigation and by a now thousand-year tradition according to which the pilot is just technical supervision offered to (or imposed on) the master of the ship by the local authorities to assist him in the correct determination of the heading in waters and places which constitute particular conditions for the navigation, which may not be known or may not have been sufficiently experienced under the nautical competence of the master”.

⁸ By the Court of Appeal of Lecce 12 April 1985, *Il Diritto Marittimo*, 1986, p. 906.

The judgments of the Tribunal of Brindisi on 14 December 1987⁹ and of the Court of Appeal of Lecce on 11 April 1996,¹⁰ confirming the first-instance judgment, follow the decisions related to an occurrence which took place in January 1983, again relating to the breaking of the mooring lines of a ship, while discharging. Tugs, pilots and mooring men came to assist, and, although with different percentages, salvage reward was acknowledged for all of them.¹¹

A similar, if not identical, occurrence took place in December 1983 with regard to another ship, with tugs pushing to keep her alongside the pier after the breaking of the mooring ropes. Mooring men also assisted in this dangerous emergency. Pilots were not involved, although mention was made of an occurrence such as that dealt with by the Tribunal of Brindisi, in its judgment of 8 April 1991,¹² confirmed by the Court of Appeal of Lecce in its judgement of 12 January 1995,¹³ acknowledging that the services rendered by the mooring men exceeded their usual services. As a consequence, mooring fees did not apply and they were entitled to a salvage reward.

In between these judicial decisions, an arbitration award was delivered on 26 June 1993,¹⁴ which acknowledged salvage remuneration for a pilot who cooperated with tugs, by hauling on board a towline, to assist a stranded ship.

3. THE COMMENTS OF SCHOLARS

Interesting observations by scholars¹⁵ underline that if pilots perform exceptional services which go beyond the usual ones, they are entitled to a salvage reward.¹⁶ But it is noted that if their activity comes within the very nature of the

⁹ *Il Diritto Marittimo*, 1988, p. 833.

¹⁰ *Il Diritto Marittimo*, 1997, p. 464.

¹¹ In particular and as to pilots, it is stated in the judgment of first instance that they “were urgently called to cooperate in a salvage operation, which absolutely goes beyond the institutional limits of their activities and exceeds in a patent way the contents of the contract of pilotage as it contemplates services supplied in exceptional circumstances to a ship in danger of getting lost and suffering heavy damages”.

¹² *Il Diritto Marittimo*, 1993, p. 1066.

¹³ *Il Diritto Marittimo*, 1995, p. 175.

¹⁴ *Il Diritto Marittimo*, 1997, p. 464.

¹⁵ The only volume existing on Pilotage, very exhaustive and detailed indeed, although dated before the entry into force of the Code of Navigation, is by Crisafulli Buscemi, S., *Pilota pratico, corporazione dei piloti, contratto di pilotaggio*, CEDAM, Padova, 1932.

¹⁶ Milanese C. A.; Riccardelli, G., *Pilotaggio*, in *Novissimo digesto italiano*, Vol. XIII, UTET, Turin, 1957, p. 89. On pilots’ duties and obligations, see also Berlingieri, G., Jr., *Pilotaggio*, in *Trattato di responsabilità contrattuale – I contratti*, Vol. II, CEDAM, Padova, 2009, p. 1115.

job they are to do, the services qualify as pilotage and not salvage, even if the ship meets with hazard.¹⁷

It is further noted that the pilot is among the crew members of a ship,¹⁸ although he does not provide services in the scope of an employment contact, with the consequence that his entitlement to a possible salvage reward is to be considered in different terms.¹⁹

However, there is the response²⁰ that “a difference is to be made when a pilot boards a ship already in danger as he is not bound by a previous contract. Although his services may be considered compulsory” (Art. 92.1.2 of the Code of Navigation) “there would be no sufficient grounds to challenge his role as salvor”.

An additional and very thorough analysis was made²¹ observing that the pilot is broadly speaking temporarily a member of the crew. In fact, he is not subject to the authority of the master of the ship and his contract has the nature of one of self-employment, with the performance of intellectual work.

Dealing with a ship in danger, it is then considered²² that the cooperation rendered by a pilot in contributing to overcoming the difficulties met by the ship is not an extraordinary one as it comes within professional risk. However, the situation changes radically when the pilot, being asked or on his own initiative, boards a ship already in danger. If the services given are more difficult than those usually performed, entitlement to a reward may exist.

4. THE REASONING IN THE JUDGMENT OF THE SUPREME COURT OF CASSATION

A summary is contained in the judgment of the provisions on pilotage in the Code of Navigation.²³

¹⁷ Ferrarini, S., *Il soccorso in mare*, Giuffrè, Milan, 1970, p. 73.

¹⁸ Berlingieri, G., Sr., *Assistenza e salvataggio nella navigazione marittima, interna ed aerea, ricupero e ritrovamento*, *Il Diritto Marittimo*, UTET, Turin, 1967, p. 121.

¹⁹ Volli, E., *Assistenza e salvataggio*, CEDAM, Padova, 1957, p. 178.

²⁰ Berlingieri, G., Sr., *op. cit.*, p. 122.

²¹ Righetti, G., *Trattato di diritto marittimo*, Giuffrè, Milan, 1987, p. 796 and Pilotage, in *Digesto delle discipline privatistiche. Sezione commerciale*, Vol. XI, UTET, Turin, 1995, p. 81.

²² Righetti, G., *Trattato...*, *op. cit.*, p. 701.

²³ Pilotage is dealt with in Arts. 86 to 96 and in Arts. 313, 1170 and 1171 of the Code of Navigation. Arts. 97 to 100 specifically deal with pilotage in inland waters. Provisions regarding the Pilots Association, the appointment of pilots and the performing of pilotage services are contained in Arts. 98 to 137 of the Implementing Rules on Maritime Navigation.

Reference is made to Art. 14.1 *bis* of Law 28 January 1994²⁴ no. 84 on the Re-organisation of the Provisions on Port Operations and Services to underline that pilotage, such as towage, mooring and boat services, is a service of general interest to safeguard navigation. This is why it is normally considered as compulsory.

Mention follows of the decision of the Tribunal of Rome which was appealed by the pilots. It was said there, *inter alia*, that “all salvage operations were directed by the Harbour Authority” and that a representative of the Pilots Association “only attended a meeting in the morning [at the Harbour Authority] when it was decided to bring the ship into the port to have her moored alongside the breakwater and that upon instruction of the head of the service [the Harbour Authority] for the safety of navigation the head pilot had to coordinate with the port boatswain regarding the exact positioning of the pontoons to allow the mooring; that two pilots embarked on a tug and directed the berthing and entrance operations into the port of the convoy until the mooring of the ship was completed; and also that such operations, as per Ministerial decrees on the port of Palermo are to be necessarily performed under the control of the pilots as experienced people”.

The Supreme Court of Cassation also refers to the conclusions of the Tribunal of Rome, according to which the Pilots Association merely performed ordinary services and fulfilled the purpose of the public interest of safe navigation. Mention is then specifically made of what was noted by the Tribunal, i.e. that all ships entering and sailing from Palermo are to be compulsorily assisted by and are to make use of pilots’ services. For this reason, notes the Tribunal, in a passage quoted in the judgment of the Supreme Court of Cassation, the said services must, even more so, be granted and performed in a situation of danger, giving entitlement only to pilots’ fees and not to salvage remuneration.

5. CONCLUDING REMARKS

It seems that the judgment of the Supreme Court of Cassation contains some contradictions.

The facts assessed by the Tribunal of Rome, certainly not capable of being modified by the Supreme Court of Cassation, should have led it to ascertain whether the Pilots Association performed salvage services. But the Supreme Court of Cassation abdicated its function to ascertain the law, alleging the impossibility to consider the facts.

²⁴ *Official Gazette* no. 28 of 4 February 1984, *Supplement* no. 21.

However, the Tribunal of Rome acknowledged that the ship was in a situation of danger. This should have been the starting point, with the Supreme Court of Cassation then moving to consider whether compulsory pilotage and the guarantee for the safety of navigation could exclude entitlement to salvage remuneration, in a scenario where the services performed by the pilots were clearly different from those described in the Code of Navigation.

Nevertheless, the appeal was dismissed on the ground that the facts could not be reconstructed differently from those made by the Tribunal of Rome.

The mistake made by the Supreme Court of Cassation consisted of the failure to consider that the intervention of the pilots was certainly not to make suggestions to the master regarding the course of the ship or to assist him in deciding on the measures to have the course followed.

According to Art. 92 of the Code of Navigation, these are the sole services to be performed by a pilot.

However, the master and all the crew had abandoned the ship.

What the pilots performed, with no one on board, in directing the manoeuvring from a tug, in assisting the tugs to tow the ship and her cargo to safety inside the port, in guiding the positioning of the pontoons, taking into account the dimensions and the structure of the ship, thus allowing for the mooring to be completed and for the fire to be extinguished, was clearly outside their duties and services as prescribed in the Code of Navigation.

Their services were therefore to be considered essential for the success of the salvage operations.

Reference to compulsory pilotage made by the Supreme Court of Cassation is believed to have no relevance, because even in that case the tasks and the services of pilots are still those under Art. 92 of the Code of Navigation, i.e. they are confined to suggesting the course to the master. The latter is the only one on board with effective command of the ship and of the direction of the manoeuvring. Incidentally, the scope of activity of the pilot is outlined also in Arts. 93 and 313 of the Code of Navigation, which state that he is liable only if the information he provides to the master is not correct.

In the matter decided by the Supreme Court of Cassation, the pilots instead directed the manoeuvring of a ship abandoned and already in clear danger.²⁵

²⁵ Danger is the requirement which must necessarily exist to allow payment of a reward. It is specifically mentioned in the definition of “Salvage operation” contained in Art. 1(a) of the International Convention on Salvage, done in London on 28 April 1989. It entered into force in Italy on 14 July 1996, which made no reservations when it ratified it on

It is therefore not possible to join the Supreme Court of Cassation in considering that the pilots performed an activity limited to the nautical-technical services of port operators listed in art. 14.1 *bis* of Law 28 January 1994 no. 84.

Reference to that article to ground the exclusion of the pilots from salvage remuneration is after all contradicted by the fact that on that occasion the tugs, similarly to the providers of nautical-technical services like mooring men and boatmen, were granted salvage remuneration in the matter under reference with the concurrent decision of the Supreme Court of Cassation.

In conclusion, it could well have been possible for the Supreme Court of Cassation to state that the services rendered by the pilots were in the nature of salvage. The Tribunal of Rome in fact ascertained that there was a situation of danger.

With regard to pilotage services, the law is clear indeed and cannot be speculated on: pilots are to keep a ship from danger, which, however, is different from rendering services to a ship already in danger.

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14 July 1996, <https://www.imo.org/en/About/Conventions/Pages/International-Convention-on-Salvage.aspx>. Together with danger, there must also be the successful result, which is another condition for the reward, stated in Art. 12 of the Convention. Of course, the amount of reward is established according to the criteria listed in Art. 13.

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Sažetak:

**TALIJANSKI VRHOVNI KASACIJSKI SUD
ODBIJA PRAVO PELJARA NA NAGRADU ZA SPAŠAVANJE**

U zoru, 29. svibnja 2009. godine ro-ro putnički brod Vincenzo Florio zapalio se kod otoka Ustica na putu od Napulja do Palermo. Putnici su prebačeni na brod koji je plovio u blizini i svi su članovi posade potom napustili trajekt. Vincenzo Florio dovučen je do Palermo tegljačima lokalne kompanije, čiji su peljari pritom bili na brodu i pomagali u manevriranju. Peljari su također pomogli usmjeravajući pozicioniranje plutajućih pontona uz lukobran luke Palermo gdje je trebao biti usidren Vincenzo Florio, s obzirom na to da su mu bočne perajice za stabilizaciju bile izvučene izvan trupa broda.

Odbijen je zahtjev peljara za nagradu za spašavanje upućen sudskom upravitelju brodarske kompanije Tirrenia di Navigazione pod izvanrednom upravom. Naknadna žalba peljara Vrhovnom kasacijskom sudu odbijena je presudom br. 7150 od 13. ožujka 2020. godine, uz obrazloženje da su peljari dužni pomagati brodu kada je peljarenje po zakonu obvezno, kao što je to bio slučaj u luci Palermo. Naime, obavljanje svoje dužnosti, peljari ispunjavaju svrhu osiguravanja sigurne plovidbe u javnom interesu. Tim više, kada je njihova usluga potrebna brodu koji je u opasnosti tada je obavljanje njihovih aktivnosti u sklopu uobičajenih usluga peljarenja. U članku se kritizira opisano obrazloženje Vrhovnog kasacionog suda.

Ključne riječi: obvezno peljarenje; spašavanje; brod u opasnosti; Međunarodna konvencija o spašavanju, London, 1989.; obveze peljara po talijanskom Pomorskom zakonu; Zakon od 28. siječnja 1994. godine, br. 84 o reorganizaciji lučkog zakonodavstva.