The concept of preparation of a voyage under art. 275 of Italian Code of Navigation

Art. 275 of Italian Code of Navigation provides for the owner's limitation of liability to apply in respect of vessels having a gross tonnage of less than 300 tons "*for the obligations arisen on or for the needs of a voyage as well as for those arisen from events or actions occurred during the said voyage, except for those deriving from owner's willful misconduct or gross negligence*".

One could ask if the interpretation of the words "*for the needs of a voyage*" (corresponding to the concept of "*preparation of the voyage*" itself) is to be intended under Italian law as inclusive of events giving rise to the owner's liability which take place while a vessel is in dry-dock undergoing repairs/refitting works.

Although Italian case-law on the interpretation of the concept of "*preparation of a voyage*" is very poor, the traditional (restrictive) approach of our Courts was to overlap the interpretation of voyage with the definition of "carriage" or "transportation", with the effect that any obligation arisen before the departure of the vessel from the sailing port or after her arrival at the port of destination could not give rise to any limitation of liability for the ship-owner.

Over the last 20/25 years the above trend has been progressively replaced by a more extensive approach whereby the concept of voyage is to be regarded as inclusive of any activity which is preparatory, functional or complementary to the voyage itself. Two key-decisions in particular led to this change of approach:

- Court of Appeal of Trieste 16.6.1995: the Court of Appeal reversed the first instance judgment rendered by the Court of Trieste according to which obligations arisen after the completion of a voyage (i.e. when the vessel, employed under a time C/P, was alongside having already completed discharge) could not give rise to limitation of owner's liability. The reasoning used by the Court of Appeal to reverse the first instance decision was that the concept of "voyage" does not coincide with the definition of carriage or transportation but is rather inclusive of any preparatory, functional or complementary activities to the voyage itself (including small repair works), as long as such activities are aimed not just at restoring "*the abstract ability of the vessel to perform her service*

(as if the vessel was undergoing repairs in a shipyard)" but at keeping the vessel operational in the context of her economic employment (i.e. in view of her next voyages under the C/P).

- Court of Appeal of Venice 13.6.2005: again the Court of Appeal reversed the first instance judgment of the Court of Rovigo according to which obligations arisen while a dredger vessel was at anchor carrying out dredging operations could not give rise to limitation of owner's liability as the vessel was not "*on or in preparation of a voyage*". The reasoning used by the Court of Appeal to reverse the first instance decision was that irrespective of the fact that the boat was not physically moving, given the very nature of the vessel and her suitability to be working while at anchor, the term "voyage" should encompass all such activities which are functional to her economic employment and, as such, the obligations arisen while the vessel was dredging would allow the owner to benefit from the limitation.

Despite the adoption of the extensive approach, however, according to the reasoning developed by our Courts a vessel which is alongside undergoing extensive repairs/refitting works or in dry-dock would hardly fall within the concept of "*preparation of a voyage*" because the aim of these works would be most likely to restore the vessel's "*ability to perform her service"* rather than to keep the vessel operational in the context of her economic employment and, as such, the obligations arisen therefrom would not give rise to any limitation of liability for the owner.

Some scholars have criticized the reasoning of our Courts stressing that also the extensive approach – which is in any case preferable than the restrictive one - is based on the (wrong) assumption that the *ratio* of Art. 275 would be to allow the limitation of liability to apply only for the obligations deriving from or however causally linked to a voyage. These scholars indeed have pointed out that the Italian legislator opted for the "limitation for voyage" system as opposed to the "limitation for event" system which was adopted in most of the EU countries as well as in the 1976 Convention and its Protocols, adding that it would be desirable that our domestic system will be updated so to switch to the "limitation for event" system.

In fact, the main difficulty in expanding the extensive approach of art. 275 cod. nav. lies in the fact that the limitation of liability is in itself a special provision derogating from the general principle of liability of the defaulting party and/or of the tort-feasor; therefore for its actual implementation either an *ad hoc* law or the ratification of an international convention (such as the 1976 Convention) would be needed.

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