

# Application of COLREGS under Maltese Law

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MARTINA  
FARRUGIA

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On 18 March 2021 the First Hall Civil Court, presided over by Justice Toni Abela, delivered a judgment in *Alexander Agius v the Vessel NS Koralle IMO No 8415201 and its owners Cora Navigation SA*.<sup>(1)</sup>

### Facts

The case concerned an action for damages filed by the plaintiff, the owner of the Eolo, a fishing vessel, after a cement carrier, NS Koralle, collided with the stationary fishing vessel while the latter was moored alongside "P Point" in the Grand Harbour.

The Court found the NS Koralle and its owners liable for the damages caused to the Eolo.

### Decision

In the deliberations of this judgment, the Court discussed the Prevention of Collisions Regulations as incorporated under Maltese law by Subsidiary Legislation 234.20. These regulations incorporate the Convention on the International Regulations for Preventing Collisions at Sea (the COLREG rules) and are applicable to all Maltese vessels as well as to foreign vessels while in Malta's internal and territorial waters.

The Court quoted article 293 of the Merchant Shipping Act (Chapter 234 of the Laws of Malta), which reiterates the obligation of all owners and masters of ships to observe the collision regulations. The Court quoted the general rule under article 293(3) of the Merchant Shipping Act, which states the following:

*If any damage to person or property arises from the non-observance by any ship of any of the collision regulations, the damage shall be deemed to have been occasioned by the wilful default of the person in charge of the deck of the ship at the time, unless it is shown to the satisfaction of the court that the circumstances of the case made a departure from the regulations necessary.*

The Court went on to quote the following sub-article, which makes the ship owner's liability clear: "Nothing in sub-article (3) shall affect any liability of the owner of the ship for damage." The Court held that this was further supported by the provisions of article 347 of Chapter 234 of the Laws of Malta, which state that:

*the owner of a ship shall be responsible for all obligations contracted by the master in relation to the ship, and shall be liable for any damages caused by acts or omissions in the navigation or management of the ship.*

The Court held that the CCTV footage submitted by the plaintiff clearly showed how the incident had unfolded. The Eolo had been moored alongside the jetty known locally as "P Point", Fuel Wharf, when the defendant vessel had begun approaching the quay, where it had been going to discharge its cargo. As it had been making its approach, instead of manoeuvring towards the quay, it had missed the quay and continued to steadily approach the moored Eolo, colliding with the stern of the fishing vessel, and had proceeded to push it forward, crushing the bow of the vessel against the jetty and causing the vessel to break its moorings. As a result of the collision, the vessel had suffered substantial damage and could not be used until extensive repairs had been carried out or a replacement had been found.

The Court confirmed that as per the declaration issued by the deputy harbour master, the Eolo had been authorised to berth at P Point and had done so for many years with the agreement of the Authority for Transport in Malta. At the time of the incident, the Eolo had been berthed in its authorised spot. The Court concluded that the incident had occurred because of a navigational error resulting from a misinterpretation of instructions issued by the pilot on board, relayed by NS Koralle's captain and actioned by the deck officer.

### Obligation to maintain proper lookout

The Court found great difficulty in holding the plaintiff responsible for the incident when his vessel had been stationary. It stated that the general rule is that it is the navigator's obligation to avoid stationary objects, as determined by the principle that requires vessels to maintain a proper lookout.

The Court agreed with the plaintiff's submissions that the incident occurred because the defendant vessel had failed to maintain a proper lookout and take the necessary actions to avoid collision. These actions may have included, if necessary, slackening the vessel's speed or stopping or reversing it by means of propulsion as per rules 5, 8(a) and 8(e) of the COLREG rules. While rule 5 requires persons to maintain a proper lookout, rule 8(a) requires "any action to avoid collision . . . shall, if the circumstances of the case admit, be positive, made in ample time and with due regard to the observance of good seamanship", while rule 8(e) states the following: "If necessary to avoid collision or allow more time to assess the situation, a vessel shall slacken her speed or take all way off by stopping or reversing her means of propulsion."

The Court held that according to the evidence presented, the deck officer had failed in his obligation to verify orders despite evidence showing that he had doubted whether the instructions being received were correct. Similarly, the captain had failed to ascertain that the instructions given were being carried out correctly, despite the vessel moving forward instead of backwards, thus failing to abide by regulation 4 of Subsidiary Legislation 234.20, which requires a vessel to be in conformity with regulations 5 and 8 thereof.

The Court held the following:

*The proper lookout rule is of paramount importance, since it is designed to be preventive of close-quarter situations ever occurring. Once a close-quarter situation has developed the likelihood is that panic may set in (as it appears to have happened in this case) and alterations of course may be made without sufficient thought, generating fatal misunderstanding between the masters of the respective ships.<sup>(2)</sup>*

The Court further held that no regulation exempted the captain and the deck officers of the watch of the defendant vessel from their negligence in failing to adhere to COLGREG rules 5 and 8, or from taking the necessary precautions expected in ordinary practice.

Therefore, the Court held that responsibility for the incident had to be borne by both defendants – the vessel and its owners. In determining the liability, the Court ordered the defendants to pay €419,273.62.

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#### **Endnotes**

(1) Sworn Application 743/19TA decided on the 18 March 2021.

(2) The Court quoted *Principles of Maritime Law* by Susan Hodges and Christopher Hill, ed 2001, p 88.