

Aviation Law Committee:
Aircraft accident investigation and 'just culture'

Admissibility of air accident investigation reports in civil proceedings for damages

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Topics:

1. EU Regulation 996/2010: main points and arguments for and against investigation report admissibility in civil proceedings
2. Case Law
3. Compensation for damages

1.

EU Regulation 996/2010: main points and arguments for and against investigation report admissibility in civil proceedings

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EU Regulation n. 996/2010: report - single objective with independence

1. The sole objective of safety investigations is the prevention of future accidents and incidents without apportioning blame or liability. (art. 1)
2. Investigations “... shall be independent of, separate from and without prejudice to any judicial or administrative proceedings to apportion blame or liability.” (Art. 5.5)



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Investigator independence and powers

1. The EU Regulation n. 996/2010 establishes that investigators-in-charge are **completely independent** in carrying out of their investigations.
2. Investigators-in-charge have **maximum investigative powers**, including the **right to a priority examination of evidence**. [The right of investigators to have immediate and **unlimited access evidence** is also **reinforced** compared to the previous regulation].
3. Art. 12 requires **cooperation** between **safety investigation authorities** and **judicial authorities**.

Speed of publication and compliance

1. The final report must be published in the shortest possible time and if possible within 12 months of the date of the accident.
2. **Non-compliance** with Reg. 996/2010 is penalized by Member States: in Italy, law decree 18/2013 sets out **financial penalties** for violations of Reg. 996/2010.



Admissibility of investigation reports?

1. Given the nature of investigation reports, could they be considered as evidence in **civil proceedings**?
2. Could one of the parties in a civil case **introduce the report as evidence** in their own favour?
3. What about **criminal cases**?



Arguments **in favour** of admissibility in civil proceedings

- ✓ Investigators have great **expertise** and independence;
- ✓ Unlimited investigation powers: autopsy, medical examination, examination of witnesses;
- ✓ Possibility to intervene immediately after the accident and gather unique evidence of short duration;
- ✓ The objective nature of the report is to **identify** as clearly as possible **the causes of the accident for safety and prevention reasons** and **not apportion blame**.



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Arguments **against** admissibility in civil proceedings

- ✓ Lack of due process guarantees: no participation of legal representation to the parties during the gathering of evidence (Hoyle v Rogers [2014] EWCA Civ 257);
- ✓ A report contains not only facts but also the opinions of the investigators;
- ✓ The ultimate **goal of a report** and the (independent) **work of the investigators** might be hindered by the possibility of using it in civil proceedings (Hoyle v. Rogers);
- ✓ The fact that a report could be subsequently produced as evidence in a civil case may **affect** people's willingness to provide information that is useful for safety purposes;
- ✓ The investigation may be **protracted**;

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2. Case Law



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Hoyle v Rogers [2014] EWCA Civ 257

1. In 2011, Mr Rogers was killed in an aircraft accident; the family members won the case. The Judge **accepted as admissible** the AAIB (Air Accident Investigation Branch) **Report in his decision**.
2. **The ruling was appealed:** the issue was whether the judge was right in admitting the Report as evidence.



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Hoyle v Rogers [2014] EWCA Civ 257

As the report consisted of **statements or reported statements of fact**, it is
(*prima facie*) admissible.

1. the Court of Appeal Judge ruled:

«These points go to the weight to be given to the evidence in the Report rather than its character» (par. 30)

«the trial judge can take into account in like manner as he would any other factual evidence, giving to it such weight as he thinks fit» (par. 49)

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Hoyle v Rogers [2014] EWCA Civ 257

1. Regarding the **objection** that the report contains **opinions** of the investigators:

«The trial judge should see the whole report and leave out of account any part of it that was inadmissible» (par. 54)

2. As for the **objection** that the admissibility of the report could/should impede or **inhibit investigators** in their work, the Judge stated:

*«they can, and no doubt do, **decline** any request **to opine on liability**» (par. 89)*

*«they are **professionals** who are not in any way concerned with establishing or refusing civil **liability**» (par. 89)*

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Hoyle v Rogers [2014] EWCA Civ 257

3. As for the **objection** that people may be **discouraged to declare as witnesses**, if they are aware that the report may be used in civil proceedings, the Judge stated:

«Participants in this field [...] have shown themselves over the years largely willing to cooperate with the AAIB» (par. 96)



Other examples: *Bristow Helicopters Ltd v Sikorsky Aircraft Corp.* [2004]: the AAIB **Report** was held to support the position that England was the most convenient forum.

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The Italian System

The Italian system: **against** admissibility?

1. (Conservative position): they are **not admissible (atypical evidence)** they are not in accordance with fundamental Italian procedural rules:
 1. **right to defense** and fair legal procedure,
 2. **experts are not appointed by the case judges**, as required by the laws of impartiality,
 3. during Investigators' work there is **not a review by the case judge**.
2. **Exception** to the above-mentioned rules: **evidence of short duration**.
3. *The judge is not obliged to justify if his/her judgment **does not consider** the report submitted (Cass. Civ. 11.2.2002, n. 1902).*

The Italian system: **in favour** of admissibility

1. (Less conservative position): nothing in the Italian legal order prevents judges from basing their decisions on an extrajudicial report Civ. sez. II, 11.10.2001, n. 12411,).
2. **Therefore in Italy:** although investigation reports are **not formal** evidence according to the Civil Procedure Code they may constitute, **at the discretion of the judge:**
 - a) a **piece of evidence** or **lead**: the assessment of its reliability is again left to the free evaluation of the judge;
 - b) a **lead** (Cass. 22. 4.2009, n. 9551);
 - c) a **formal piece of evidence** whenever the investigator is summoned to court in order to confirm the facts contained in the report (Cass. Civ. 19.5.1997, n. 4437).

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Italian case law: Court of Rome 2014

1. **Court of Rome** 8.4.2014, n. 79976: in the light of the differing conclusions in the reports (ANSV investigation report and court-appointed report), the judge ordered an additional investigation.
2. The court-appointed expert confirmed the original outcome, in contrast with the ANSV report.
3. The Judge **ruled without taking into consideration** the ANSV report, **entirely at his discretion: he based his ruling only on the report by the court-appointed expert.**
4. The court **neither took into consideration** in its decision the **report** of ANSV filed by the plaintiff, **nor explained** why it did so.

What about criminal cases? Linate Accident

8.10.2001

1. **At Linate Airport in Milan:** Scandinavian Airlines Airplane MD-87 carrying 110 people collided on take-off with a Cessna Citation CJ2 business jet carrying four people. All **114 people** on both aircraft were killed, as well as **four people** on the ground. The accident occurred **in thick fog**, with visibility reduced to less than 200 metres (656 ft).
2. **Cause of the accident:** the "immediate cause" of the accident was the **runway incursion of the Cessna aircraft**; the airport was operating **without a functioning ground radar system**; guidance signs along the taxiways were obscured or badly worn; ATC's verbal directions used terminology to designate aprons, taxiways and runways **which did not match the way they were designated** and labelled.



What about criminal cases? Linate Accident

8.10.2001

1. **Court of Milan ruling (April 2004):** the description of accident causes were **largely based** on the ANSV investigation report.
2. **Court of Appeal (July 2006):** appellants challenged the ruling because:
 - a) **there were no due process guarantees** (no participation of legal representation to the parties during the gathering of evidence)
 - b) **ANSV inspectors were not summoned to court to confirm all the facts contained in the report.**
3. The Court of Appeal **confirmed the Trial Court ruling** on the basis that the trial judges took into consideration **only the facts described by inspectors and not their opinions.**



3. Compensation for damage



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Compensation for damage in Italy

Compensation for civil damage is awarded by Italian courts under **different categories**:

1. **Biological damages** compensate injured party's physical injuries or psychological condition, regardless of any loss of income.
2. **Compensatory damages** for **loss of earnings** are awarded where the claimant and/or his/her next of kin have suffered a loss of income.
3. **Moral damages** compensate for pain and suffering on an equitable basis. The amount varies according to the circumstances of the accident, the type of injury and the extent of disability.
4. **Existential damages** compensate for the loss of a full quality of life, regardless of the loss of income and without necessarily involving permanent physical injury. Their award has recently been upheld by Italian courts, the concept is new and the criterion for calculating damages has not yet been fully established.

Compensation for damage in Italy: average compensation at the moment of death

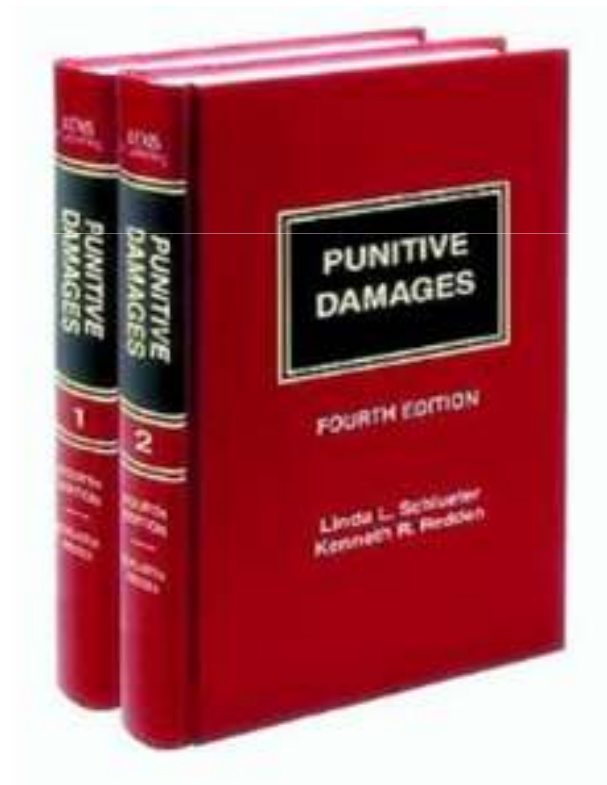
Compensation	From	To
In favour of each parent for the death of a child	€ 154.350,00	€ 308.700,00
In favour of each child for the death of a parent	€ 154.350,00	€ 308.700,00
In favour of spouse or surviving partner	€ 154.350,00	€ 308.700,00
In favour of the brother for death of a brother	€ 22.340,00	€ 134.040,00
In favour of the grandfather for death of a grandchild	€ 22.340,00	€ 134.040,00

Compensation for damage in Italy: Examples of non-patrimonial damages awarded to relatives in case of death

	Victim's age at time of death	Kinship with the victim	Age of relative	Cohabitation	Absence of others cohabitants	Damage's amount
A.	60	Child	30	Yes	Yes	€ 253.025,00
B.	60	Brother	50	No	Yes	€ 130.875,00
C.	30	Parent	55	Yes	Yes	€ 253.025,00
D.	20	Parent	55	Yes	Yes	€ 261.750,00
E.	30	Brother	32	No	No	€ 148.325,00

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Punitive damages?



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The issue of punitive damages: in breach of Italian Law?

District Court of Jefferson County, Alabama: ordered an Italian manufacturer to pay 1 Million \$ **in punitive damages** (in a tort case) for death of the plaintiff's son involved in a road accident due to a defect in the design of the buckle of the crash helmet.



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The issue of punitive damages

1. **Court of Appeal of Venice**, 15 October 2001, *Parrot c. Fimez S.p.a.*, (ruling on the request of exequatur):

Lack of enforcement: The US Court did not specify the **apportionment of compensatory and punitive damages** against the Italian defendants, so the Court of Appeal of Venice concluded that the **award was punitive in nature**, and therefore **contrary to Italian public law**.



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The issue of punitive damages

Court of Appeal of Trieste 3/12/2009:

1. Partial damages enforcement is possible if the original judgment separates the different damages (compensatory from punitive damages). Once again, only compensatory damages are awarded in Italy.



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Thank you

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