

MASTER, THE SCAPEGOAT:

Following the environmental disaster caused by *The Prestige*, Captain Mangouras has been the person who suffered the most.

Once again, the inadequacy and the lack of effectiveness of the existing rules regarding sea carriage (carriage of oil and its derivatives in particular) became apparent as a result of the environmental disaster which affected Spanish Coasts. Now, priority should be given to take solid steps with respect to security which may prevent such environmental disasters, instead of efforts to punish the Master who has become the scapegoat of the accident.

In mid November 2002, Bahamas flagged tanker, *The Prestige*, was caught to a storm off the Atlantic Coast of Spain. The old tanker, which had a cargo of 77.000 mts of fuel-oil on board, suffered heavy damages from the storm and began to take sea water in.

She then broken into two pieces and sank 70 miles off the coast while being towed – with a controversial decision - towards the north of Portugal. Several accusations from all parties involved came about following the disaster which caused a huge oil spill along the hundreds of miles of Galician Coast. Among the accused, Spain, which refused to name a port of refuge to the damaged vessel and diverted her towards the stormy Atlantic Ocean, came the first.

Several other companies and international organizations such as IMO and EU, which was accused to be late to make a regulation regarding the ports of refuge, have taken their share from the accusations.

In fact, the list of accusations is far longer: Those who have loaded additional ballast, which was argued to be the reason for the accident, irresponsible media and press, the “tanker mob” who keeps using scrap tankers, the flag state, the classification society and other supervising authorities which did not implement safety rules and did not report the dangerous situation of the tanker, Government of Spain which reported the amount of spill over sea surface less than it really was.

However, 67 years old Captain Apostolos Mangouras, Master of *The Prestige*, has been affected from these accusations more than any other party involved.

3 Million Euros for Guarantee:

Spanish authorities arrested Captain Mangouras, whom they believe was responsible for the disaster, on 15 November 2002, as soon as he set his foot on shore. The reasons for arrest have been stated as “*to disobey public officials and to cause environmental pollution*”. The Spanish Judge ordered the provision of a guarantee letter for the amount of 3 million Euros, in order the Master to be released. The Greek Company, who was the owner of the vessel and the employer of the Master, applied to the court

for the guarantee amount to be decreased. However the application was rejected. A second application to the same respect was rejected by the court, as well.

The Argument on which the Spanish Authorities insisted was that the Master was late to accept the tow rope which was given to the vessel by the tugs, which were sent by Spanish Authorities, and that, this delay led to the drifting of the vessel towards the coast. This argument was based on the assumption that the Master did not take the tow rope, to avoid entering into a salvage agreement.

However, it is widely known that the main priority of any Master whose vessel is under a serious danger would be to prevent his ship from sinking. Therefore, application of the heaviest sanction possible, just on the assumption that the Master refrained to take the tow rope does not seem acceptable.

Furthermore, it is one of the main principles of Maritime Law that a master is to take instructions from the owner and/or manager of the vessel or from cargo interests and acts as pursuant as possible to these instructions. Therefore, these parties should also be taken into consideration, while accusing the Master for not following the instructions of Spanish Government or those of salvors.

The Conscience of Seafarers:

To reach a quick conclusion that the master negligently refrained to take the tow rope, declaring him guilty and arresting him immediately, while trying to find an answer as to whether the Master refrained to take, or the tug refrained to give the tow rope (perhaps, due to the lack of a salvage agreement), disturbed the conscience of seafarers dreadfully.

Even if the situation had occurred in the exact turn of events as claimed by the Spanish Authorities, at a glance, there seems to be no negligence on Master's account, which would suffice to arrest him and to put him in jail.

As much as the maritime traditions and the ISM Code grant the Captain both the authority and the responsibility to take final decisions regarding to prevent pollution and to ensure the safety of the vessel, the circumstances during which the decision was taken by the Master should also be taken into consideration, while deciding over the consequences of exercising this authority.

As a matter of fact, from the beginning of the oil leakage from *The Prestige*, even all those aforesaid parties could not reach a conclusion which is beyond dispute and acceptable for every party involved, although they had every opportunity to negotiate and to make a decision. If this is the case then it is not possible to reach a conclusion that the decision of the Master who was under pressure of the critical situation was absolutely wrong.

The common view among all the individuals and organizations that are interested in the case is that Spanish Government arrested Captain Mangouras and presented him as a scapegoat to the world and, of course, to Spanish public, in order not to remain under the heavy burden of having a major role in an environmental pollution.

However, Captain Mangouras who evacuated his crew but stayed in his ship with just two officers until the last moment, have gained respect and sympathy of those who are interested in the case all around the world.

Sacrificing Behavior:

Perhaps, the most sacrificing behavior which could be expected from a captain, whose ship is sinking in a distant part of the ocean, is to stay in his ship and try to save her until the last moment, thus, honoring the maritime profession and tradition.

Captain Mangouras followed this tradition, evacuated his crew, stayed in his ship and kept fighting for days, together with his two officers.

Anything that have happened subsequently should be evaluated, taking into consideration the expectation from the Master to act in accordance with the instructions of Spanish Government and those of salvors, together with his obligation to act in accordance with the instructions of the owner, the manager and the cargo interests of the ship, the benefits of whom the captain is under an obligation to protect.

Disregarding the trauma and stress of a Master who lost his ship, despite all his efforts and arresting him immediately by an arbitrary decision, demonstrates the cruelty of the attitude of Spanish Authorities when general maritime traditions and the facts of this particular case is taken into consideration. Furthermore, the anger towards Spain increased even more for declaring the amount of guarantee as 3 Million Euros, which makes the release of Captain Mangouras almost impossible.

The State of Imprisonment:

The European Convention of Human Rights, permits the arrest of an individual in the presence of reasonable evidence to believe that arrest is necessary in order to prevent the suspect from disappearing after committing a crime and provided that the suspect will immediately be brought in front of a judge.

Moreover, the 1965 recommendation of the European Council of The European Union, of which Spain is a member, states that the decision as to continuity of arrest should only be taken in case of a real necessity and every effort should be shown in order not to prolong the duration of arrest more than necessary.

There is a universal opinion among all civilized societies that, imprisonment should not be used as a punishment as long as one cannot be sure, by convincing and reasonable evidence, that it is really necessary.

It should also be remembered that, in Turkish Law, arrest is subject to special conditions and only permitted if there is a reasonable doubt that the suspect may disappear and if there is a risk of alteration of evidence.

Finally it should be noted that, United Nations Convention of the Law of the Sea 1982, with respect to similar situations, states that the detained crew should immediately be released, upon provision of a reasonable guarantee.

Negligence of Many States:

No matter how big the scale of this pollution is, which deeply affected all those who are sensitive to the increasing pollution of our planet, to impose whole responsibility on a single person in a way to deprive him of his freedom, does not seem fair under the universal principles of law and as far as one's conscience is concerned.

Is it possible to say that a 3 Million Euros guarantee for the release of Captain Mangouras is fair and reasonable? Is not the attitude towards Captain Mangouras unfair and cruel, when there is negligence of many states and presence of other parties who could be deemed responsible, but who just do not have bodies to put in jail?

Is not that necessary -immediately and before everything else- to take steps in order to prevent such environmental disasters, instead of trying to punish Captain Mangouras?