

AVIATION LIABILITY

Italy



Aviation Liability

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Quick reference guide enabling side-by-side comparison of local insights, including into applicable treaties; liability for passenger injury or death during international or domestic carriage; third-party actions; liability for ground damage; liability for unruly passengers and terrorist events; liability for harm caused by drones; consumer protection and passenger rights; liability of government entities providing services to carriers; criminal proceedings; effect of carriers' conditions of carriage and tariffs; damages; accident investigation and family assistance; insurance requirements; litigation procedure; judgments and settlements; and recent trends.

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APPLICABLE TREATIES

Major air law treaties

To which major air law treaties related to carrier liability for passenger injury or death is your state a party?

As Italy is a member of the European Union, it is subject to the legislation produced in the context of the European Union. Indeed, pursuant to the Italian Constitution (articles 10 and 11), international treaties and European Regulations are binding and have a direct effect in Italy, and there is no need for any implementation. Some EU Directives may be considered self-executive and, therefore, must be considered binding too, and require no enforcement to be applicable in Italy.

Italy is a party to the following air law treaties:

- the Warsaw Convention: Convention for the Unification of Certain Rules Relating to International Carriage by Air (1929);
- the Rome Convention: Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface (1952);
- the Hague Protocol to the Warsaw Convention: Protocol to amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air (1955);
- the Guadalajara Convention: Convention Supplementary to the Warsaw Convention for the Unification of Certain Rules Relating to International Carriage by Air Performed by a Person other than the Contracting Carrier (1961);
- the Tokyo Convention: Convention on Offences and Certain Other Acts Committed on Board Aircraft (1963);
- the Montreal Additional: Protocol No. 1, Additional Protocol No. 2, Additional Protocol No. 3 and Additional Protocol No. 4 to Amend Convention for the Unification of Certain Rules Relating to International Carriage by Air, signed at Warsaw on 12 October 1929, as amended by the Protocol at the Hague on 28 September 1955 (1975);
- the Montreal Convention: Convention for the Unification of Certain Rules Relating to International Carriage by Air (1999); and
- the Montreal Convention: Convention on Compensation for Damage Caused by Aircraft to Third Parties (2009).

Further, according to Regulation (EC) No. 889/2002 of the European Parliament, the Montreal Convention 1999 has been transposed in the EU legal system and, therefore, this Convention is directly effective in Italy and is also applicable to domestic carriage by air.

Law stated - 23 September 2021

INTERNATIONAL CARRIAGE – LIABILITY FOR PASSENGER INJURY OR DEATH

Montreal Convention and Warsaw Convention

Do the courts in your state interpret the similar provisions of the Montreal Convention and the Warsaw Convention in the same way?

Italian courts interpret the similar provisions of the Warsaw Convention and the Montreal Convention in the same way.

Law stated - 23 September 2021

Do the courts in your state consider the Montreal Convention and Warsaw Convention to provide the sole or exclusive basis for air carrier liability for passenger injury or death?

The liability of air carriers for passenger injury and death under EU provisions – which are directly effective in Italy – is governed by Regulation (EC) No. 889/2002, which recalls the provisions of the Montreal Convention. Further, the EC Regulation requires the ‘Community air carrier’ (namely, the air carrier with a valid operating licence granted by an EU member state in accordance with Regulation (EC) No. 1008/2008) to provide an advance payment within 15 days in cases of injury or death of a passenger, sufficient to cover immediate economic needs on a basis proportionate to the damage suffered. In the case of death, the advance payment will not be less than 16,000 special drawing rights (SDR).

Law stated - 23 September 2021

Definition of ‘carrier’

In your state, who is considered to be a ‘carrier’ under the Montreal and Warsaw Conventions?

According to the Italian courts, the carrier is the person or entity granted a valid operating licence by the competent authority. According to the Italian courts, both the contractual carrier (which is the one with whom the passenger has entered into the air transport agreement) and the operating carrier (which is the one that is actually in charge of performing the carriage) are considered carriers in accordance with the Montreal Convention and the Warsaw Convention.

Law stated - 23 September 2021

Carrier liability condition

How do the courts in your state interpret the conditions for air carrier liability – ‘accident’, ‘bodily injury’, ‘in the course of any of the operations of embarking or disembarking’ – for passenger injury or death in article 17(1) of the Montreal Convention and article 17 of the Warsaw Convention?

According to Italian courts and legislation:

- ‘accident’ is any unusual event (meaning any event that will be considered uncommon with regard to the ordinary carriage performance), external to the passenger, occurring to the latter during the execution of the air carriage (Cass Civ No. 14666/2015). Such an event will take place between the time any person ‘boards’ the aircraft until all passengers have disembarked;
- ‘bodily injury’, as per the interpretation given by Italian law and by the courts, should be any illness in the body. Nevertheless, according to the decision of the Court of Justice of the European Union of 6 May 2010, there has been an extensive interpretation of the damage mentioned in article 17 of the Montreal Convention to include even non-material damage. This interpretation is, therefore, shared by some Italian courts (Court of Biella on 16 June 2016); and
- ‘in the course of any of the operation of embarking or disembarking’ has caused a conflict of case law in Italian courts. On one hand, it has been interpreted strictly by stating that the carrier will not be deemed liable for the damages suffered by the passenger in the course of the transportation between the terminal and the aircraft, because this transportation is executed by an autonomous subject that could not be considered as an accountable part of the carrier itself (Cass Civ No. 12015/2001). On the other hand, more recent decisions

broadened the liability of the air carrier to damage that occurred during preliminary or ancillary activities in connection with the carriage (such as the above-mentioned transportation of passengers between the terminal and the aircraft). In such cases, the air carrier has the burden of proof that the damage is a consequence that is unforeseeable and unavoidable with ordinary and reasonable diligence (Court of Messina No. 1147/2015, Cass Civ No. 9811/2018).

Law stated - 23 September 2021

No negligence defence

How do the courts in your state interpret and apply the 'no negligence' defence in article 21 of the Montreal Convention, and the 'all reasonable measures' defence in article 20 and the 'wilful misconduct' standard of article 25 of the Warsaw Convention?

According to the Italian courts, pursuant to the Conventions and the Italian Navigation Code, there is a presumption of liability on the carrier. To overcome this presumption, the carrier will prove its 'no negligence' defence by having adopted 'all reasonable measures' to avoid the damage. The generic proof of the use of ordinary diligence has not been deemed as sufficient, but Italian courts demand the carrier provide the evidence of each concrete and practical measure adopted, and evidence of the specific cause of the damage. As a consequence, the carrier bears the liability for any damage caused to the passengers owing to unknown causes (Cass Civ No. 20787/2004).

With regard to 'wilful misconduct', Italian courts stated that the liability of the carrier should be objectively appraised, on the basis of normal forecasting criteria. According to such decisions, the carrier's liability lies in the 'colpa con previsione' (wilful misconduct – Court of Milan on 25 September 1995; Cass Civ No. 8328/2001): in such cases, the carrier has been considered as liable on the basis of the fact that the latter acted recklessly and accepted the damage as a possible outcome of its conduct, being aware of the fact that it could have avoided it.

Law stated - 23 September 2021

Advance payment for injury or death

Does your state require that advance payment be made to injured passengers or the family members of deceased passengers following an aircraft accident?

Regulation (EC) No. 889/2002 requires the carrier to anticipate a payment, in the case of injury or death of a passenger, to cover immediate economic needs in proportion to the suffered damage, within 15 days from the day of the damage itself. In the case of death, the advance payment will not be less than 16,000 SDR.

EU regulations are applicable only to those carriers that can be considered community carriers (carriers that have their operating licence issued by the competent authority of a member state of the European Union, pursuant to Regulation (EEC) No. 2407/92).

Law stated - 23 September 2021

Deciding jurisdiction

How do the courts of your state interpret each of the jurisdictions set forth in article 33 of the Montreal Convention and article 28 of the Warsaw Convention?

Italian courts interpret the jurisdictions set forth by the Montreal Convention and the Warsaw Convention as follows:

- domicile of the carrier: it could be both the head office or the local office of the air carrier, should the latter have appointed an authorised representative in such a local office (Cass Civ No. 22035/2014);
- principal place of business: it is the head office of the air carrier;
- place of business through which the contract has been made: it is the local office of the air carrier where the ticket has been bought there by the passenger; it can also be a travel agency if it is proven that it sold the tickets on the basis of an agreement with the local office of the air carrier (Cass Civ No. 13689/2006);
- place of destination: the place of the final destination of the flight as agreed between the air carrier and the passenger; and
- place of residence of the passenger: it is the state where the passenger has its normal place of residence. Combined with the Italian Consumer Code, passengers, in their capacity as consumers, are entitled to bring their cases against the air carriers before the court of the place of their residency.

Further, there has been a conflict of case law in the Italian courts on the interpretation of the subject articles, settled by several decisions of the Italian Supreme Court, and, according to the latter, the above-mentioned criteria are to be considered as international jurisdictions criteria, while the internal jurisdiction (on the basis of which it is determined before which office of the court or before which court within the national territory the case should be brought) will be ruled by internal national law (Cass Civ No. 22035/2014).

Law stated - 23 September 2021

Period of limitation

How do the courts of your state interpret and apply the two-year period of limitations in article 35 of the Montreal Convention and article 29 of the Warsaw Convention?

Italian courts interpret article 35 of the Montreal Convention and article 29 of the Warsaw Convention, combined with article 949-ter of the Italian Navigation Code, and apply the two-year limitation as a forfeiture period. Therefore, according to article 949-ter, the Italian courts state that passengers who intend to bring a claim against the carrier should file it within two years after the arrival to the destination of the carriage; this period cannot be suspended (United Division of Cass Civ No. 21850/2017).

At present, with regard to the passengers' rights arising by Regulation (EC) No. 261/04, there is no settled case law on this issue.

Law stated - 23 September 2021

Liability of carriage

How do the courts of your state address the liability of carriage performed by a person other than the contracting carrier under the Montreal and Warsaw Conventions?

Where the contractual carrier does not perform the carriage, because it is performed by a third operating carrier, Italian courts, by applying the provisions set forth in the Montreal Convention, consider the operating carrier jointly liable together with the contractual carrier before the passengers' claims. It is understood that the operating carrier's liability is limited to the damage that occurred during the leg of the carriage they executed.

Law stated - 23 September 2021

DOMESTIC CARRIAGE – LIABILITY FOR PASSENGER INJURY OR DEATH

Governing laws

What laws in your state govern the liability of an air carrier for passenger injury or death occurring during domestic carriage?

According to article 941 of the Italian Navigation Code, article 11 of the Italian Constitution and Regulation (EC) No. 889/2002, the Warsaw Convention and the Montreal Convention directly apply even to domestic carriage; therefore, both the nature and the limits of air carrier's liability, together with the main defences available for the air carrier, are similar to those applicable for international carriage. The same is applicable to time limits within which it is possible to bring an action against an air carrier for damages, including those deriving from injury or death of the passenger.

Law stated - 23 September 2021

Nature of carrier liability

What is the nature of, and what are the conditions for, an air carrier's liability?

On the grounds of the information given above – the direct application in the domestic carriage of the Warsaw Convention and the Montreal Convention – the liability of domestic air carriers is ruled by the same laws that rule international carriage. Therefore, the air carrier liability in domestic carriage for injuries or death of the passengers is strict as ruled by articles 17 of both the Montreal Convention and the Warsaw Convention.

Law stated - 23 September 2021

Liability limits

Is there any limit of a carrier's liability for personal injury or death?

For domestic carriage, the liability limits are set forth in the Montreal Convention. Therefore, the air carrier would be strictly liable up to the amount of 100,000 special drawing rights. The passengers would still be entitled to a higher level of compensation, pursuant to article 21 of the Montreal Convention, where:

- the damage is because of the air carrier's own negligence; or
- the damage has not only been caused by the negligence of the passenger or a third party.

Law stated - 23 September 2021

Main defences

What are the main defences available to the air carrier?

In domestic air carriage, as per international carriage, the air carrier's main defence is set out in articles 19 and 20 of the Montreal Convention.

Law stated - 23 September 2021

Damages

Is the air carrier's liability for damages joint and several?

Also in domestic carriage, the Montreal Convention with its regime of liability is applicable. Further, according to article 943 of the Italian Navigation Code, the passenger is entitled to be informed by the contractual carrier of the circumstance where the actual operating carrier would be a different one. Should the contractual carrier fail to inform the passenger about this circumstance, the latter would be entitled to obtain a termination of the carriage agreement, a refund of the price paid for the ticket and compensation for the damages.

Law stated - 23 September 2021

Rule for apportioning fault

What rule do the courts in your state apply to apportioning fault when the injury or death was caused in whole or in part by the person claiming compensation or the person from whom the right is derived?

According to article 20 of the Montreal Convention, as well as article 1227 of the Italian Civil Code, if the passenger's negligence has contributed to causing the damage, the compensation is reduced according to the seriousness of the negligence and the extent of the consequences arising from it. Compensation is not due for damages that the creditor (namely, the passenger) could have avoided by using ordinary diligence. Pursuant to the above, Italian courts do not consider the air carrier liable in cases where the damage is the result of an event caused by the passenger's lack of diligence and prudence and sense of responsibility for the sake of its immunity (Court of Milan No. 3398/2009).

Law stated - 23 September 2021

Statute of limitations

What is the time within which an action against an air carrier for injury or death must be filed?

Also in domestic carriage, the two-year time limit established in article 35 of the Montreal Convention is applicable.

Law stated - 23 September 2021

THIRD-PARTY ACTIONS

Seeking recovery

What are the applicable procedures to seek recovery from another party for contribution or indemnity?

In cases where the damage to the passenger was caused by a third party, the air carrier has two options:

- sue the third party in the same proceeding originally pending between the passenger and the air carrier itself to be held harmless by the third party; or
- sue the third party in a subsequent proceeding brought by the air carrier who lost the claim against the passenger.

Law stated - 23 September 2021

Time limits

What time limits apply?

The time limit depends on the contractual relationship between the air carrier and the third party.

The general limitation period for a recovery action is 10 years.

If the third party is subject to the Montreal Convention, the two-year time limit has to be considered.

If the third party is an insurer, the time limit is fixed at two years but the air carrier has to fulfil the obligations in the insurance agreement (eg, disclosure requirements).

In cases where there is no contractual relationship between the air carrier and the third party, any extra-contractual liability expires five years from the date on which the illicit fact or act caused by the third party occurred. However, this rule must receive a different consideration if the fact or act falls under the application of criminal law.

Law stated - 23 September 2021

LIABILITY FOR GROUND DAMAGE

Applicable laws

What laws apply to the liability of the air carrier for injury or damage caused to persons on the ground by an aircraft accident?

The liability of any damages caused to persons or goods on the ground in an aircraft accident is, in principle, governed by the Rome Convention. Indeed, pursuant to article 965 of the Italian Navigation Code, the liability for injury or damage caused to persons on the ground by an aircraft is governed by the international laws that are in force in Italy.

In this regard, according to both the Italian Navigation Code and the Rome Convention, these rules are applicable only to the aircraft operator. Therefore, those rules would be applicable to the air carrier as well only in cases where the air carrier coincides with the aircraft operator, as defined under article 2, second paragraph of the Rome Convention.

In cases where the air carrier does not coincide with the aircraft operator, it would not be able to take advantage of the limitation of liability. In such a case, the air carrier liability would be ruled by the Italian Civil Code.

Italy did not ratify the Montreal Protocol dated 23 September 1978, which amended the Rome Convention.

Law stated - 23 September 2021

Nature and conditions of liability

What is the nature of, and what are the conditions for, an air carrier's liability for ground damage?

Should the air carrier coincide with the aircraft operator, its liability must be qualified as a strict one.

Law stated - 23 September 2021

Liability limits

Is there any limit of carriers' liability for ground damage?

In cases where the air carrier and the aircraft operator coincide, as per article 971 of the Italian Navigation Code, its

liability would be limited to the insurance coverage limits set forth by article 7 of Regulation (EC) No. 785/2004. Should the air carrier not be the aircraft operator, under the Italian Civil Code, any limitation of its liability would not be applicable.

Law stated - 23 September 2021

Main defences

What are the main defences available to the air carrier in a claim for damage caused on the ground?

For ground damage, the operator's liability may be totally or partially excluded by proof of:

- the sole victim's fault;
- the circumstance that the damage is a simple consequence of the passage of the aircraft through the airspace in compliance with current traffic regulations;
- the circumstance that the damage is a direct result of an armed conflict; and
- the circumstance that the damage occurred when the aircraft operator was deprived of the use of the aircraft by an act of public authority.

Law stated - 23 September 2021

LIABILITY FOR UNRULY PASSENGERS AND TERRORIST EVENTS

Applicable laws

What laws apply to the liability of the air carrier for injury or death caused by an unruly passenger or a terrorist event?

The regulations applicable for unruly passenger and terrorist events in Italy include the following:

- the Tokyo Convention;
- the Montreal Convention; and
- the Warsaw Convention.

Law stated - 23 September 2021

Nature and conditions of liability

What is the nature of, and what are the conditions for, an air carrier's liability for injury or death caused by an unruly passenger or a terrorist event?

The nature and condition of an air carrier's liability for injury or death of a passenger caused by an unruly passenger or a terrorist are those set out in the Montreal Convention.

Law stated - 23 September 2021

Liability limits

Is there any limit of liability for injury or death caused by an unruly passenger or a terrorist event?

For injury or death of a passenger, the limit of liability set in the Montreal Convention (equal to 113,100 special drawing rights) applies.

Law stated - 23 September 2021

Main defences

What are the main defences available to the air carrier in a claim for injury or death caused by an unruly passenger or a terrorist event?

The main defences available to the air carrier in claims for death or injury of passengers caused by an unruly passenger or a terrorist are those provided by articles 20 and 21 of the Montreal Convention.

Law stated - 23 September 2021

LIABILITY FOR HARM CAUSED BY DRONES

Applicable legislation

Summarise the laws or regulations related to the liability for injuries or damage caused by drones.

The applicable legislation consists of:

- the Italian Navigation Code;
- Regulation (EC) No. 785/2004 of the European Parliament and of the Council – otherwise called 'Insurance Requirements', as amended by Regulation (EU) No. 285/2010;
- the Rome Convention of 7 October 1952;
- Regulation (EU) No. 1139/2018;
- the Italian Civil Code; and
- Italian Civil Aviation Authority (ENAC) Regulation No. 2 dated 16 July 2015 as per revision No. 4 dated 21 May 2018.

Article 743 of the Italian Navigation Code, titled 'Concept of aircraft', introduces, in the definition of aircraft, the notion of remotely piloted aerial vehicles:

'Aircraft shall mean any machine designed for the transportation by air of persons or property. Remotely piloted aerial vehicles are also considered aircraft, as defined by special laws, ENAC regulations and, for the military, by decrees of the Ministry of Defence. The distinctions of the aircraft, according to their technical specifications and use shall be established by ENAC with its regulations and, in any case, by special legislation in this field.'

ENAC Regulation No. 2/2015, as a further discipline of article 743 of the Italian Navigation Code, splits remotely piloted aerial vehicles into remotely piloted aircraft systems and model aircraft for the purpose of applying the provisions of the Code.

Remotely piloted aerial vehicles operated or intended to be operated for specialised operations or for experimental,

scientific or research activities, are established to be remotely piloted aircraft systems (RPAS) and the provisions of the Italian Navigation Code apply, in accordance with this Regulation.

Model aircraft shall not be regarded as aircraft for the applicability of the provisions of the Italian Navigation Code and can be used for recreational and sporting activities only.

Nevertheless, the ENAC Regulation sets out specific provisions and limitations applicable to the use of the model aircraft to ensure the safety of persons and property on the ground and of other airspace users.

With reference to RPAS and the liability rules in case of damage, the applicable legislation is the following.

In the case of damage caused to third parties on the surface, the operator's liability is governed by the Rome Convention of 7 October 1952. Although it is provided that the Rome Convention applies only to damage caused in the territory of a contracting state by an aircraft registered in another state (article 23 of the Rome Convention), article 965 of the Italian Navigation Code also extends the provisions of the Rome Convention to the damages caused in the Italian territory by aircraft registered in Italy as well as to damage caused by state aircraft.

Article 965 of the Italian Navigation Code states that:

'the Operator's liability for damage caused by the aircraft to people and property on the surface is governed by the international rules in force in the Republic, which also apply to damage caused in Italy by aircraft registered in Italy. The same regulation also applies to State Aircraft pursuant to Articles 744 and 746.'

The liability is qualified as a strict liability: the causal link between the aircraft and the damage caused by the latter is sufficient, regardless of the fault or intent of the person to whom the responsibility is attributed. Further, it can be qualified as a non-contractual liability.

The operator who is held liable for damage to third parties on the surface benefits from a special limitation of the liability system. In fact, as per article 971 of the Italian Navigation Code, 'the total compensation due by the operator, liable pursuant to articles 965 to 967 is limited to the sums provided for by EU legislation as minimum insurance coverage for third-party liability for each aircraft'. Therefore, article 971 of the Italian Navigation Code refers to Regulation (EC) No. 785/2004, also mentioned in ENAC Regulation No. 2. Thus, the insurance coverage of any RPAS (in accordance with the provisions set forth by Regulation (EC) No. 785/2004) will also be the limit of the compensation due for the damages caused by the RPAS to third parties on the surface.

Further, the issue concerning 'drone strikes' must be dealt with.

The legislator, both national and European Union, although not expressly mentioning drone strikes, is aware of the risks of possible collisions between RPAS and traditional aircraft, establishing that RPAS operation must take place in safe conditions and also in terms of non-interference with other vehicles in flight.

Thus, the attention of the legislators seems to be focused primarily on preventive measures; although, both in the ENAC Regulation, as well as in Regulation (EU) No. 1139/2018, there is a clear reference to the fact that the operator of an RPAS is liable for its correct use, and, consequently, the operator may be called to pay compensation for the caused damage.

Given that there are no specific provisions about which rules the liability regime of an RPAS operator is based on, article 966 of the Italian Navigation Code will apply. This article states that, in the event of a collision, inter alia, between 'aircraft' in flight, the provisions of the same Navigation Code relating to liability for the collision of ships (article 482 and subsequent) apply.

According to article 972 of the Italian Navigation Code, all the rules governing the limitation of liability, provided in the case of damage to third parties on the surface, also apply to liability for damage owing to impact, windage or other

similar cause.

Further, with reference to model aircraft, as the Italian Navigation Code cannot be applied, the liability regime is that provided for by article 2043 of the Italian Civil Code for non-contractual liability: consequently, no limitation of liability is provided.

Finally, in recent years, doctrinal disputes have been held about the fact that, in the absence of any specific rule issued by the legislator, the aforementioned liability regime – set forth in the Italian Navigation Code – should be applied to RPAS that are intended for ‘the transportation by air of persons or property’ only (see the wording of above-mentioned article 743 of the Italian Navigation Code). Consequently, with regard to RPAS intended for other uses, article 2043 of the Italian Civil Code (Liability Regime) should be applied. In cases where this strict interpretation prevails, the liability regime for the use of an RPAS not dedicated to ‘the transportation by air of persons or property’ should have no applicable limitation.

Law stated - 23 September 2021

CONSUMER PROTECTION AND PASSENGER RIGHTS

Applicable legislation

Summarise aviation-related consumer-protection laws or regulations related to passengers with reduced mobility, flight delays and overbooking, tarmac delay and other relevant areas.

As a member of the European Union, Italy is subject to the EU Regulations governing these areas, summarily:

- Regulation (EC) No. 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights;
- Regulation (EC) No. 1107/2006 on the rights of disabled persons and persons with reduced mobility when travelling by air; and
- Regulation (EC) No. 2027/97 on air carrier liability in the event of accidents as amended by Regulation (EC) No. 889/2002 of the European Parliament and of the Council of 13 May 2002.

Law stated - 23 September 2021

LIABILITY OF GOVERNMENT ENTITIES PROVIDING SERVICES TO CARRIERS

Relevant laws

What laws apply to the liability of the government entities that provide services to the air carrier?

The international applicable law providing liability of the government entities that provide services to the air carrier is Regulation (EU) No. 923/2012. On the basis of this Regulation, any government body providing services to a carrier, when causing damage to this carrier or to any third party, would be subject to article 2043 of the Italian Civil Code (Compensation Rule).

Law stated - 23 September 2021

Nature and conditions of liability

What is the nature of, and what are the conditions for, the government’s liability?

The responsibility of government bodies can only be of an extra-contractual nature.

Indeed, under Italian law, the public entity may be liable only in the case of an extra-contractual responsibility, owing to illicit conduct or illegally issued provision.

Further, it will be necessary for the plaintiff to prove the existence of the psychological element, which should at least be negligence, on the public entity.

In the latter case, there is a reversal of the burden of proof, so it will be the public entity that will have to demonstrate that the latter acted with simple negligence (United Division of Cass Civ No. 500/1999).

Law stated - 23 September 2021

Liability limits

Are there any limitations to seeking recovery from the government entity?

No.

Law stated - 23 September 2021

CRIMINAL PROCEEDINGS

Responsibility for accidents

Can an air carrier be criminally responsible for an aviation accident?

Under Italian law, a legal entity such as an air carrier cannot be held responsible for a criminal act. Indeed, according to the Italian Criminal Code, only individuals may be held criminally liable for their actions.

According to Legislative Decree No. 231/2001, it may be possible for the Italian courts to apply criminal sanctions to legal entities, in the form of monetary fines, in the presence of the following legal requisites:

- the employee of the legal entity committed or attempted to commit certain criminal offences in the interest or for the advantage of the legal entity itself; and
- the criminal offence attempted or committed falls under the application of Legislative Decree No. 231/2001.

Whether Italian law considers as crimes the causing of the fall of an airplane and, more generally, any failure in the observance of the laws or regulations aimed at the safety of navigation, these crimes do not fall under the application of Legislative Decree No. 231/2001.

Nevertheless, involuntary homicide falls under the application of this Decree, and, therefore, makes it possible for the court to hold the legal entity criminally responsible when it is caused by the non-compliance with the laws on health and safety at work (Court of Genoa No. 2212/2017).

Law stated - 23 September 2021

Effect of proceedings

What is the effect of criminal proceedings against the air carrier on a civil action by the passenger or their representatives?

Under Italian law, a final conviction issued by the criminal court may state that, in the civil action brought by the

passenger or his or her representative against the air carrier, the responsibility of the convicted subject cannot be questioned. On those grounds, the only subjects on which the civil court may exercise its discretion are the following:

- the degree of the negligence of the convicted subject;
- the potential contributory negligence of the damaged party in causing the damage; and
- the amount of compensation.

Law stated - 23 September 2021

Compensation

Can claims for compensation by passengers or their representatives be made against the air carrier through the criminal proceedings?

Under the Italian Criminal Procedure Code, any party that intends to claim for compensation against a subject who is accused in criminal proceedings has the right to join the proceedings as a civil party. As such, the passenger may claim compensation for the damages directly in the criminal proceedings.

Law stated - 23 September 2021

EFFECT OF CARRIER'S CONDITIONS OF CARRIAGE AND TARIFFS

Liability

What is the legal effect of a carrier's conditions of carriage or tariffs on the carrier's liability?

The air carrier may regulate its contractual relationship with the passenger in the drafting of the general terms and conditions of carriage. These conditions constitute the carriage agreement between the parties and, consequently, have a binding effect on both parties' rights. Nevertheless, the air carrier, in drafting the general terms and conditions of carriage, may not arrange a regulation of its liability that is different to the ones set forth by the Montreal Convention and EC Regulation No. 261/2004, these rules being strictly mandatory.

Law stated - 23 September 2021

DAMAGES

Damage recovery

What damages are recoverable for the personal injury of a passenger?

Under Italian law, the person who has suffered damage is entitled to be fully compensated for the damage suffered, both biological and existential. Biological damage consists of any damage to physical integrity, and existential damage is any damage to psychological integrity. Passengers who intend to claim compensation for damage resulting from an injury that occurred during air carriage have the burden of proof for the damage suffered.

With reference to the settlement of the biological claims, Italian courts apply a chart issued by the Court of Milan, which determines the entity of the compensation on the basis of the age of the damaged person and the percentage of temporary or permanent invalidity of the damaged person.

With reference to the settlement of the existential claims, even though the Court of Justice of the European Union defined as reimbursable the compensation of the non-material damages, to actually compensate these damages, Italian courts do not settle such damage, even though recognised by the interpretation of Montreal Convention, if the

claimant fails to meet the following conditions:

- they must provide proof of the damage suffered, which should not be a mere inconvenience (United Division of Cass Civ Nos. 26972-26973-26974-26975/2008; Cass Civ No. 14667/2015);
- they must provide proof of a faulty act or omission by the – alleged – liable party; and
- they must prove the existence of a causal link between the act or omission and the damage.

Further, injured passengers have the right to claim even for the economic loss deriving from the occurred damage (eg, losses because of the inability to work).

Law stated - 23 September 2021

What damages are recoverable for the death of a passenger?

Italian law gives relatives of a dead passenger the right to claim for the following damages suffered:

- non patrimonial damages – iure proprio – the sufferance caused to the relatives of the dead passenger because of the loss (Cass Civ No. 4043/2013);
- non-patrimonial damages – iure hereditatis – the sufferance caused to the passenger in both:
 - the case that he or she was aware of imminent death; and
 - the case that he or she suffered death throes (United Division of Cass Civ No. 15350/2015); and
- patrimonial damages – iure proprio – such as funeral expenses, loss of earnings or loss of income (Cass Civ No. 10853/2012).

Law stated - 23 September 2021

ACCIDENT INVESTIGATION AND FAMILY ASSISTANCE

Investigatory authority

Who is responsible in your state for investigating aviation accidents?

Legislative Decree No. 66/1999 has been embodied in the National Agency for the Safety of Air Traffic (ANSV), which is the specific public body in charge of carrying out:

- technical inquiries on serious incidents or accidents on aircraft; and
- study and inquiry activity to ensure the improvement of air traffic safety.

This public body, in accordance with EU Regulation No. 996/2010, and with the aim of impartiality and neutrality, has independence and disjunction with the civil aviation system because it submits to the Council of Ministers and not the Ministry of Transport.

Law stated - 23 September 2021

Disclosure restrictions

Set forth any restrictions on the disclosure and use of accident reports, flight data recorder information or cockpit voice recordings in litigation.

On its website, the ANSV publishes its investigative relations and reports and, even though the identity of the involved individuals is kept confidential, this documentation may be used in litigation.

Law stated - 23 September 2021

Relevant post-accident assistance laws

Does your state have any laws or regulations addressing the provision of assistance to passengers and their family after an aviation accident?

Under article 21 of Regulation (EU) No. 996/2010, each member state of the European Union should establish an emergency plan for aviation accidents. Each member state provides that every air carrier registered in the national territory will establish a civil aviation accident emergency plan at the national level. This plan aims to provide assistance, in particular in terms of psychological support, to survivors of such events, and also to families and relatives of deceased passengers.

Law stated - 23 September 2021

INSURANCE REQUIREMENTS

Mandatory requirements

Are there mandatory insurance requirements for air carriers?

Under article 942 of the Italian Navigation Code, there is an obligation for air carriers to enter into insurance agreements on their activity. According to article 942, all European and international laws on insurance requirements are directly applicable in Italy. Such international laws are the following:

- Regulation (EU) No. 889/2002;
- the Montreal Convention; and
- Regulation (EU) No. 785/2004 (as amended by Regulation (EU) No. 285/2010).

The last sets out minimum insurance requirements for air carriers and aircraft operators in respect of passengers, baggage, cargo and third parties.

This Regulation applies to air carriers and aircraft operators flying within, into, out of or over the territory of an EU member state and stipulates the following minimum insurance cover:

- 250,000 special drawing rights (SDR) per passenger;
- 1,131 SDR for baggage per passenger; and
- 19 SDR per kilogram of cargo.

Law stated - 23 September 2021

LITIGATION PROCEDURE

Court structure

Provide a brief overview of the court structure as it relates to civil aviation liability claims and appeals.

There is no specific court dedicated to civil aviation matters. Therefore, the standard rule of competence of Italian courts must be considered. The Italian court structure is based on, among other things, territorial rules and on the value of the claim.

Claims of up to €5,000 are decided by a justice of the peace (JP) who is not a formal gowned judge. Claims above €5,000.01 are decided by the tribunal that has the territorial jurisdiction.

Both the judgment issued by a JP and the judgment issued by a tribunal can be appealed before the tribunal and before the court of appeal (which is formed by three magistrates) respectively. The competent court to decide over the appeal against the decision issued by the court of appeal is the Italian Supreme Court.

Should the JP decide on a claim on an equitable basis, the competent court for the appeal would directly be the Supreme Court.

In ordinary proceedings, the plaintiff must sue the defendant at a fixed date.

Generally, the defendant must file his or her statement of defence 20 days before the fixed date if the claim is under the tribunal or the court of appeal. In cases where the claim is under JP jurisdiction, the defendant can file the statement of defence up to the first actual hearing before that magistrate.

In any case, the appeal must be brought within six months, starting from the filing of the decision that the party wants to appeal, otherwise, the decision becomes final, unless the winning party serves the judgment to the counterparty. In the latter case, the appeal should be brought within 30 days, otherwise, the decision becomes final.

Generally, in the second instance, there are two hearings (the first appearance hearing and the hearing where the party asks for the decision) before the court.

Law stated - 23 September 2021

Allowable discovery

What is the nature and extent of allowable discovery/disclosure?

Under article 2697 of the Italian Civil Code (Burden of Proof), the party that asserts a right in judicial proceedings must prove the facts on which the right is based. The counterparty that asserts the invalidity of these facts or claims that the right has been modified or extinguished must prove the facts on which the defence is based.

Therefore, each party has to disclose appropriate and expedient evidence to prove his or her right. The proceedings are not aimed at revealing the truth but are directed at getting the correct judgment based on the evidence offered by the parties.

The only case under which a party is obliged to disclose evidence is when such a request comes from the judge because a party proves that the evidence is only in the hands of the counterparty. If the judge orders a document's disclosure but the requested party fails to comply, the judge is entitled to draw any conclusion that he or she sees fit from this failure (article 116, paragraph 2 of the Italian Civil Proceedings Code).

Law stated - 23 September 2021

Evidence

Does the law of your state provide for any rules regarding preservation and spoliation of evidence?

No laws are provided for a general obligation to preserve or to prevent the spoliation of evidence. In Italy, there are specific laws that oblige the preservation of the document with regard to financial documents and account books, and with regard to the investigation and prevention of accidents. With reference to financial documents and account books, the document has to be preserved for 10 years. With reference to the investigation and prevention of accidents, this is as per Regulation (EU) No. 996/2010 of the European Parliament and of the Council of 20 October 2010 (as enforced by Legislative Decree No. 18/2013).

Therefore, generally, if a party does not have in his or her possession evidence that would be useful towards winning the case, he or she would probably lose the case unless he or she can prove that the spoliation does not depend on him or herself, and he or she can get the same goal through presumptions.

Law stated - 23 September 2021

Recoverability of fees and costs

Are attorneys' fees and litigation costs recoverable?

In Italy, each party must bear his or her own attorneys' fees. Further, the plaintiff must pay litigation costs in advance.

As per article 91 of the Italian Civil Proceedings Code, the losing party is condemned to bear both the litigation costs and the counterparty's attorneys' fees, calculated on the basis of Ministerial Decree No. 55/2014.

Law stated - 23 September 2021

JUDGMENTS AND SETTLEMENT

Pre- and post-judgment interest

Does your state impose pre-judgment or post-judgment interest? What is the rate and how is it calculated?

In Italy, the default legal interest is payable in the amount established, year by year, by the Ministry of Treasury.

In 2020, as per the Ministerial Decree issued on 12 December 2019, the updated legal interest rate was equal to 0.05 per cent above the due amount. In 2021, as per the Ministerial Decree issued on 15 December 2020, the updated legal interest rate is equal to 0.01 per cent above the due amount.

The start date of the interest accrual generally is identified as the date of the notification of the judicial claim to the counterparty.

It could happen that the judge, as per the sentence he or she issues, establishes as the starting date the date of the ruling.

Finally, in cases where the claimant, before the proceedings, brings a default action against the counterparty, by a formal letter, the interest accrues from the date of this formal letter.

In cases where the parties to the proceeding are professionals and the proceeding concerns a business-to-business relationship, the default interest is established by Legislative Decree No. 231/2002 and is fixed at the amount of 8

percentage points above the base rate.

Law stated - 23 September 2021

Settlements

Is court approval required for settlements?

Court approval is not required for settlements unless the settlement agreement is entered into before the judge.

Should the claim be before a court, the parties have two options:

- they can get an out-of-court settlement agreement, under which they can close the claim and give up the proceeding without appearing before the judge in the next hearings; or
- the parties, represented by their relative attorney, can sign a settlement agreement before the judge.

Law stated - 23 September 2021

What is the effect of a settlement on the right to seek contribution or indemnity from another person or entity? Can it still be pursued?

If a settlement is concluded, it is only binding upon the parties who sign the settlement itself and does not affect the right to contribution or indemnity from another person or entity unless such clause is expressly drafted in the settlement agreement itself.

Law stated - 23 September 2021

Are there any financial sanctions, laws or regulations in your state that must be considered before an air carrier or its insurer may pay a judgment or settlement?

Under Italian law, with the aim of preventing the use of the banking and financial system for money laundering and terrorist financing, any payment carried out over the limited amount of €3,000, as set forth by article 49 of Legislative Decree 231/2007, cannot be performed in cash. The air carrier or its insurer that carries out a payment following the outcome of a judgment, or of a settlement of an amount higher than €3,000, will have to execute it by bank transfer, cheque or any other traceable means of payment. In addition to this, anti-money laundering legislation should be applied in any case.

Law stated - 23 September 2021

UPDATE AND TRENDS

Key developments of the past year

What were the key cases, decisions, judgments and policy and legislative developments of the past year?

After the covid-19 pandemic that heavily impacted the civil aviation market, it is possible to imagine that, owing to the vaccinations carried out among the population, the demand for airline tickets, connected to the growth of the desire and need to fly, will start to grow again. It is likely that the growth in this demand will not be matched by immediate growth in the supply of airline tickets in the short to medium term, as carriers, to withstand the market downturn, have

made consequent choices regarding, for example, slots and available fleets.

This, it is assumed, will certainly lead to an increase in ticketing costs, given the lower number of seats available on flights and a lower frequency of flights.

This cost increase will also be justified by the need to take appropriate measures to reduce pollution. The need to convert the fleet to use sustainable fuels will be a further element that will affect the increase in ticket prices.

Owing to the greater demand for flights compared with supply, it can be foreseen that there will be a potential increase in cases of overbooking, resulting in a greater demand for the application of the provisions in article 4 of Regulation (EC) No. 261/04.

Finally, such an imbalance between flight supply and demand could also have repercussions for frequent flyers. To date, the reduction in flights has seen an increasing number of carriers postpone the 'expiry' of their frequent flyers status (eg, statuses expiring in 2021 have been postponed until 2022). The increase in demand, compared with the supply of flights may, however, also affect the possibility of redeeming 'award flight', with consequent liability for the carrier's breach of the loyalty programme. The carrier could not be exempt from liability by invoking the revocation for the cause of the loyalty programme, given that this revocation is allowed, in the Italian legal system, only because of a just cause qualified as a supervening event (as per article 1990 of the Italian Civil Code): certainly, the choice of reducing flights cannot, at present, be qualified as a supervening event. The potential liability of the carrier will be equal to the economic value of the award not collected or whose use becomes impossible.

Law stated - 23 September 2021

Jurisdictions

	Austria	Benn-Ibler Rechtsanwälte GmbH
	Brazil	ASBZ Advogados
	Canada	Alexander Holburn Beaudin + Lang LLP
	France	Kennedys Law LLP
	Germany	Urwantschky Dangel Borst
	Italy	RP Legal & Tax
	Latvia	SUCCESS410.COM Specialized Advisory Services
	Malaysia	Saranjit Singh, Advocates & Solicitors
	Netherlands	Van Traa Advocaten
	New Zealand	Hesketh Henry
	Nigeria	Streamsowers & Köhn
	Switzerland	bellpark legal ag
	United Kingdom	Stephenson Harwood LLP
	USA	Clyde & Co LLP