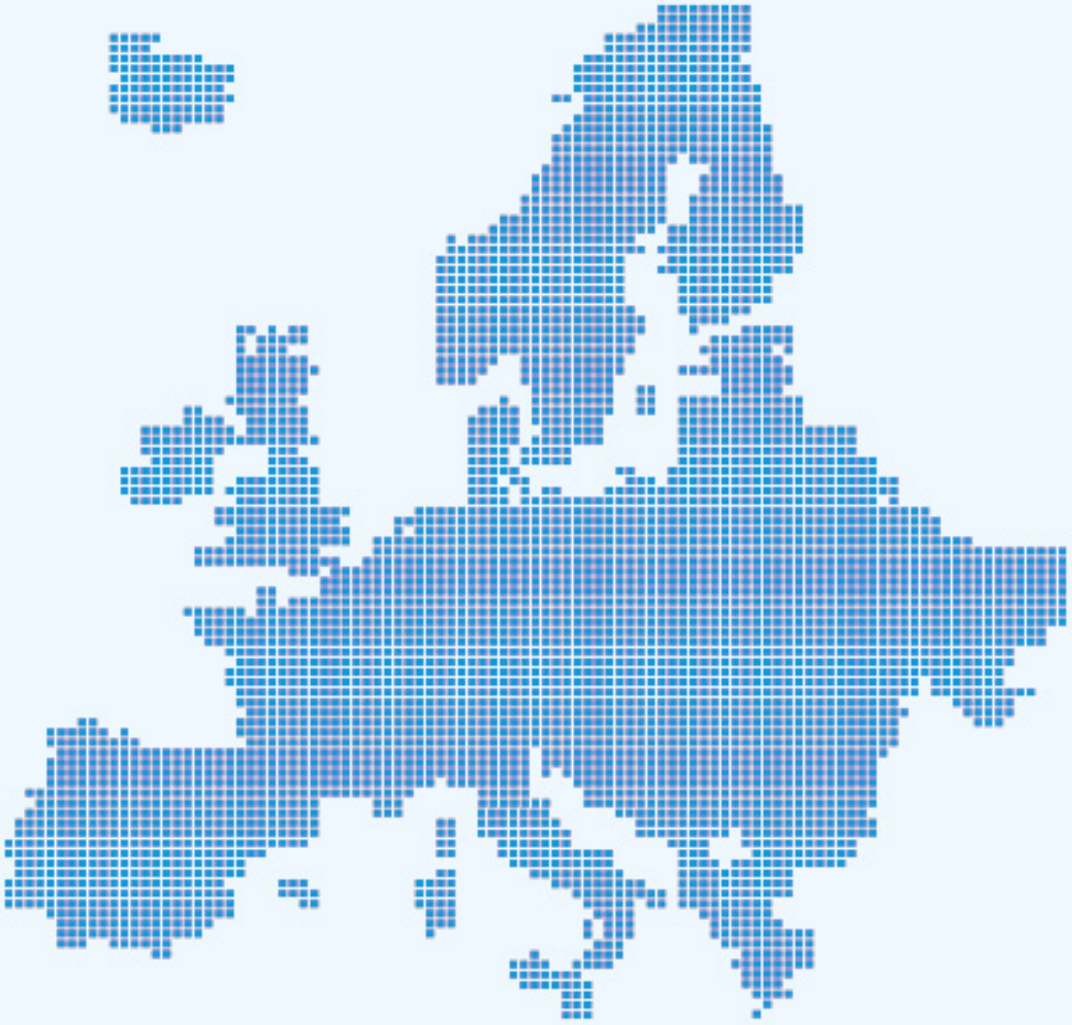
CLNI Judgements



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CLNI JUDGMENTS

COURT	LOCATION	ARICLE CLNI	SUBSTANCE
Berufungskammer der Zentralkommission Strassburg 23.04.1992	**250 Z – 2/92**	**Art. 4**	**Limitation of liability**

The now outdated notion of acting with malice aforethought is apparently intended to describe conduct by the debtor, in respect of which a generally approved limitation of liability on his behalf is unacceptable to the creditor. However this would imply not only the intent, but also deliberate negligence (almost exactly as in Art 4. of the Strasbourg Convention of 1988 on the Limitation of Liability in Inland Navigation - CLNI – according to which "a person liable shall not be entitled to limit his liability if it is proved that the loss resulted from his personal act or omission, committed with the intent to cause such loss, or recklessly and with knowledge that such loss would probably result". Cf also the identical regulation in Art. 4a of the German law on inland navigation law, introduced into this law by the Second Maritime Change Law of 25.07.1986, according to para. 1.4 of which, the limitation of liability for the shipowner for claims relating to loss involving the death or injury of passengers ceases to apply if the aforementioned conduct on his part is established.)

RB Rotterdam 11.06.1993	**ECLI:NL:RBROT:1993:2894 S&S 1994,103**	**Art. 17**	**Applicability of CLNI**

There is no possibility to anticipate the CLNI and entertain a claim relating to damage sustained in a collision that occurred before the CLNI Convention was ratified by the Netherlands (1988).

RB Rotterdam 07.10.1994	**ECLI:NL:RBROT:1994:3008 S&S 1997,84**	**Art. 17**	**Applicability of CLNI**

There is no possibility to anticipate the CLNI and entertain a claim relating to damage sustained in a collision that occurred before the CLNI Convention was ratified by the Netherlands (1988).

Berufungskammer der Zentralkommission Strassburg 08.12.1994	**317 Z – 15/94**		**Applicability of CLNI prior to ratification**

As far as the Appeals Chamber is aware, this Convention will be ratified by the Federal Republic of Germany and its content incorporated into the German law on inland navigation, in particular since the Unification Treaty concluded between the Federal Republic of Germany and the former German Democratic republic on 31.08.1990, as a result of by then already modernised liability law for inland navigation in the latter State stipulates that "the pan-German legislature intends to introduce limitations of liability relating to amount for commercial inland navigation ahead of the entry into force of the Strasbourg Convention (CLNI)" (Annex 1, Chapter 3, Subject area D, Section III, No. 4 of the Treaty). In the light of this it cannot be a matter for the courts to partly pre-empt the ratification of this Convention, or its incorporation into the law on inland navigation by the legislature, by already treating certain regulations contained in the Convention as legally binding or, by means of a legal analogy, referring to an equivalent regulation in maritime law, particularly as it is not simply a question of "whether" a limitation of liability applies, but also of "how", as well as of the distribution of the amount of liability among multiple creditors and the procedures this entails.

RB Rotterdam 24.10.1996	**ECLI:NL:RBROT:1996:2984 S&S 1997,41**	**Art. 2**	**Liability for costs and measures to prevent water pollution**

To limit liability for preventive costs related to environmental contamination, it is not sufficient to constitute a property fund; rather the specific water pollution fund should be constituted.

Hof Den Haag 26.10.1999	**ECLI:NL:GHSGR:1999:4181 (Appeal re: ECLI:NL:RBROT:1996:2984, S&S 1997,41), S&S 200, 132**	**Art. 2**	**Liability for costs and measures to prevent water pollution**

To limit liability for preventive costs related to environmental contamination, it is not sufficient to constitute a property fund; rather the specific water pollution fund should be constituted.

Schifffahrtsobergericht Köln 31.10.2006	**3 U 138/05 BSch –, juris**	**Art. 18, para. 1 c; Art. 2, paras. 1 d, e and f**	**Limitation of liability according to Art. 5 f German law on inland navigation BinSchG**

On this precise point, the legislature has not included any relevant provisions corresponding to Art. 5j of the **German law on inland navigation BinSchG**. This also became particularly apparent through the fact that in this respect the preamble (cf BT-Drucks. 13/8446 S.30) refers to CLNI Art. 18, para. 1c, which in turn refers to CNLI Art. 2, paras. 1d and e. In contrast, there is specifically no reference to CNLI Art. 2, para. 1f, which addresses claims of the nature under discussion here regarding reimbursement for safety measures. A correction to what the Senate considers a clear interpretation, consisting of removing at the outset the entitlement to the reimbursement of costs for safety measures from the scope of application of the limitation of liability in accordance with Arts. 4 to 5m of the **German law on inland navigation BinSchG**, would overstep the boundaries of acceptable interpretation. Given the clear statements in the preamble regarding claims for reimbursement of expenses there is no ascertainable loophole which would allow the use of an analogy.

RB Rotterdam 27.07.2007	**ECLI:NL:RBROT:2007:1405 S&S 2009,68**	**Art. 6**	**The term 'means of propulsion'**

The capacity of a bow thruster intended solely to manoeuvre the vessel is not included in the calculation of the sum of limited liability. This type of bow thruster is not classed as a means of propulsion (Ger: "Antriebsmaschinen" ; French: " machines de propulsion") as referred to in CLNI Art. 6.

VG Darmstadt 31.07.2008	**3 E 1329/07 (4)**	**Art. 2, para. 1a; 6, para. 1b**	**No limitation of liability for the costs of a fire service intervention related to a shipping accident; water pollution in Hesse**
Verwaltungsgerichtshof 25.11.2010	**8 A 3077 08 (Appeal re VG Darmstadt 31.07.2008)**		
BVerwG 23.11.2011	**6 C 6/11 (Appeal re Hesse**		

	Verwaltungsgerichtshof **25.11.2010)** **ZfB 2012, Nr. 2/3, page 2168 ff**		

The costs claimed are not covered by the facts of the situation that initiated the limitation of liability. Fire service costs are not considered claims for loss in the sense of Para. 4 of the **German law on inland navigation BinSchG** in conjunction with CLNI Art. 2 para. 1 a.

Hof Den Haag **28.04.2009**	**ECLI:NL:GHSGR:2009:3293** **S&S 2009, 31** **(Appeal re** **ECLI:NL:RBROT:2007:1405 S&S** **2009,68)**	**Art. 6**	**The term 'means of propulsion'**

The capacity of a bow thruster intended solely to manoeuvre the vessel is not included in the calculation of the sum of limited liability. This type of bow thruster is not classed as a means propulsion (Ger: "Antriebsmaschinen"; French: " machines de propulsion") as referred to in CLNI Art. 6.

OLG Karlsruhe **29.09.2009**	**22 U 4/09 RhSch** **ZfB 2/2010, Sammlung 2067 ff**	**Art. 6, para. 2**	**Liability privilege under Art. 5f, para. 2 of the German law on inland navigation BinSchG**

In accordance with Art. 5f, para. 2 of the German law on inland navigation, claims in respect of damage to harbour works and basins (and similar) have priority with regard to settlement from the maximum liability limit. In Art. 5f, para. 2 of the German law on inland navigation – which corresponds to the regulation for maritime shipping contained in Art. 487 b of the German Commercial Code - the German legislature has made use of the opportunity set out in CNLI Art. 6, para 2, to accord priority to claims for damage to certain, usually public installations over claims relating to other property damage. In consequence, such damage is considered first when distributing the amount of liability in accordance with the distribution procedure set out in Art. 46, para. 1 of the Maritime Distribution Statute.

RB Rotterdam 30.09.2009	**ECLI:NL:RBROT:2009:….. S&S 2011,31**	**Arts. 6; 9**	**Limitation of coupling relationship between pusher and barges**

Accident involving a pusher coupled to a pushed barge. Although the CLNI (nor the London Convention on Limitation of Liability for Maritime Claims, from which the CLNI is largely derived) contains no express regulation, it can be understood from CLNI Arts. 6 and 9 that the owner of a pusher that at the time of the accident was coupled to a barge, cannot limit his liability by constituting a fund solely for the pusher.

RB Rotterdam 15.09.2010	**ECLI:NL:RBROT:2010:…… S&S 2010,32**	**Arts. 1; 11**	**Term 'charterer' in relation to pusher and barge**

The mere fact that a pusher is employed to move a barge chartered for the purpose of transporting containers, does not render the charterer of the barge also the charterer of the pusher. A charterer may only impose a limitation on the fund constituted for the barge where he is also the charterer of the barge.

Hof Den Haag 30.08.2011	**ECLI:NL:GHSGR:2011:1135 (Appeal re ECLI:NL:RBROT:2010:……, S&S 2010,32), S&S 2012,61**	**Arts. 1; 11**	**Term 'charterer' in relation to pusher and barge**

For an explanation of the term ´charterer´ in the sense of CLNI Art. 1, para. 2, it is necessary to consider Art. 1 para. 2 of the London Convention on Limitation of Liability for Maritime Claims, from which the CLNI is largely derived. In contrast to Dutch law, where time and voyage chartering is linked to carriage on board a vessel (and thus the voyage or time chartering of a barge alone is not possible), under CLNI Art. 1, the bareboat, voyage and time charterer is included among those entitled to limit liability with regard to the whole vessel (push boat and barge). There are no grounds to distinguish between principal and sub-charterer. The barge and pusher are furnished as a pushed entity, so that the charterers can also limit liability through the fund constituted for the pusher.

RB Rotterdam
22.09.2010

ECLI:NL:RBROT:2011:…..
S&S 2011,33
ZfB 2011, Nr. 1, page 2114 (2014) ff

Art. 1

Slot charterer is entitled to limit liability

For interpretation of the CLNI, it is essential to consult the London Convention on Limitation of Liability, from which the CLNI is largely derived. A slot charterer (that is to say, a charterer who concludes a charter contract for part of the hold for a number of containers) is entitled to limit liability in the sense of CLNI Art. 1 para.2. Here it is important to note that the concept of those entitled to limit liability is applied increasingly widely and that the carriage of containers has increased, so that the use of slot charter contracts has also grown significantly, as has the close link between vessel and slot charterer for the use of a given number of container places on a particular vessel. In the case of slot chartering, the control over the chartered hold space and the commercial risk is comparable with that of the user or charterer who has control over the entire cargo capacity of the vessel.

Hof Den Haag
28.04.2011

ECLI:NL:GHSGH:2011, 3019 (Appeal re ECLI:NL:RBROT:2011:…
S&S 2011,33), S&S 2014,53
ZfB 2011, Nr. 8, page 2139 ff

Art. 1

Slot charterer is entitled to limit liability

For interpretation of the CLNI, it is essential to consult the London Convention on Limitation of Liability, from which the CLNI is largely derived. There are no grounds to distinguish between principal and sub-charterer: the importance of being able to invoke limitation applies to both principal and sub-charterer. Given the aim and the scope of the CLNI, there is no reason to deny the slot charterer the right to limitation.

RB Rotterdam
25.09.2013

ECLI:NL:RBRO:2013:7253
S&S 2014,32

Arts. 2; 18

Reservation under CLNI Art. 18 for water pollution

The reservation expressed in CLNI Art. 18, para. 1a applies only to damage due to a change in the quality of the water itself, and not to damage to property caused by oil that has leaked into the water. Claims for damage due to a change to the quality of the water include the costs for reasonable preventive measures implemented to counter the threat of

damage due to a change in the quality of the water (cleaning costs). Under Dutch law, for all these claims (including those presented as recourse claims), a water pollution fund should be constituted; it is not sufficient to constitute a property fund.

RB Rotterdam
09.10.2013

ECLI:NL:RBROT:2013, 8135
S&S 2014,77

Arts. 2; 15; 18

Reservation in respect of vessels not used for commercial shipping. No anticipation of CLNI 2012

In the light of the declaration made upon accession to the CLNI as set out in Art. 15, para.2, the CLNI applies to all waterways in the Netherlands. As the Netherlands has emitted no reservations with regard to vessels not intended for commercial shipping (Art. 18, para. 1d), the owner of a houseboat may invoke limitation of liability.

OLG Hamburg
05.12.2013

6 U 194/10 - , juris

Interruption or suspension of a dispute in the Netherlands

A dispute regarding the legal liability of a principal carrier in respect of an average in the Netherlands is not interrupted in the sense of Arts. 52; 42; 8 para. 3 of the German law on the procedure regarding the constitution and distribution of a fund to limit liability in maritime and inland navigation, if the German dispute tribunal reaches the conclusion that the principal carrier is not entitled to limit liability under Arts. 4 to 5m of the German law on inland navigation BinSchG (thus also the CLNI). This also applies where the claimant has registered his claims in respect of the distribution procedure in the Netherlands. In the light of these facts, the dispute procedure cannot either be suspended under Art. 148 of the Code of Civil Procedure or paused under Art. 251 of the Code of Civil Procedure.

Rheinschifffahrtsobergericht Karlsruhe
27.04.2015

22 U 1/14 RhSch
ZfB 2015, Nr. 6, page 2359 ff.

Limitation of liability and pilot liability

In the same way as is set out in Art. 21, para. 3 of the law on maritime pilots, a pilot is only liable for intent and gross negligence. However, under Arts. 5b, para. 1; 5 c, para. 1.3 of the German law on inland navigation BinSchG, limitation of pilot liability is excluded where the damage is due to the pilot acting with the intent of causing damage, or recklessly and in the knowledge that such damage would be likely to occur. The description of the action as 'reckless' refers to a particularly severe objective degree of dereliction of duty, going beyond gross negligence (not legally binding).

RB Rotterdam
25.11.2015

ECLI:NL:RBROT:2015:8534

Arts. 2; 18

Persons entitled to invoke limitation with regard to the water pollution fund

The Netherlands has emitted a reservation, as set out in CLNI Art. 18, para. 1a, with regard to the limitation of liability for damage due to water pollution. For this reason, the limitation of liability in respect of claims for damage due to water pollution is based not directly on the CLNI, but on the Dutch procedure for settling such cases. The owner of the vessel liable is not entitled to invoke limitation for costs arising from measures implemented by the owner to contain the water pollution caused by oil leaking from his vessel (CLNI Art. 2, para. 1f). This rule will also be maintained in the new CLNI. Here the limitation system for inland waterways deviates from the CLC, where the owner may institute such a claim in the limitation fund. It is not the task of a Dutch judge to abolish differences between maritime and inland waterways shipping law.