

# THE CONTROLLER

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# The Blame Culture in Italy

## Two Accidents and Subsequent Convictions Illustrate Severe Shortcomings



by Bruno Barra, President ANACNA (Italy Controllers Association)

### Linate Accident

On 8 October 2001 an SAS MD87 collided on take off on the runway in Milan Linate airport with a German Cessna Citation 500 taxiing. All occupants of both aircraft and 4 on the ground were killed (118 persons). The Citation pilot took a wrong taxiway, crossed the active runway stop signs and penetrated the runway. Visibility in the fog was 50 to 100m and the airport was operating as CAT 3. The Citation pilot was only CAT 1 qualified. No ground radar was available. (source ansv, report available on: [www.ansv.it](http://www.ansv.it))

The Italian Supreme Court confirmed an earlier ruling of the Milanese Appeals Court: the ground controller on duty that day was sentenced to three years imprisonment. Seven others from various organizational levels in ENAV (Air Navigation Service Provider) and SEA (Airport Handling Agent), were also convicted. No one from ENAC (Italian Civil Aviation Organization) was found guilty, contrary to the outcome of earlier trials.

The Supreme Court ruled that while the controller operated with adequate professionalism, he lacked the ability to "imagine" that the CESSNA was on the wrong taxiway, without radar and no visibility (fog). This unjust outcome appears to be largely the result of the outdated Italian justice system, not having implemented European and ICAO just culture regulations.

The Courts' full motivation takes up around 200 pages. Focussing on the part of the controller, the judges stated: "it is possible that at the base of the accident, more concurring clauses can be identified to identify the human errors combined by the controller and the Cessna pilots, the lack of ground radar and the misleading signals...on the R6 taxiway". Similar to what the judges underlined in the appeal with regards to "the existing procedures at Linate for aircraft movement in the airport area and in take off position were adequate and functional" and that "the accident did not occur because of the application of inadequate procedures, but

*because the procedures were not followed carefully and breached".*

Contrary to the earlier trials, where – based in ANACNA's opinion on an inadequate and deceiving technical consultancy – the ground controller's personality and alleged incompetence were focussed on, this verdict did not question his experience, skill and professionalism. The appeal did however confirm the controllers' sentence owing to one identified fault: the pilot reported a sign which did not appear on any map and was therefore unknown to them and the controller. The Supreme Court of Cassation stated that "...no pilot, in normal conditions and knowing where he/she was, would have communicated such a report to the Tower..." In the given circumstances (a position report that didn't make sense, not being able to physically see the aircraft and without ground radar), the controller should have realised the dangerous situation: "he only had one possibility and one duty: to immediately stop the airplane ... until the position had not been identified".

We have to ask ourselves whether it is possible that someone, who the Court itself believes to have elevated professionalism, behaved in such a grave, negligent and imprudent manner. Furthermore, not considering the continuous attempts to steer public opinion towards blaming a single person, what proved to the Supreme Court that this call was so clear to the controller that

Photo: ENAV





it had to at least presented a warning to him? Quite honestly: nothing! The controllers' defence proved the unreliability of the evidence presented throughout, even using phonetic analysis. But to no effect. It is amazing that the Supreme Court did not even comment on this information in their final judgement.

Some superficial arguments would not have manifested themselves, according to us, if the Court of Milan, during the preliminary investigations and the first degree trials had relied on their objective, independent experts (as is customary). Instead, they relied on the narrative of a single consultant, chosen by the public prosecutor.

Some important considerations:

- This single technical consultant was a professional pilot and a member of ANSV (Italian Safety Agency). Both the ANSV initial report and the technical one for the public prosecutor were very similar, as they were written from the same point of view. Based on this, ANACNA forwarded a complaint to the European authorities.
- Complex cases like these require specialist technical expertise. With such a central role, it is essential for this expertise to be completely objective.
- With this in mind, serious doubts are justified: specialized competencies are required for each of the particular sectors involved. Therefore, there is a need for experts, preferably belonging to professional orders or associations, who have documented technical experience in their field.
- The magistrate's auxiliary consultants are "trial subjects" and they certainly cannot be confused with professional experts such as pilots and controllers.
- The SAFREP (safety reporting) task force has reminded member states - in agreement with the 2003/42/EC Regulations - to employ only resources with a specific investigational and analytical competence for a surveillance and technical investigation, in order to be able to properly evaluate the dynamics of an event. Recently, the European Commission made the responses given to public consultation promoted in the months of January - March 2007 public. These were proposals to modify the regulations 94/56/EC and 2003/42/EC and even in this context, the indication that investigators of air traffic incidents must be trained and have the correct ability to perform this difficult profession sharing similarities in all European Countries.
- A list of specialists that have a sole European certification would, perhaps, avoid what one of the nation's most qualified

experts on flight security defined as "the dangerous category of the 'self-referenced experts', who, without having ever followed a specialization course like those of accident investigators for each of the various fields of civil aviation (operations, maintenance, air traffic control, training, meteorology etc.)." ... [These] 'technical consultants' of the many 'ambitious' public prosecutors present

*in Italian justice [system], invent thesis and theories of accusation for "front line operators" that, due to bad luck, committed (according to their point of view) "errors" where they do not exist, or at least, they are not grave faults, nor international violations, but simply (and not always) simple human errors to evaluate according to the "Human Factor" techniques, and not in a tingling hand-cuff manner.* (Captain Renzo Dentesano in ANACNA Convention on April 6<sup>th</sup> 2006)

Issues in the trial that followed this accident, have according to ANACNA, certainly not been comforting.

- In the first degree judgement, the decision was, as mentioned above, mainly based on the sometimes inconsistent and contradictory evaluations expressed on what happened from the same technical consultant who assisted the Public Prosecutor, and who then assisted the Substitute General Prosecutor in the appeal. The court, then, did not take into account the observations of consultancy of other parts in the trial.

For ANACNA, we can see a verdict that did not take into account accepted just culture principles:

- From the preliminary investigation, the trial violated what was contained in the European 94/56/EC and 2003/42/EC regulations. ANACNA reported the lack of segregation between the technical/administrative investigation and judicial one (see also recommendations AIG ICAO), as well as deficiencies in the role and competence of the investigators;
- Considering that the Court of Appeal believed the controller to be adequately professional, the motivation for sentencing him appears to be in complete contrast with ICAO recommendations, which advises



Copyright ANSV - Cessna 500 Citation OE-FAN - Cagliari, 24FEB2006

→ The tail of the OE-FAN.

against useless criminalization and automatically opening of judicial procedures against pilots, air traffic controllers and other staff responsible for flight operations. Many others, such as the President of NTSB, the Flight Safety Foundation, IFATCA and IFALPA have made similar statements.

- The motivation for the final sentence appears to be equally inadequate, from the just culture principle supplied by Eurocontrol: "a just culture is defined as one in which front-line operators or others are not punished for actions, omissions or decisions taken by them that are commensurate with their experience or training, but where gross negligence, wilful violation and destructive acts are not tolerated". The Court itself did not question the controller's experience and professionalism. Certainly, the fact that he did not perceive something that is outside of norms and operational procedures as an alarm signal cannot, surely, be considered gross negligence or wilful violation;
- Italy's breach of contract and its insufficient "legal system", along with its inadequate culture, are also highlighted in the 2006 ICAO audit and in Eurocontrol's 2006 and 2008 Performance Review Reports (PPR)



## The Cagliari Accident

On 24.02.2004, an Austrian Cessna Citation 500 (OE-FAN) collided with the top of Monte Sette Fratelli at 3300 ft, 18 NM before Cagliari airport while performing a visual approach at night. All 6 occupants died. The pilot, initially cleared for an instrument approach, reported the field in sight and requested a visual approach. The controller replied "Confirm able to maintain your own separation from obstacles, Sir, performing visual APP runway 32?" The pilot replied "Affirm". (ANSV final report available on [www.ansv.it](http://www.ansv.it))

On March the 17<sup>th</sup>, 2008, Cagliari court sentenced the two controllers on duty to 3 years imprisonment (reduced to 2 years due to the choice of reduced procedure). They also had to pay 75,000 Euros in civil damages and trial expenses. This sentencing created awe and drew reactions from everyone in aviation circles in Italy. Main argument for the verdict was the authorization, even if requested by the pilot, for a visual approach at night "without supplying the pilot with all the necessary information on the orography\* of the land."

Photo: ENAV

The controllers had followed the technical rules and regulations they had. This was also testified by the courts' experts. The "topographical information on the land's orography", which the controllers omitted to communicate to the pilot, are part of **additional conditions** relevant night visual approaches. They were issued by the former D.G.A.C. of the Ministry of Transport, to all Italian airports and by extension to Italian airlines companies. They specify the applicable conditions in which the pilots can safely perform a visual approach at night in Italy.

The evidence highlighted that **those additional conditions were not present in the ATC technical regulations** in Cagliari, nor were they ever brought to the attention of the controllers. The convicted controllers scrupulously applied what was in their manual regarding visual approaches at night, as one can see in the transcript. ANACNA thinks that the Italian Safety Agency (ANSV) did not fulfil its institutional duty of verifying the real causes at the origin of this accident, avoiding doubts regarding eventual technical causes.

Even considering that the investigation report and its safety recommendations should not, in any case, apportion blame, ANACNA believes that the lack of a conclusive report by ANSV on the true causes of this accident, along with clearly specifying the real responsibilities of the controllers, would have helped the magistrates to better understand the ATC technical norms.

Confusing the technical, administrative with the judicial one has probably influenced the ANSV investigation, seeing the fact that the sentence given, and its motivations were essentially based on a different interpretation of technical norms that regulate the ATS services

On this, it is necessary to recall that ANSV duties and finalities are in complete contrast with the EU Regulation 94/56/CE, which specifies:

- 1) as it is the state's organism who is in charge of the investigation, its investigators must have absolute independence and autonomy in order to avoid any conflict of interest, pressures or interventions from any other party whose interests may enter in conflict with the mission assigned to them;

- 2) the sole objective of the technical investigation is to draw lessons that allow to prevent future accidents and incidents. The analysis of the event, the conclusions and the safety recommendations should not be aimed at establishing errors or at evaluating responsibilities.

So for an Investigation Agency such as ANSV to collaborate with a public prosecutor could well point technical reports towards establishing errors and identifying responsibilities.

**This verdict did not take into any consideration ICAO and EU community regulations regarding just culture.**

From the beginning, this trial appeared to be an exaggerated attempt to criminalize professionals who operated with diligence. The behaviour of the controllers that day was in accordance to the technical rules and regulations in force at the time in their unit.

- The exaggerated severity of the sentence has confirmed the lack of Italy's institutional will to conform to ICAO and European directives which aim at encouraging the development of a just culture and the creation of a punishment risk free environment. It does not focus on the faults of components of the system (those responsible for front line operations), but it aims at guaranteeing an exhausting and regular interchange of matters regarding safety.
- None of the above mentioned institutions (ENAC, ANSV, ENAV, AMI) responsible for guaranteeing flight safety, have performed the necessary clarifying technical role in this matter, supplying explanations regarding the procedure to follow when a pilot's request of a night visual approach.
- More than one year after publication of EU directive 2003/42/CE, still no intention was apparent to introduce a reporting system (mandatory and voluntary).

\*Orography (from the Greek ὄρος, hill, γραφία, to write) is the study of the formation and relief of mountains and can more broadly include hills, and any part of a region's elevated terrain. ⊕

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