

(1) Message dated 20 September 2013 from Mr Mizzi to the Registrar (not reproduced), transmitting completed set of: Republic of Panama’s Answers to the Questions raised by the Tribunal on 30th August 2013, received on 5 September 2013, attached:

Case 19 – VIRGINIA G

REPUBLIC OF PANAMA’S ANSWERS TO THE QUESTIONS RAISED BY THE TRIBUNAL ON 30 TH AUGUST 2013.

1. Can the Parties throw some more light, if possible with examples of relevant practice or specific cases, on the risks posed to the marine environment by bunkering?

1- DEFINITION OF BUNKERING

We can define bunkering as the fuel intake of a ship from storage tanks from a fuel supplier, which are stocked on their tanks on board and will then be used with propulsion purposes and generation of electricity on board

2- TYPES OF PRODUCTS USED IN BUNKERING

The fuels used in the bunkering operations are:

- Gas Oil
- HFO (IFO-30 /60/180/380)

It should be understood that oil and asphalt are NOT products used in bunkering operations.

3- EXECUTION OF BUNKERING OPERATIONS

Bunkering operations are made in two zones:

a- In the port

In the port, the bunkering is done in two ways:

- From installations at land, through pipes or via tanker trucks; or
- Via bunkering ships

b- On the sea

They are always done through bunkering ships

4- TYPES OF OIL TANKERS

An oil tanker is defined as a Tanker ship, designed for transporting various kinds of liquid fuels. These are designed for the transport of following products:

- a. Heavy or Dirty (raw, asphalt, fuel oil); and
- b. light or clean (fuel for cars, aviation, distilled, etc.)

The tankers are of various sizes and capacities, from the small tankers used for bunkering (used to refuel other ships) that vary between 1000 and 5000 deadweight tons (DWT) to the real giants: the VLCC (very large crude carrier) of 2-300.000 DWT and the ULCC (ultra large crude carrier) as of 300.000 DWT.

5- RISKS DURING THE BUNKERING OPERATIONS

The risks during the bunkering operations are minimal, because these are operations that are studied and prepared in advance and executed following security protocols. In the event that non-compliance with some safety aspects affecting persons, the vessel or the environment are found out, the operations do not start or are suspended.

These minimum levels of Risk are reached through the following:

- a- boats with technical means are enabled (OWS, ODME, alarms, tank level sounding, pressure/vacuum valves, remote stops, etc) and materials (overflow tanks, catch basins, booms, absorbents, dispersants, etc) to prevent any leakage damage to the environment
- b- International regulations such as MARPOL, which establishes in its annex I, rule 37, the obligation for all vessels to have on board a manual on procedures called S.O.P.E.P. (**Shipboard Oil Pollution Emergency Plan**). Its main objective is to prevent pollution and stop or minimize it when an outflow has occurred.
- c- Certification of the crews under the STCW Convention
- d- Training of the crews through the monthly required exercises

6- ENVIRONMENTAL DAMAGES

We will classified the environmental damages in two categories:

- a- Environmental damages due to maritime accidents

This kind of damage is the most substantial, as when they occur they bring as a consequence a great environmental impact because of the large quantity of product discharged into the sea.

To do this, from the beginning of such accidents new security measures have been introduced (SOLAS & MARPOL) in the construction of ships (double hull tanks reduction capabilities, etc.) and technical means (monitoring equipment and detection, use of inert gas, etc..) which has facilitated the drastic reduction of marine casualties in these vessels.

It should be mentioned that currently there are now other ships, other than tankers, which because of their big size (Bulk Carriers, Containers Ships), they store large amounts of fuel in their tanks on board (in some cases with capacities exceeding 1,000 Tons), which results that in case of a maritime accident it will have almost the same environmental consequences of an oil tanker, also adding that the fuel these ships are using is heavy fuel (HFO). To avoid this, as has happened with the oil, new regulations have been introduced in their construction and equipment.

b- Environmental damages due to bunker activities.

It needs to be indicated that there are less environmental damages through bunker activity, unlike the previous one, and their environmental impact, since small quantities are produced in comparison to the ones pointed out in the previous section and their intervention to minimize damage is immediate, as the means to combat the spill are prepared and ready for immediate use and if they occur in ports or territorial waters, it also has immediate collaboration from the port and a spill never stretches beyond the surroundings of the ship, due to the containment barriers.

The bunkering spills should not be considered similar to the spills occurred in maritime accidents, such as Erika and the Prestige cases. In addition, it must be noted that the oil spilled in the case of major accidents was crude oil whereas the bunkering operations to fishing vessels performed in the EEZ are made with gas-oil (clean and volatile product) and small quantities.

Another point to be considered, as indicated in section 6, is that large ships other than oil tankers (bulk carrier, ULCS) go through the EEZ with more fuel than the amount that stores a bunker ship.

Panama is a contracting party to all international conventions on pollution prevention and responsibilities (CLC-69 and Bunker 2001). Therefore, all Panama flagged ships comply with international standards on the pollution prevention.

The rules on construction of oil tankers (MARPOL) set out the following:

- Every oil tanker bigger than 600DWT which carries persistent hydrocarbon must be built to meet the double hull MARPOL regulation.
- Every oil tanker bigger than 5000DWT must have double hull.

According to these rules, we have to say that the Ship Virginia G is less than 5000 DWT and does not carry persistent oil. Hence, the ship Virginia G can continue navigating as single Hull and carrying oil in its cargo tanks.

2. What are the legal remedies available under the legal system of Guinea-Bissau against the confiscation of a vessel, its cargo and its gasoil?

The possibility to confiscate a fishing vessel can be found in Article 52 of the Guinea Bissau's Fisheries Act of 6-A/2000 (as amended in 2005).

Before 2005, Article 52(3) read:

"3. The decision provided for in paragraph 1 is NOT subject to appeal" (emphasis added)

4. The Inter-Ministerial Fisheries Commission is to decide the disposal of the property and products confiscated under the terms of the provisions of this law, which revert to the government.

In 27 June 2005, this Article 52.3 was amended, as follows:

"The decision provided for in paragraph 1 IS SUBJECT TO APPEAL". (emphasis added)

The "Legal opinion" prepared by the Attorney General (Procurador-Geral da Republica) of 11 November does not mention as facts the arrest of Virginia G of 21 August 2009, but only refers to an alleged refuelling operation that would have occurred on **20 June 2009**.

The Attorney General also wrongly states in this legal opinion that the Decision on confiscation were not subject to appeal:

"The decision of the Inter-Ministerial Fisheries Commission is thus, in our opinion, correct and unappealable (cf.nº3 of article 52 of Law nº 6-A/2000). Hence the shipowner petitioned for an interim measure".

Surprisingly, the Attorney General, DID NOT INCLUDE in his legal opinion to the Prime Minister that the decisions of confiscation was subject of judicial appeal. It did not take into account that in 2005, the Fisheries Act was amended.

Please note, that we have been informed by local counsels that this amendment was precisely adopted because of the ITLOS Judgment in the JUNO TRADER Case.

PROVISIONAL MEASURES

The shipowner has two options:

OPTION ONE: APPLICATION FOR PROMPT RELEASE: Under Article 65 of the Fisheries Act, the shipowner can lodge an appeal before a local court to request the adoption of interim measures, BUT this option only allow to ask the release of the ship, crew and products UPON THE DEPOSIT OF A GUARANTEE/BOND. And furthermore, this provision expressly impose that the amount of the guarantee must be NOT LESS that the value of the cost of the arrest or detention, of repatriate the crew and the amount of the fine. In cases where the administration has imposed confiscation of the fishing catches, equipment and ship, the local court CAN INCREASE THE AMOUNT OF THE GUARANTEE/BOND to the value of the fishing catches, equipment and also the value of the ship (Article 65.4).

Certainly, the above conditions make practically impossible to make such a request for interim measures. Indeed, the local judge has not a possibility to modulate the amount taking into account the “*fumus boni iuris*”, the damages, the casual link, etc.

OPTION TWO: application of provisional measures before the local courts based on grounds of procedural laws. The 2005 amended version of the Fisheries Act, allows to challenge a confiscation decision before the “judicial courts”. There is no a particular reference to which local court.

So, general provisions of procedural law apply.

Based on the above, the shipowner of the VIRGINIA G lodged a request for interim measures before a local court, who rendered on 5 November an Order (**Case 74/2009) *Providencia cautelar – Pedido de Suspensao de Eficacia Despacho de Deferimento da Providencia Cautelar***). Please find attached this Order (together with a translation into English)) and the formal service of this Order that local lawyers made at the time (on 10 November 2009) and that were attached as Appendix 54 of Panama’s Memorial.

This Order decreed on 5 November 2009 the suspension of the confiscation orders on the ship and cargo.

Contrary to what has been said to date by the Agent of Guinea Bissau before the Tribunal, the government of Guinea Bissau lodged an appeal on 3 December 2009 before the same local court; the government lodged the appeal via the Gabinete de Advocacia de Estado. Some weeks later, the Judge adopted a new Order on 18 December 2009 confirming the suspension: the government of Guinea Bissau had lodged its appeal OUT OF TIME (“*extemporaneo*”) and not before the COMPETENT COURT. Please find attached a copy of this Order together with an English translation. (Please see **Attachment 1** to this document, together with translation **Attachment 1.1**)

This procedure is final. And the government of Guinea Bissau did not respect the Orders of suspension, and they unloaded the cargo on 20 November 2009 on a Sunday to avoid to allow the shipowner to go to the local court.

The shipowner also submitted (Case 98/2009) a request for interim measures (*Providencia cautelar - Pedido de Suspensao de Eficacia* against the Oficio 317/GSET/2009 of the Minister of Finances – Secretario de Estado do Tesouro related to the decision of the government of Guinea Bissau to unload the cargo.

On 16 December 2009, the Judge ordered the immediate return of the unloaded cargo to the ship VIRGINIA G. To date, the government of Guinea Bissau has **NOT** respected this Order. Please find attached a copy of the Order together with a translation into English of the conclusions of the Order as **Attachment 2**, with the operative part translated below:

a) To order the immediate return of the fuel discharged of the applicant's vessel, and the plaintiff should support all costs related to this devolution.

b) to abstain of conduct any act opposing to this decision and informed of disobedience could have [criminal consequences]

c) I order and determine the notification of the plaintiff and the applicant further articles 400 No2, 382 and thereafter of the Procedural Civil Code.

d) Costs to be borne by the applicant, with a reduction of 2/4 of the judicial fees further art. 453 and 446 both of the Procedural Civil Code

APPEAL AGAINST THE CONFISCATIONS DECISIONS

+ Administrative appeal

First of all, the shipowner contested the first confiscation number 07/09 at ADMINISTRATIVE LEVEL, against the same body, via the FISCAP, that is the one acting as secretary of the Inter-Ministerial Commission for Fisheries. Please see different written submissions made by the shipowner before the FISCAP (28 August, 4 September and 14 September). Please, see Appendix 42, 41 and 44, and also in Annex 37 of Panama's Memorial).

FISCAP denies this, but the Coordinator of FISCAP even replied –on behalf of the Inter-Ministerial Fisheries Commission) denying the merits.

Later, the Inter-Ministerial Commission adopted a new decision of 25 September 2009 of confiscation confirming the previous one (number 9/09). Please see Appendix 47: Letter of Coordinator of FISCAP of 23 September 2009, where SURPRINSINGLY, Mr Hugo Nossoliny states:

* *Note by the Registry*: The penultimate line should read: “Appendix 48 Letter of Coordinator of FISCAP of 25 September 2009, where”.

“To confiscate the oil tanker VIRGINIA G and all the product on board owing to a violation of sub-section 1 of Article 52... and due to the lack of any reaction after the notification of decision number 07/CIFM/09 dated 27 August of the current year”.

This ended the administrative appeals.

+ Judicial Appeals against the CONFISCATION DECISIONS.

Processo n 96/09 Recurso contencioso d apelação

Based on Article 52.3, the shipowner also lodged on 4 December 2009 an appeal for annulment against the two confiscations Orders (7/09 and 9/09) before the local courts.

On 17 February 2010, the Inter-Ministerial Commission submitted a Reply.

On 25 February 2010, the shipowner submitted a Rejoinder against the finding of inadmissibility argued by the Respondent. (Attached hereto as **Attachment 3**)

To date (3 years and 6 months after the submission of the rejoinder), there is absolutely no news or progress on this case. In view of the above and the fact that later the vessel was released in October 2011, and that the Special Agreement between Panama and Guinea Bissau on the claim damages was concluded to submit the case to ITLOS, the shipowner's efforts have been futile.

+ Appeal against the decision to unload the cargo

Finally, an additional appeal (action for annulment) against the (*Recurso contencioso de anulacao*) against the Ofício 317/GSET/2009 of the Minister of Finances – Secretario de Estado do Tesouro related to the decision of the government of Guinea Bissau to unload the cargo. To date, there is no news or progress on this case. In view of the above and the fact that later the vessel was released in October 2011, and that the Special Agreement between Panama and Guinea Bissau on the claim damages was concluded to submit the case to ITLOS, the shipowner's efforts have been futile.

3. What has been the practice of Guinea-Bissau in implementing article 23 of Decree Law 6-A/2000 with respect to bunkering operations for fishing vessels in its EEZ in general and, in particular, regarding vessels flying the flag of Panama?

Have logistical support vessels (bunkering vessels) been required to obtain and keep on board the authorization for carrying out bunkering operation?

Or has it been enough for fishing vessels to obtain the authorization for bunkering operation for both fishing vessels and bunkering vessels through telephone or radio?

First of all, Panama rejects the wording of the second questions when it mentions that “logistical support vessels” are “bunkering vessels”.

In August 2009, as set out in the Joint Order 2001 (Appendix 5 of the Counter Memorial), authorizations for alleged “fishing related activities” within the alleged “maritime waters” of Guinea Bissau were only required for national companies either with owned or chartered vessels. Please see Recital 3 of the Joint Order.

Please note that the Order does not make any distinction between alleged related fishing activities in the internal waters, in the territorial sea and in the EEZ of Guinea Bissau.

This Order applied exclusively to Guinea Bissau’s vessels, whether owned or chartered by national companies. Definition of national fishing vessels can be found in Article 7 of the Fisheries Act 2000.

Based on the above and in relation to the submitted corresponding authorizations that Panama has been able to review, it appears that those authorizations were ALWAYS been requested to the competent Fisheries Authorities by a national company (normally the local Agent or the fishing vessel’s owner owing a fishing permit).

In fact, foreign ship-owners involved in the alleged “related fishing activities” have never been requested to apply for such authorizations.

*** Note by the Registry:* In line 3/4 of the response, it should read: “(Appendix 5 of the Rejoinder)”.

Those authorizations are normally kept in Guinea Bissau. The bunkering vessels do not use to enter into the Guinea Bissau port just to pick up the original of the authorization granted to the fishing vessel.

Besides, it is a duty for the national company and not for a foreign company. (This was argued by the shipowner of the VIRGINIA G before the FISCAP, by stating that it was the responsibility of the Guinean company, Bijagós). Bijagos was the local agent of the fishing vessels operating with a permanent establishment in Bissau.

The bunkering operation must be understood as a “purchase transaction” made by a Guinean national company to a foreign company operating fishing vessels with a local fishing permit and with a permanent establishment in Guinea Bissau.

This national companies or foreign companies with a permanent establishment in Guinea Bissau are the ones “importing” the gas-oil.

The shipowner of the bunkering ship or the or the Charterer receives a request to purchase gas-oil form a company, and then the local agent of the fishing company request such an authorization.

Please note that it is being required to comply with its national rules and make all necessary arrangements, not only at the level of imports but also customs, health, etc, and request all necessary authorisations for achieving the landing of its goods in its country.

In the particular case of the bunkering in the EEZ, i.e. outside the Territorial Sea, by not having carried out this operation in port, it is a duty for the national company once it has complied with the formalities to communicate to the bunkering ships that the authorisations have been awarded and the vessels have received the green light of this national company for proceeding with the operation and delivering the gas-oil.

It is to be understood that as they are vessels at the sea, they cannot have a physical presence for the authorizations. Therefore, it is usual and customary in the sea and in good faith to accept this instrument (radio) as confirmation for the authorizations which have been issued by the corresponding authorities.

This is the procedure by means of which the ship-owners are aware that there are authorisations. However, Panama does not know the procedures and formalities which must be completed to obtain the authorisation.

The shipowner of the bunkering vessel only provides the requested administrative and technical information of the ship, and also the position and the date that the bunker can take place. The local Agent submits the formal request and documentation (tonnage certificate, certificate of registration, etc. . ,) so that it can do all formalities and get their permits.

Please note that the authorization includes the name of the local agent, rather than the name of the fishing vessels being bunkered by the bunker ship.

What is the amount to be paid for the authorization and was a payment made in the case of the M/V "Virginia G"?

In August 2009, the Joint Order into force did not apply to any ship or fishing vessel (whether owned or chartered by nationals of Guinea Bissau or by foreign companies without a local establishment in Guinea Bissau).

We have received information from the local agents of those national companies that all the payments have effectively made by the local agent, either via a local bank or via a check. The local agents also pays other taxes, levies, duties that fishing vessels incurred when operating in Guinea Bissau.

Later, the local agent sends an invoices with all the costs and fees to the fishing shipowner.

The shipowner and the Charterer of the Virginia G NEVER paid any fee, levy or tax to the Guinea Bissau administration for bunkering operations provided in 2009 to fishing vessels operating with a fishing permit within the EEZ of Guinea Bissau. And the fishing shipowners have never claimed a discount for the cost of any local authorization for the alleged "fishing related activities".



Ramon Garcia-Gallardo

Agent and Counsel of Panama



Alexander Mizzi

Hamburg, 5 September 2013

Attachment 1**Notice, 4 February 2010, Regional Criminal Court, Bissau (in Portuguese)
(not reproduced)****Order, 18 December 2009, Regional Criminal Court, Bissau (in
Portuguese) (not reproduced)****- English translation of Notice and Order**

Guinea Bissau Republic
Regional Tribunal For Crimes
Section of transgression

Proceedings No. 74/2009

INJUNCTION

The Judge of law, Dr Marcos Indami, from the Section of Transgression of the Guinea Bissau V.C.T.R. (Regional Tribunal for Crimes) orders that the below individuals are appropriately notified of the order in the pages 114 , 114V , 115 and 115V of the Interim Injunction referenced above .

Being delivered to them together with this notification a copy of them.

TO BE SERVED:

Bissau, 4 February 2010

By order of the Judge of Law,

The Officer j

(Signature)

TO BE NOTIFIED TO:

PENN LILAC TRADING, Virginia G's ship-owner, through the authorised judicial representative Dr. Ismael Mendes Medina and Dr. Emilio Anus Mendes. FISCAP (Interministerial Commission for the Maritime Surveillance) through the authorised judicial representative, Dr. Mussa Mane and the State Lawyer Cabinet together with the General Republic Prosecutor.

Republic of Guinea Bissau

Regional Tribunal of Bissau Criminal Section

(Transgression Section)

ORDER

The Public Prosecutor, in his capacity as a guardian of legality, was asked to review, within a delay of 48 hours, the present file, which was delivered to him on 11 November 2009 (v.g. pages 69n72,73 and 73A of the file).

The Public Prosecutor returned the file on 19 /11/2009, however, the date does not appear on the Order (page 73).

The Public Prosecutor disagreed with the decision set out at pages 55 to 61 of the file, and appealed by means of the appeal of AGRAVO on 19 November 2009 at pages 75 to 81 of this file.

To assess and decide

Despite of the admissibility of the appeal and the fact that the applicant does not have direct and main legitimacy in the case, and is only an accessory when called to participate in the case, further to article 680 of the Procedure Civil Code.

According to the file, the Public Prosecutor was notified on 11 November 2009, which means he then became directly aware of the facts (pages 72 and 73 of the file), has lodged a appeal of AGRAVO on 19 November 2009 pages 75 to 81 of the file.

Nevertheless, the deadline for lodging this appeal is eight (8) days from the date of notification of the decision further to article 985 No 1 of the Procedure Civil Code.

Further to our calculation of the deadline, we confirm that the appeal of AGRAVO was lodged after expiry of the time limit of 08 days, i.e., from 11 November 2009 to 19 November 2009, which amounts to 09nine days (nine days).

As a matter of fact, the delegate of the Public Prosecutor had requested that the matter be filed in the Transgression Section on (ten) 10 November 2009 page 69 and but he has lodged the appeal to the Judge of the Criminal Section of the Regional Tribunal of Bissau, when he is aware that the appeal should be lodged in the same section.

The same appeal was delivered to the registrar of the Transgression Section on 23 November 2009, 13 days after the expiry of the legal time limit of 08 days.

The procedural consequence established by the lawmaker of the failure to abide by the deadline of (08) eight days, is to consider that the applicant did not exercise its right of appeal, and this does not have the procedural effect desired by the applicant.

Therefore, the appeal is rejected because it was lodged after the expiry of the time limit, as it was lodged out of the time limit of 08 (eight) days.

Therefore because the appeal was filed outside of the time limit, it is not necessary to review the merits of the appeal (*extemporario*).

However due to the superior and political interests of the country, I leave the files to your superior consideration, following a careful and prudent analysis of the facts presented in the file, we have considered that all the pleas of facts and pleas in law which lead us to the issue of the present Order of rejection remain the same, reiterating the pleas herein described.

Bearing in mind, however, that either revoking or confirming the appealed decision your Honours will do the due justice.

Without costs.

To notify.

Bxo, 18 December 2009

[signature of the judge]

Attachment 2**Notice, 18 December 2009, Regional Court, Bissau (in Portuguese) (not reproduced)****Order, 16 December 2009, Regional Court, Bissau (in Portuguese) (not reproduced)****- English translation of Notice and Order****REPUBLIC OF GUINEA BISSAU****SUPREME COURT****REGIONAL COURT BISSAU****TRANSGRESSION SECTION**

Court Warrant

Proceeding	Number	Secretariat / Section
Provisional orders	98/2009	Transgression

His Exc. Judge, Dr. Marcos Victor Indami, requests to notify the persons mentioned hereby of the Judgment's content, whose copies will be submitted through a notification act, in the terms and for the effects indicated:

TO BE NOTIFIED

1	PENN LILLAC TRADING, represented by Dr Ismael Mendes de Medina and Dr Emilio Ano Mendes, lawyers with office in Bissau.
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Bissau, 18 December 2009

Protective Order not Specified

Proceeding No 98/09

PENN LILLAC TRADING, ship-owner have submitted the present conservatory act against the Secretary of Treasure, invoking that:

- The claimant has submitted the present conservatory act not specified on 28 October 2009, and it was pronounced on 4 November and notified to the parties on 6 and 11 November 2009, 2 to 37, 55 to 61, 62, 63, 64, 67 and 68 of the judicial ruling within Proceeding No 74/2009;
- In a contempt regarding the decisions taken by Court, the Secretary of State for Treasure ordered on November, 3rd, the unloading of the oil tanker NOT UNDERSTANDABLE;
- In case the case proceeds to be executed, it will cause serious damages to the claimant and the good name of Guinea Bissau regarding its international trade and any foreign investors;
- Finally, it finally requests that the respondent is notified of all measures and rulings in order to abstain of any practices which would continue causing serious damages to the claimant, and proceed with the immediate refund of the unloaded oil and all those related costs;
- The current proceeding follows all that established by article 400.2 Code of Civil Procedure, v.g. 2 to 18, 19, 20 to 35.

The Court is competent to decide on this matter based on the nationality, subject matter and hierarchy.

The form of the proceeding used is legally admissible.

The parties have legal personality and are lawful.

The proceeding is not subject to invalidity.

There are not any other exceptions or procedural issues which are necessary to highlight.

It is decided:

- Article 399 Code of Civil Procedure states that “when someone shows grounded fear that others, before the action is firm or pending, can cause serious damages and difficult the protection of his rights, if the case does not suit any of the procedures set out in this chapter, the measures appropriate to the situation, including the authorisation to perform certain acts, the summons for the defendant to refrain from certain conduct, or delivery of movable or immovable, which are the subject of the action, to a third party, your trustee.
- The claimant’s is founded on an existing right or on a right rising from a constitutive action, following a proposal of [...].
- The law alleged in this action is the claimant’s property right in relation to the confiscated oil and requested by a non-legitimate administrative act.
- It must be borne in mind that, as stated in the original application, it is founded that the respondent has seriously and irreparably damaged the claimant’s right of property.
- The claimant requires that the respondent does not sell or use the confiscated oil, and returns the oil to the vessel in order not to damage the claimant and allows him to decide on the original action submitted.
- The proceeding’s requirements are the following:
 - It is founded that, before the request of the original action, causes serious damages or difficult to repair to the claimant’s right;
 - Serious possibility of an existence of a threaten to the concerned right;
 - The appropriateness of the requested action, in order to avoid any damages;
 - Finally, that the result of the action cannot be greater than the damage suffered, or that the result of the action does not exceed the damage suffered originally.

It is true that the claimant has been confiscated of its oil from the vessel. The damage has been already suffered, and it is founded that the claims are adequate to avoid further damages.

In the case at hand, the concerned vessel is a commercial fishing vessel. The claimant has been deprived of its vessel, and in case its oil would be sold, he cannot obtain any benefit from it.

The confiscation/seizure of a good requires effective judicial protection, as established by the Constitution from sovereign and competent courts for the administration of justice on behalf of the citizens. As a result, a legal action of seizure, for which a legal interpretation is required is not the purpose of an administrative proceeding, given that the administrators cannot impose the law.

The respondent, with its seizure has caused the claimant a damage which is difficult to repair given that, even if a protective order has been submitted, the claimant will not be able for a period of time to use his fishing vessel or obtain any profits from the commercialisation of its oil to other fishing vessels, which in fact causes degradation to the entire vessel.

Given that it is not the purpose of this court to agree with one of the parties, the court prefers that the parties to a legal proceeding find an agreement, given that it is questioned the right of property.

Given that the court is willing to avoid any damage, the ruling in the present judgment cannot result on a greater damage to that which is required to avoid in the present action. The Court considers that for the solution of the current action it is only required to return the oil to the vessel and proceed, within the competent forum, before the relevant court to rule on disputes involving the aforementioned issues.

By virtue of possible fraudulent actions for the claimant's interests which could frustrate the current action [*not clear*] on the basis of article 400 Code of Civil Procedure, v.g. 2 to 18 of the rulings.

Based on all the aforementioned, I consider as appropriate the current action and, as a result:

- a) Impose the immediate return of the unloaded oil to the claimant's vessel, being the respondent responsible of all costs for its devolution;
- b) Avoid any practices against this judgment, which could have as a consequence criminal responsibility;
- c) Notify to the respondent and the claimant following the mandate of articles 400 and 382 Code of Civil Procedure;
- d) The legal costs must be paid by the respondent, as well as the legal fees are reduced by 2/4, on the basis of article 453 and 446 Code of Civil Procedure.

Bissau, 16 December 2009.

District Judge, the President,

Attachment 3**Rejoinder from lawyers of Penn Lilac Trading to the Regional Court of Bissau (in Portuguese) (not reproduced)
- English translation of Rejoinder**

[Stamp]

Entry No 39/2010

Bxo, 25/02/2010

Civil Servant's signature

Regional Tribunal of Bissau

Proc. No 96/09

Transgression Section

The Honorable Judge

PENN LILAC TRADING, Applicant in the file above identified in which the plaintiff is the **INTERMINISTERIAL COMMISSION OF MARITIME SURVEILLANCE** (“CIFM” or “Plaintiff's Authority”), and thereof better identified, having been notified of the Reply of pages (...) of the file, lodged by Plaintiff's Authority, from which two pleas are brought, further to article 502, No 1, or in not being the case, further to article 3, No 3, of the Procedural Civil Code (“CPC”), applicable ex vi of what is set forth in the article 862 of the Administrative Code, presents hereby, REPLY, in the following terms and pleas:

I. INTRODUCTION**1.**

The applicant only can reply to the counterstatement if it was brought any plea and only if the merits are related to the plea (further to article 502, n 1 of the CPC, applicable ex vi of article 862 of CA).

2.

Considering that the in its Reply the Plaintiff Authority brought the dilatory pleas of no granting of security and the lack of jurisdiction of the Transgression Section, the Applicant has the right to reply. More,

3.

This right to reply to the pleas is also justified by the due process of law general principle, further article 3 of CPC, which is also applicable ex vi to the article 862 of the Administrative Code.

4.

According to this principle, should always be given to the opportunity, against whom a claim is made, an argument invoked or produced evidence to rule, with no decision before this happens

II. THE ALLEGED NEED TO PROVIDE A SECURITY AS A CONDITION OF ACCESS TO THE COURTS**5.**

In articles 77 to 85 of the Reply, the Plaintiff's Authority brought an alleged innominate dilatory plea, according to which the Applicant should have made the provision of security before resorting an appeal to the courts ,i.e., before lodging the present Appeal, concluding by the rejection of the appeal.

6.

The Plaintiff Authority refers in article 77 of the Reply that " the decree-law no 6-A/2000 established as a condition to the judicial review of the acts of organs of the Maritime Surveillance by the ship owner upon payment of deposit by that arbitrated (articles 64 e 65 of the mentioned law).

7.

With all respect, the Plaintiff's Authority makes an incorrect interpretation of article 65 of the Decree-law n°6-A/2000, of 22 August (Fisheries General Law), when implying that the judicial review of the acts of organs of the Maritime Surveillance would be conditioned to the granting of security.

In reality,

8.

If the Plaintiff's Authority is right, only who had economic conditions to provide such security could access the Courts, appeals to justice.

9.

The justice would be accessible only to those who had economic conditions and who had not those conditions would be prevented from accessing our courts.

10.

As a matter of fact, the entities responsible for the seizure of vessels would be, so to speak, "*with the knife and the cheese in his hand,*" since considering the power they already have to apply fines, would be invested with the power to indirectly dictate the value of the security, which among other amounts, is indexed to the amount of the fine – see no 3 of article 65, of Fisheries General Law.

11.

This interpretation advocated by the Plaintiff Authority cannot proceed, as it is clearly unconstitutional since it flatly contradicts the fundamental right to effective judicial protection, in the corollary of the right of access to the law and courts, established in article 32 of Constitution.

12.

Only for this reason the plea invoked is, *in limine*, unfounded.
Moreover,

13.

It should be clarified the rationale, i.e., the *ratio* of the article 65 of the Fisheries General Law.

14.

As it reaches its wording, Article 65 of the Fisheries General Law has a special scope, establishing a legal remedy allowing a prompt release of ships or vessels and their crew upon payment of security.

15.

As a special regime, this quicker procedure set forth in Article 65 of the Fisheries General Law co-exists with the standard procedure of objection of decisions made by organs of Maritime Surveillance, which are set out in paragraph 3 of Article 52, of the Fisheries General Law with wording amended by Decree Law n ° 1-A/2005, where one can read that “*the decision mentioned in number 1 (confiscation) is susceptible of appeal*”.

In other words,

16.

The previous mentioned Article 65 of the Fisheries General Law seeks to regulate the special procedure for release of ships or vessels and their crew upon the payment of a security, making no reference to judicial review of the acts of the organs of the Maritime Surveillance.

17.

In the present case, the Applicant used the standard procedure of objection, petitioning this Honour Court the declaration of nullity, or if not understood, the annulment of the contested act of confiscation determined by the Plaintiff Authority.

18.

The Applicant did not provide security because legally it did not have to do, as it has been become clear from the above.

19.

In light of the foregoing, it is easily concluded by the full rejection of the dilatory plea of inadmissibility for failure to pay security deposit as brought by the Plaintiff's Authority, in Articles 77-85 of the challenge that is contested.

III. THE ALLEGED VIOLATIONS OF LACK OF JURISDICTION OF THE TRANSGRESSION "TRIBUNAL"

20.

The Plaintiff Authority further claims in Articles 86-97 of the Reply, the dilatory plea of lack of jurisdiction, due to the merits, of the Transgression Section to assess and decide the present case.

21.

According to the Plaintiff Authority, "the disputes emerging from procedures violations/transgressions of fishing laws and regulations have been submitted to the Criminal Court of the Regional Judicial Tribunal", due to its material jurisdiction to judge those cases (Article 88 and 96 of the Reply)

22.

Again, the Plaintiff Authority does have any reason, as it will be demonstrated.

23.

Before analysing the reasons for inadmissibility of the lack of jurisdiction plea due to subject of the Transgression Section of the Criminal Court of the Regional Tribunal of Bissau, it is important to describe the organisation of the first instance Tribunal.

Therefore,

24.

Under article 12, n°1, of the Tribunal Organic Law (LOT) (Law No 2/2002, of 20 November) in our legal system "*exists tribunals for small cases, tribunals of first instance, tribunals of second instance and the Supreme Court of Justice*".

25.

In accordance with numbers 3 and 5 of the same provision, "*the tribunals of first instance are called regional tribunals*" and may be organized into courts.

26.

It happens so, that in accordance with its current internal organization the Regional Tribunal of Bissau is organized in two Courts, Civil and Criminal Court, depending if the dispute concerned is civil or criminal.

27.

For its turn, the Criminal Court of the Regional Tribunal of Bissau contains a section, the transgression section, with jurisdiction to judge illicit transgressional or misdemeanours acts, which are not punishable as crimes.

28.

(As far as the Applicant understands, the breakdown of the Criminal Court into Transgressions Section occurred following the deliberation of the Supreme Judicial Council),
In other words,

29.

Insofar as it pacifies the distinction between crimes and misdemeanours / transgressions in our legal order, it makes sense to conclude - in logic, it is assumed, *La Palissiana* - the use of the transgressions section should be limited solely and exclusively to the illicit of misdemeanours or transgressional nature, as the Criminal Court is concerned with illicit matters purely criminal.
In addition,

30.

The system of misdemeanours and transgressions defined by the Penal Code of 1852 with respect to the subjective part, and the Code of Criminal Procedure of 1929, with respect to the adjective remains in force in our legal order, as to the provisions of article 3, of Decree-law No 4/93, of 13 October, which approves the first Criminal Code.

31.

To date there have not been occurred the creation and installation of specialized courts in matters of maritime litigation (the Maritime Tribunal, as set forth in article 59 of LOT).

32.

Also, to date there have not been occurred the functioning of "*the specialized tribunals in matters of administrative litigation*" – article 80 of LOT.

33.

Having regard to the file, according to the Plaintiff Authority's understanding expressed clearly and unequivocally in its Reply (see articles 86 and 88 of the Reply), the nature is misdemeanours / transgressional and not criminal.

34.

It is easy to conclude that in light of the Plaintiff Authority's own understanding, the jurisdiction to judge the dispute *sub judice* is attributed to the Transgressions Section of the Criminal Court of the Regional Tribunal of Bissau.

As a matter of fact,

35.

In the study of Dr Augusto Silva Dias, referred to by the Plaintiff Authority under Article 15 of its Reply, nothing is removed that undermines the conclusion that arrived here.

Indeed,

36.

Being pacific the competence and the current organization of the Criminal Court of the Regional Tribunal that handles the prosecution of crimes, there is no doubt that misdemeanours or transgressional lawsuits does not have a criminal nature.

In addition,

37.

The Applicant had previously brought before the Criminal Court of the Regional Tribunal of Bissau an interim relief with the suspension of the effectiveness of the act of confiscation *ex-officio* of the vessels Virginia G, with all their gear, gadgets and products on board in favour to the State of Guinea-Bissau, determined by the Plaintiff Authority.

However,

38.

In the Order of the Honourable Judge, of 29.10.2009, page 39 and reverse (Procedure No 54/2009), the Criminal Court of the Regional Tribunal of Bissau has declared its lack of jurisdiction, deciding to send the file of required interim measures to the Transgressions Section, according to article 43 of Code of Criminal Procedure of 1929.

Against that background,

39.

because they find "competent due to "the nationality, the matter and the hierarchy", the Judge of Transgression, of the Regional Tribunal of Bissau, determined that the Applicant was notified for the purposes of payment of the respective judicial fees, in accordance with Articles 88 and 89, No 1, a) of the Code of Judicial Fees (in accordance with order which decide to proceed in that way).

40.

When lodging this action, the Applicant has addressed to the Transgression Section of the Criminal Court of the Regional Tribunal of Bissau (Procedure 74/2009), considering that the interim measures always exists in dependency of a main action and develops attached thereto, as occurs in the present case.

As a matter of fact,

41.

With all respect, now invoking this plea by the Plaintiff Authority is not ethically correct.

In fact,

42.

The Plaintiff Authority has not raised the same plea of lack of jurisdiction in the interim measures sought by the Applicant.
In other words,

43.

The Plaintiff Authority cannot, therefore, at least when weighted the level of procedural good faith first admit the jurisdiction of the Transgression Section, automatically determined by this Honourable Tribunal to hear and determine the preliminary injunction provides this action, and later invoke the objection of lack of jurisdiction the same court, when it comes only to appreciate and judge the main action in which the interim measures previously requested is attached.

45.

Thus, given the above, the plea of lack of jurisdiction of the Transgression Section of the Criminal Court of the Regional Tribunal raised by the Plaintiff Authority in its Reply, must also be manifestly rejected.

Terms under which the pleas brought by the Plaintiff Authority should be rejected, and therefore accepts in whole the present appeal Dismisses the appeal pursuant to the terms petitioned the initial application of pages (...) et seq.

Lawyers with power of attorney in the interim measure

[stamp name of lawyer]

[signature]

Attachments: legal duplicated