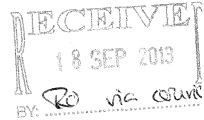


(j) Replies by the Republic of Panama to additional questions of the Tribunal, 16 September 2013, Reply to “Questions to Parties, I”, with attachments

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**Case No. 19 “VIRGINIA G”
Replies by the Republic of Panama to additional questions of the Tribunal
dated 6 September 2013**

Reply to “Questions to Parties I”



Question 1: Why were the legal proceedings for seeking the release of the vessel not used?

This reply will seek to explain that under the law of Guinea-Bissau, the shipowner was entitled to make use of several co-existing procedures to challenge the decisions and actions of the Guinea-Bissau authorities and to seek to release the VIRGINIA G and her crew.

Nevertheless, such procedures and remedies were in effect and in practice either (i) inaccessible / prohibitively conditioned, or (ii) hindered/stalled by the Guinea-Bissau administration, or (iii) ultimately ineffective, as a result of which the shipowner’s efforts were futile.

Specifically:

- A. The shipowner could not reasonably have made recourse to the “prompt release” action under Article 65 of Decree-Law 6-A/2000 since the conditions for providing security/guarantees were (i) unknown, (ii) partial towards Guinea-Bissau, (iii) unreasonable and (iv) prohibitive, thus preventing effective access to this remedy;
- B. The shipowner did make administrative recourse and did request possible solutions for the release of the vessel, crew and cargo, both before and between the issuance of Decisions 07/CIFM/09 and 09/CIFM/09. This was to no effect; and
- C. The shipowner’s appeals to the Regional Court of Bissau against CIFM Decisions 07/CIFM/09 and 09/CIFM/09 were permitted under Article 52(2) (subsequent to the 2005 amendment). This process was undertaken, but was without effect. The cases before the Regional Court of Bissau are currently dormant, and have been so for more than three and a half years.

Affidavit by Guinea-Bissau local counsel

In order to provide additional support in respect of the proceedings in Guinea-Bissau, Panama has requested and obtained a declaration of the shipowner’s local counsel in Guinea-Bissau, **Ismael Mendes de Medina**, of the law firm GB Legal (**Attachment A**).

Mr Mendes de Medina sets out the stages and status of each of the four actions brought by the shipowner in Guinea-Bissau, and has provided (eight) documents evidencing the requests for payments issued by the clerk of the Courts, as well as the subsequent proof of payments. These documents are to be considered as integral attachments to the Affidavit provided by Mr Mendes de Medina, and are included in this note as part of the relevant sections (i.e. **Attachments 2, 7 and 9**).

Mr Mendes de Medina confirms that the shipowner always complied diligently with all requirements, payments and legal deadlines imposed by the Courts.

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As further clarification in relation to the ineffectiveness and inaccessibility of legal remedies in Guinea-Bissau, Mr Mendes de Medina states that on 1 April 2010, there was a military uprising in Guinea-Bissau, which led the country through a situation of politico-military instability. Various situations of military revolt have occurred in the country, for example on 1 March 2009, on 26 December 2011, on 12 April 2012.

As a consequence, the regular functioning of the institutions, in particular, the administration of justice, was particularly affected by the instability created by the military uprising of April 2010, which led to the temporary closure of the tribunals, and of major delays in the progress of cases before the tribunals.

Panama’s reply to the Tribunal’s question will, therefore, seek to demonstrate that the shipowner diligently attempted to seek redress in a number of ways and for a considerable period of time, and that in practice, could not obtain full and effective legal remedies in Guinea-Bissau.

Additional remarks:

Importantly, Panama trusts that this reply will also illustrate that **Guinea-Bissau has sought to mislead the Tribunal** by incorrectly interpreting or presenting the law of Guinea-Bissau, or aspects thereof, in order to support its fabricated allegations of shortcomings by the shipowner in regard to the judicial proceedings available or undertaken in Guinea-Bissau.

In this respect, Panama refers to certain claims or assertions made by Guinea-Bissau’s counsel and/or witnesses and/or expert witnesses during the hearings in Hamburg, which Panama asserts to be, at best, misconceived, and, at worst, in bad faith. Specifically (without limitation):

- i. That the Article 65 (prompt release) procedure was the only way or the "good" way for the shipowner to have proceeded:

16 **MR MENEZES LEITÃO:** What are the proceedings according to the law of Guinea-
17 Bissau to apply this kind of sanction and what are the legal remedies available to the
18 ship owner in that case?
19

20 **MR MANÉ** (*Interpretation from Portuguese*): Under the law, article 52, which was
21 revised in 2005, it orders *ex officio* confiscation, which was what happened. The law
22 also provides that the courts of Guinea-Bissau are competent to handle infractions of
23 the fisheries law and the ship owner has the right to appeal under article 56. The
24 ship owner can require immediate release of the ship and this request is decided in
25 48 hours against payment of a bond, which would include any costs of repatriation
26 and any other costs of the proceedings. All the ship owner had to do was request
27 immediate release of the vessel and the court would allow this. The ship owner had
28 to ask for this immediate release and did not do so.
29

30 **MR MENEZES LEITÃO:** If the ship owner has asked for the prompt release of the
31 ship, would the case still be tried by the tribunal?
32

33 **MR MANÉ** (*Interpretation from Portuguese*): In this case, if there was the guarantee
34 of a bond, the court, before learning the merits of the case, i.e. if there was actually a
35 violation, could quite freely release the vessel if the bond had been paid as required
36 by law. This is not what happened because the ship owner preferred to go the wrong
37 way and was not able to achieve the result.

Verbatim records, testimony of Mussa Mane, 5 September 2013, morning session, page 2

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- Panama States that Guinea-Bissau has confused the different co-existing proceedings/remedies available, and has only emphasised the use the Article 65 procedure (i.e. the prompt release-type measure) as the only option for the shipowner.
 - Panama states that this action/remedy is not obligatory and was not the only available remedy, and that, in any event, it was not as simple and straightforward as Guinea-Bissau makes it out to be. This is explained in further detail below
- ii. That the time-limit for appealing the decisions of the CIFM was of 15 days (subject to an extension), in terms of Article 60(1) and (2):

10 **MR MENEZES LEITÃO:** Now my questions will be as to the remedies taken by the
 11 ship owner. I understand the ship owner did not appeal the decision of the CIFM. Is
 12 that correct?
 13
 14 **MR MANÉ** (*Interpretation from Portuguese*): That is right. He took the wrong path
 15 and the time-limit had expired. He had 15 days. He could have requested an
 16 extension. The decision of the Commission was made public on 17 August and
 17 confirmed on 27 September but up till then the ship owner had not appealed against
 18 the decision, so the problem was the expiry of the time-limit. The other thing was the
 19 form used in the case. The Public Prosecutor supervises legality. If he had not
 20 agreed, he would have sent the case back to the origins, and it would have either
 21 proceeded to trial or it would have been dismissed. The competent court, the
 22 criminal branch, would have examined its merits. If there was a violation, the violator
 23 would have been found guilty. The court would never have increased the sentence
 24 that had already been issued. All this procedure in the case of the *Virginia G* was not
 25 respected.
 --

Verbatim records, testimony of Mussa Mane, 5 September 2013, morning session, page 3

- Panama states that the 15-day time limit set out in Article 60(1) of the Fisheries Act, claimed by Guinea-Bissau¹ to have not been respected by the vessel's owner, **is not a time-limit to appeal the CIFM Decisions**, whether judicially or administratively.
- It is a time-limit to pay the fine imposed. Only upon the failure to pay such a fine within the 15-day deadline (or extended deadline) could the confiscated property have reverted to the government of Guinea-Bissau. **No such fine was imposed on the VIRGINIA G (as explained in Question 4).**
- Under Guinea-Bissau law, the vessel's owner at all times retained the option to appeal the Decisions of CIFM in terms of Article 52(3), and no 15-day limitation was applicable.
- The shipowner, in fact, initiated and pursued the actions available to him, as will be set out in more detail below. Nevertheless, the cases are now

¹ Including in its replies to the Tribunal's first written questions to the parties, page 7 centre page.

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dormant, by no means as a result of the action (or inaction) of the shipowner, as suggested by Guinea-Bissau.

- In addition, the shipowner did challenge the administrative decision of CIFM at an administrative level, as will be set out in more detail below.
- The line of questioning by the Guinea-Bissau counsel and the replies of Mr Mane in his testimony to the Tribunal are incorrect and misleading.

14 **JUDGE AKL** (*Interpretation from French*): Thank you, Mr Sami, but I was referring to
15 appeal against the court’s decision made by the General Prosecutor. Could you
16 please tell us the date of the appeal by the General Prosecutor against the court’s
17 decision, and what was the decision by the court having jurisdiction in Guinea-
18 Bissau?
19

20 **MR MANÉ** (*Interpretation from Portuguese*): I have to say that I do not remember
21 the whole course of the appeal. What I can say is that in the contestations that I
22 actually presented to the Guinea-Bissau court, the heart of the question, even
23 regarding the main case, unfortunately the acts were suspended and the case did
24 not go forward because the ship owner did not use the mechanisms available to him
25 to lodge an appeal.
26

27 **JUDGE AKL**: Thank you very much, Mr Sami.

Verbatim records, testimony of Mussa Mane, 5 September 2013, morning session, page 5

- iii. (a) That the appeal by the Guinea-Bissau government against the suspension order (preliminary injunction) obtained by the owner of the VIRGINIA G (Proceeding 74/2009) had a suspensive effect, such that CIFM Decision 07/CIFM/2009 and 09/CIFM/2009 could be executed; and
- (b) That the shipowner lost interest in the cases brought in Guinea-Bissau, and that the shipowner failed to pay the Court fees, such that the proceedings are now stalled.

1 **MR PINTO PEREIRA** (*Interpretation from Portuguese*): There was actually an
2 appeal that came, and it could not be another way, because the decision was
3 postponed and several factors must be considered. First of all, a measure was done
4 without the State having been heard. Penalties cannot be applied without hearing the
5 other party, and when there is a risk that a final measure may be effected without
6 hearing the other party, the adversarial principle must be used. In the end this is
7 similar to the Portuguese legislation as well as the European legislation. The
8 adversarial principle when hearing the other party can influence the primary
9 hearings. In this case there was no other risk, because it had already been applied.
10 Besides this measure, I cannot see any other one that could be used. Here in this
11 case it would not be created no other situation of risk as the judges did not proceed
12 right because an appeal should be placed. This appeal was made, a suspensive
13 effect was granted to it, and the decision could be executed. But the worst was when
14 making reference to the special appeal foreseen in the General Law of Fisheries
15 there is a conclusion that I could take. We see that once the injunction is made, the
16 ship owner has tried a main action, but this main action was not followed because
17 the ship owner was no longer interested. So that an action can be appreciated in
18 courts, an entity must pay something in the beginning, and when this is not done,
19 then the proceedings do not take place. The ship owner made an injunction, he also
20 made a main action, but when he was asked to pay this beginning amount, then
21 when this party does not pay the costs within the foreseen delay, the court also
22 allows it to be paid but it would be doubled; and as it is nothing of those, the
23 injunction is still in court and it is still running in Guinea-Bissau.

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Verbatim records, testimony of Carlos Pinto Pereira, 5 September 2013, morning session, page 15

- In respect of (a), Panama states that the appeal brought by the Guinea-Bissau government did not have suspensive effect. This is supported by the statement of the shipowner's Guinea-Bissau counsel, Mr Mendes de Medina in paragraph 4 of the attached Affidavit (Attachment A).
- Moreover, the same question arose in the *Juno Trader* case, in which Mr Ricardo Alves Silva, Counsel for Guinea-Bissau stated (on page 109 of the consolidated minutes of the public hearings of the case), that:

Question 2: In case the fisheries administration does not agree with a decision rendered by a competent domestic judicial court suspending the effects of a decision taken by the Interministerial Commission, what legal remedy under the legal system of Guinea-Bissau can the fisheries administration resort to in order to challenge the court's decision? The answer is that if the administration does not agree with said decision, it may appeal to the Supreme Court of Justice, which at the present time occupies the position of the Administrative Supreme Court that existed before independence.

I believe that the Tribunal will also be interested to know that this appeal under Guinea-Bissau's law does not suspend the execution of the decision rendered by the first instance court. So, there is no suspension of the suspension. The suspension of the decision is valid until we reach a final decision respecting the injunction.

I may on this matter refer to a decision by the Administrative Supreme Court of Portugal rendered on 3 July 1996 under a legal regime with exactly the same rules as the one in Bissau which stated: "*Tem efeito meramente devolutivo o recurso de decisão que suspendeu a eficácia de acto contenciosamente impugnado*". A rough translation is that in case the authorities or any other party appeal a decision which ordered the suspension of enforcement of an act which is being appealed in a main case, that appeal does not suspend the enforcement of that judgment.

- This was acknowledged by Judge Mensah and Judge Wolfrum in their Joint Separate Opinion in the *Juno Trader* Case, where it is stated in paragraph 5:

*5. We turn now to the procedures which, according to the Respondent, led to the confiscation of the Juno Trader. [...] From the responses of the Respondent to the questions posed by the Tribunal (as given in the oral presentations of the Respondent on the second day of the hearing and in the written documents submitted subsequently) it seems that the Respondent had modified its views [...]. **Furthermore, the Respondent appears to accept that the decision of the Regional Court of Bissau suspending the implementation of Minute 14 of the Interministerial Commission remains in force unless and until it is invalidated by a superior court in Guinea-Bissau.*** (Added emphasis).
- In respect of (b) Panama states that, contrary to Guinea-Bissau's assertions, and contrary to Mr Pinto Pereira's last sentence quoted above, all required/ordered judicial costs were duly paid by the shipowner. Proof of payment is attached.
- The main case (i.e. procedure 96/2009, as set out below) was never stalled or delayed by the Shipowner, but is, in fact, pending rejoinder by Guinea-Bissau.
- The only case for which payment was not made was the last case, procedure 14/2010, that is, the main case following the preliminary injunction in procedure 98/2009. As will be explained below, the action was admitted and

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all document stamps were duly paid. However, the owner of the VIRGINIA G has never been notified by the clerk to pay the initial court fees, which according to the Guinea-Bissau legislation is a precondition for service of notice on the defendant.

*

A. *The shipowner could not reasonably have made recourse to the “prompt release” action under Article 65 of Decree-Law 6-A/2000 since the conditions for providing security/guarantees were (i) unknown, (ii) impartial and arbitrary, (iii) unreasonable and (iv) prohibitive, thus preventing effective access to this remedy;*

Under Article 65 of Decree-Law 6-A/2000 (amended in 2005) (the “Fisheries Act”), a shipowner can lodge a voluntary request before a local court for the release of the ship and her crew upon the provision of a “sufficient” guarantee/security. The Article 65 measure is available only in respect of the vessel and crew, but not in respect of the seized cargo or products on board.

This procedure co-exists with the standard procedures of appeal against the decisions by the government of Guinea-Bissau (in terms of Article 52(3) (As explained in point C).

It is critical to point out that:

- (i) The security would be tied up in favour of Guinea-Bissau for the duration of the case, which can be excessive. This can be seen from the very same cases which the shipowner instituted in Guinea-Bissau (which are now dormant, as explained in the section C). The case referred to by Guinea-Bissau during the hearings - the *Mare Undarum* - is also a reflection of the inefficacy and uncertainty of such a proceeding, where the owner of the vessel was deprived of an (undisclosed) amount of guarantee/bond for 5 years; and
- (ii) The way in which the security/guarantee calculation is made is unreasonable and would in practice only allow economic operators with ample financial liquidity to access this remedy.

In relation to the second point: in terms of Article 65(2) and (3), the amount of the guarantee/security is not to be less than the combined amount of:

- a. the cost of the arrest;
- b. the cost of detention;
- c. the cost of repatriation of the crew; and
- d. the amount of the fine for which the vessel would be liable;

and

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- e. where the law provides or authorises the confiscation of the of the fisheries products, the gear and the vessel (as seemed to be the case with the VIRGINIA G) then the Court can increase the amount of the guarantee/security to include:
 - o the value of the fisheries products;
 - o the value of the vessel's gear/equipment; and
 - o the value of the vessel.

The above conditions, are described in Article 65(1) as being "sufficient" for the Guinea-Bissau authorities. The conditions, however, cannot be said to be "reasonable", affordable or feasible for a small shipowner seeking release of a vessel, crew and cargo.

The requested security is not capable of quantification/calculation in advance since most of the factors are not quantified or quantifiable. The provisions of Article 65 also unbalance the situation in favour of Guinea-Bissau, ultimately making the measure prohibitive, for the following reasons:

- a. In terms of Article 65(2) and (3), the competent judge is bound by pre-determined factors in calculating security. The judge is not able to modulate the amounts, for instance, by taking into account *fumus boni iuris*, the circumstances, the infraction claimed, the possible damages, the causal link, and other such considerations which would favour "reasonableness" in setting the security/guarantee;
- b. the cost factors are highly uncertain, arbitrary and completely unknown to the shipowner when evaluating the option of requesting release under Article 65:
 - o the cost of arrest of the VIRGINIA G was unknown, and would be dictated by Guinea-Bissau;
 - o the cost of detention of the VIRGINIA G was unknown, and would be dictated by Guinea-Bissau;
 - o the cost of repatriation of the VIRGINIA G's crew was an unknown variable;
 - o the amount of the fine for which the VIRGINIA G would have allegedly been liable was unknown since no fine was ever imposed against the VIRGINIA G (apparently obligatory in terms of Article 52(2) and 54(2) of the Fisheries Act). Such fine could have ranged between USD 150.000 and USD 1.000.0000. This was a key missing element in establishing the security/guarantee.
- c. the cost of the vessel, her cargo and equipment would then have been added to the calculation of the security/guarantee, thus increasing the amount of the security/guarantee to an unaffordable and prohibitive level.

The shipowner did not use Article 65 because he was not in a position to use such procedure. The amount of security was, firstly, unknown, and, secondly, would have been prohibitively unaffordable to a company in increasingly serious financial difficulty as a result of the unfounded arrest and detention. Any such bond would have been, in reality, punitive

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in nature, and would have conveyed the idea that the amount of the bond was determined on the basis of a finding of culpability (See Separate Opinion of Judge Lucky in the *Juno Trader*).

In parallel, the shipowner was attempting to seek to establish a reasonable bond - via administrative channels, as explained below – but was completely disregarded by the Guinea-Bissau authorities.

The suggestion by Guinea-Bissau’s Counsel and Agent that the shipowner could have had recourse to prompt release under Article 292 UNCLOS is overly simplistic. The shipowner contests the classification of the VIRGINIA G as a fishing vessel, or that she was somehow engaged in the exploitation of living resources in the EEZ of Guinea-Bissau. Consequently, the Article 292 procedure (as linked with Article 73(2)) was not an obvious one.

In any case, Article 73(2) of the United Nations Convention on the Law of the Sea states that *arrested vessels and their crews shall be promptly released upon the posting of reasonable bond or other security*. (added emphasis)

*

B. The shipowner did make administrative recourse and did request possible solutions for the release of the vessel, crew and cargo, both before and between the issuance of Decisions 07/CIFM/09 and 09/CIFM/09. This was to no effect.

The arrest of the VIRGINIA G took place on 21 August 2009.

7 days after the arrest – and before any formal notification by FISCAP – by letter dated **28 August 2009**, the VIRGINIA G’s P&I Club sent a letter to FISCAP requesting a clarification on the vessel’s arrest, and asking for possible solutions for the release of the vessel as soon as possible (see **Memorial Annex 42, p. 12**).

10 days after the arrest, formal notification of Decision 7/CIFM/2009 was sent to the VIRGINIA G by letter from FISCAP dated **31 August 2009** informing of the confiscation of the VIRGINIA G, her gear/equipment and cargo (**Memorial Annex 38**).

The owner of the VIRGINIA G replied to FISCAP via the P&I Club by letter dated 4 September 2009, stamped as received by FISCAP on 7 September 2009, i.e. **7 days after formal notification by FISCAP (Memorial Annex 41)**. In the letter, Penn Lilac contest the allegations of FISCAP, and concluded by stating:

By virtue of the above and in order to avoid increased damages due to the arrest of our vessels, we REQUEST you to express yourselves concerning the matter and to inform us on the way to settle the difficult and unpleasant situation, as soon as possible or to observe the procedures established in the law and the establishment of the necessary guarantee for the release of the vessel, of the crew and of the product on board. (added emphasis)

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4 days later, by letter dated 11 September 2009, FISCAP replied to Penn Lilac's (4 September) letter, rebutting Penn Lilac's defence of the VIRGINIA G. FISCAP neither made any reference whatsoever to the owner's request to establish a guarantee/security, nor offered guidance as to other options available to the owner to contest the administrative decision (Memorial Annex 43).

At this point in the chronology, 11 days had passed since the formal notification of Decision 7/CIFM/09 to confiscate the VIRGINIA G. By this time, the CIFM Decision and FISCAP communications had already been administratively challenged and a request to set a guarantee/security had been submitted to FISCAP.

By letter dated 14 September 2009, the vessel's P&I Club sent a further communication to FIACAP, reiterating the lack of explanation by FISCAP regarding the procedures to be followed by the owner of the vessel. The owner, once again, requested guidance on the release of the vessel, her crew and cargo (Memorial Annex 44, paragraph 9 of the letter).

By letter dated 15 September 2009 – that is, **15 days** after the notification of Decision 7/CIFM/09 – the vessel's P&I Club requested the extension of the deadline (Memorial Annex 45).

No reply was received in relation to the above.

At this point in the chronology, 15 days had passed since the formal notification of Decision 7/CIFM/09 to confiscate the VIRGINIA G.

By letter dated 23 September 2009, FISCAP informed the vessel's P&I Club that "*Considering that it had been more than 30 days since notification of the CIFM Decision [7/CIFM/09] without any claim from the representative of the [...] Virginia G [...] we will proceed to the sale of the product on board by public auction if within 72 hours from the date of this notification there is no reaction from its representative*". (Memorial Annex 47)

In fact, 23 days, not 30 days, had passed since notification of the CIFM Decision 7/CIFM/09. In any case, it is incorrect that the vessel's representative had not reacted. The letters set out above clearly indicate otherwise, and FISCAP itself had replied. Moreover, the vessel's representative requested an extension of any applicable deadline (which, in any case, Panama submits does not apply).

Finally, 48 hours (not 72 hours) later, hence on 25 September 2009, FISCAP notified the vessel of a new Decision **9/CIFM/2009** whereby the vessel and all her products on board were confiscated owing to a violation of the Fisheries Law and a lack of reaction following decision 7/CIFM/09 (Memorial Annex 48)

It is clear that CIFM/FISCAP ignored the requests of the shipowner for guidance on the procedure to be followed, especially in respect of proceeding to the setting up of a reasonable guarantee/security for the release of the vessel.

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By letter dated 28 September 2009, the owners of the VIRGINIA G vehemently denied the statements made by FISCAP in its letter of 25 September 2009. Penn Lilac strongly denied the alleged failure to react to the notification of arrest, referring, to each item of correspondence sent up until that point, and to all the supporting documents. Penn Lilac, once again, petitioned FISCAP to release the vessel, its crew and the cargo (Memorial Annex 49).

On 5 October 2009, the VIRGINIA G's P&I Club received a letter from FISCAP, dated 30 September 2009. FISCAP listed a number of grounds in support of its continued detention of the VIRGINIA G. The letter concluded by stating that the vessel's gasoil would be auctioned by public tender, and that the owners were invited to partake of the auction, adding that under the law of Guinea Bissau, they had pre-emption rights. (Memorial Annex 50).

On 27 October 2009, FISCAP officials boarded the VIRGINIA G and took soundings of the cargo tanks. The captain was informed that the day after he would be required to berth the vessel alongside the pier and that the crew would have to abandon the vessel. The captain reported that he was told that measures were being taken since the owners allegedly did not reply to a letter wherein the confiscation had apparently been commuted to a fine of USD 600.000. **The owners never received or knew about the existence of this letter.** The possibility of a fine was, in fact, not mentioned in the written communications sent by FISCAP. In any event, the fine would have normally been imposed by Court order (in accordance with Article 52(2)). No such document was received; no such document has been provided by Guinea-Bissau in the proceedings.

On 28 October 2009 the owner (through his lawyers) filed a request for a preliminary injunction against Decisions 7/CIFM/2009 and 9/CIFM/2009. The request was successful, and was granted on the 4 November 2009 (notified on the 5 November 2009) (as will be explained in the next part, and as set out in Memorial Annex 54). Further detail in respect of this action is set out in the following section.

The operative part of the Judgement stated:

V – Operative part

I find the present provisional proceeding (interim measure) well-founded and consequently I:

- a) Order the suspension and warned the defendants (FISCAP, the Inter-ministerial Commission for Fisheries) to refrain from the practice of any and all acts concerning the confiscation of the vessel Virginia G and any product on board until final decision in the declaratory process that will be brought.*
- b) Authorize the applicant and force the defendants to allow the entrance of applicant's staff [crew] in the vessel to proceed with its services of maintenance of the vessel without prejudice to the parties bringing a main action.*
- c) Authorize the applicant to perform the tasks related to the normal management and maintenance of the vessel.*

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- d) *In case the defendants infringe or prevent the fulfilment of the above mentioned, they incur in the penalty of the crime of disobedience, in terms of the criminal law.*
- e) *Determine the personal notification to the defendants and the applicant in these terms.*
- f) *Costs by the applicant with the court fee reduced to ¼ - Article 453 and 446 both from the Code of Civil Procedure.*

On 6 November 2009, Commandante Mita, the Port administrator, ordered the captain to berth the vessel at the fuel dock at around noon. The captain asked Commandante Mita for a written order, to which the reply was that no such document would be necessary as these were "orders from above".

The owner of the VIRGINIA G immediately informed the company's and the P&I representative (Domingo Alvarenga). The quick efforts were successful and the authorities were notified of the court order suspending the seizure (**Memorial Annex 53**).

By letter dated 10 November 2009, the lawyers of the shipowner requested formal notification of the suspension order to the Ministry of Defence and to the Ministry of Finance, in order to inform them of the Judge's order, and to avoid either entity issuing further orders for the confiscation of the vessel and for the sale of the cargo on board, with the excuse of not being aware of the Judge's order (**Memorial Annex 55**).

On 20 November 2009, the captain of the VIRGINIA G called the owner of the vessel to inform him that military personnel again boarded the vessel in a violent and threatening manner, ordering him to berth the vessel. As testified by the Chief Mate Fausto Ocaña Cisneros during the hearings, Commandante Mita stated: "*Captain, you either give us the fuel today or somebody is going to suffer today. This is Bissau, this is Africa, and we are military, so the fuel is going to leave the boat today come what may*".

This time, the captain was handed a document issued by the Ministry of Finance forward dated to 30 November 2009 (**Memorial Annex 56**), stamped as "received" by PETROMAR on 20 November 2009. The letter contained Decision **317/GSET/2009**, and was addressed to the Companhia de Lubrificantes y Combustibles de Guinéa-Bissau (CLC) and stated:

By virtue of Decision N° 7 of the Maritime Inspection Interministerial Commission, the Oil Tanker Virginia G was seized ex officio with its gear, engines and cargo, due to the repetitive practice of fishery-related activities, in the form of "non authorized sale of oil to fishery vessels in the EEZ, namely to N/M Amabal 2".

Notwithstanding the judicial order of suspension of the seizure,² and not having the opposition of the Public Prosecutor, the Government Attorney and Supervisor of Legality, (Ref. n° 716/GPGR/09), for the Government to proceed to "(...) the use of the oil that the vessel traded in our EEZ (...)", we order hereby that the Oil Tanker Virginia G be authorized to discharge its content estimated at 436 tonnes gas oil in your premises.

² Added emphasis.

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The gas oil cargo was discharged.

The owner of the VIRGINIA G filed a further preliminary injunction and the subsequent main action in respect of the Decision by the Ministry of Finance 317/GSET/2009, (received by PETROMAR on 20 November 2009), which authorised/ordered the discharge of fuel aboard of the Oil Tanker Virginia G. Further detail in respect of this action is set out in the following section.

*

C. *The shipowner's appeals to the Regional Court of Bissau against CIFM Decisions 07/CIFM/09 and 09/CIFM/09 were permitted under Article 52(2) (subsequent to the 2005 amendment). This process was undertaken, but was without effect. The cases before the Regional Court of Bissau are currently dormant, and have been so for more than three and a half years.*

Article 52 of Decree 6-A/2000 (as amended)³ provides for the enforcement by Guinea Bissau of the provisions of Decree 6-A/2000 in cases where fishing vessels carry out unauthorised fishing activities:

**Article 52
(Activities of non-authorized vessels)**

1. All industrial or artisan fishing vessels, whether national or foreign, which carry out fishing activities within the limits of national maritime waters, without having obtained the authorisation in terms of Article 13 and 23 of this law, will be seized ex-officio, with its gear, equipment and fishery products in favour of the State, by the decision of a member of the Government responsible for Fisheries.
2. Regardless of the confiscation provided for in the previous paragraph, the courts must apply the fines set out in Article 54(2) of this law.
3. **The decision taken in terms of paragraph 1 can be appealed.** (added emphasis)
4. The Inter-Ministerial Fisheries Commission will decide how to dispose of the confiscated property and products in terms of the provisions of this law, which will revert to the Government.

³ Prior to amendment in 2005, Article 52 read as follows (with added emphasis used to indicate the substantive changes):
 1. **All foreign fishing vessels** that carry out fishing **operations** within the maritime waters of **Guinea Bissau** without having obtained proper authorisation in accordance with Article 13 and Article 23 of this law shall be confiscated ex officio with their gear, equipment and fishery products in the name of the Government by decision of the government official responsible for fisheries.
 2. [no change]
 3. The decision taken in terms of paragraph 1 is **not** subject to appeal.
 4. [no change]

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Article 52(3) states, therefore, that a decision taken in paragraph 1 can be appealed. There is no particular reference to which local court, and, contrary to what Guinea-Bissau states by cross reference to Article 60, **there is no 15-day time-limit**. The 15-day time-limit mentioned in Article 60 applies only to the payment of the fine - a fine which was never imposed on the VIRGINIA G, as will be explained further in reply to Question 4 (set by the Tribunal).

It would appear, therefore, that the general provisions of procedural law apply; and on this basis, the owner of the VIRGINIA G filed two preliminary injunctions and the subsequent main actions, namely:

1. In respect of CIFM Decision 07/CIFM09 of 31 August 2009 and CIFM Decision 09/CIFM09 of 25 September 2009 confirming the seizure of the oil tanker VIRGINIA G and products on board (see **Memorial Annexes 38 and 48**), the owner appealed by means of:

1(a) Preliminary Injunction	Proceeding No 74/2009	filed on 28 October 2009
1(b) Main Case	Proceeding No 96/2009	filed on 4 December 2009

2. In respect of the Decision by the Ministry of Finance 317/GSET/2009, received by PETROMAR on 20 November 2009, which authorised/ordered the discharge of fuel aboard of the Oil Tanker Virginia (see **Memorial Annex 56**), the owner appealed by means of:

2(a) Preliminary Injunction	Proceedings No 98/2009	filed on 7 December 2009
2(b) Main case	Proceedings No 14/2010	filed on 18 January 2010

The following sections will provide remarks on each of the actions:

1(a) Preliminary Injunction - Proceeding No 74/2009

Summary

The owner of the VIRGINIA G lodged a request for a preliminary injunction/interim measures before the Regional Tribunal of Bissau in respect of CIFM Decision 07/CIFM09 of 31 August 2009 and CIFM Decision 09/CIFM09 of 25 September 2009. The decisions confirmed the seizure of the oil tanker VIRGINIA G and products on board, for the alleged breach of Decree-Law 6-A/2000 (see **Memorial Annexes 38 and 48**).

This preliminary injunction was obtained in the form of a supervision order in respect of the confiscation decisions issued by CIFM against the ship and cargo. The government of Guinea Bissau appealed the suspension order on 19 November 2009. One day later, and on the basis of a "non-objection" by the Public Prosecutor's office, Guinea-Bissau officials/military violated the preliminary injunction. The cargo was unloaded on 20 November 2009, on a weekend, effectively preventing the shipowner from seeking recourse from the local court.

By order of 18 December 2009 the Court confirmed the suspension order obtained by the VIRGINIA G's owners and rejected the appeal by the government of Guinea-Bissau as **out of time** ("*extemporaneo*") and **filed before the wrong (non-competent) court**.

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The cargo was never returned.

Detail

28 October 2009

Penn Lilac lodged a request for a preliminary injunction against CIFM Decision 07/CIFM09 of 31 August 2009 and against CIFM Decision 09/CIFM09 of 25 September 2009. The two Decisions confirmed the seizure of the oil tanker VIRGINIA G and any product on board. (See **Attachment 1**)

29 October 2009

The Court ordered payment of the court fees. These fees were duly paid, and the case proceeded. Proof of payment is attached as **Attachment [2]**.

4 November 2009 (notified 5 November 2009)

The Court granted the preliminary injunction in respect of the VIRGINIA G in the form of a suspension order against CIFM’s Decision to confiscate the vessel and her cargo. (See **Attachment 3**)

6 November 2009

Guinea-Bissau officials/military made a first attempt to confiscate the fuel. The owner of the VIRGINIA G invoked the suspension order and the confiscation of the cargo was averted.

10 November 2009

The lawyers of the shipowner requested formal notification of the preliminary injunction / suspension order to the Ministry of Defence and to the Ministry of Finance. This was done to inform the Ministries of the Court’s suspension order, and to avoid either entity issuing further orders for the confiscation of the vessel / sale of the cargo on board, with the excuse of not being aware of the Court’s order. (See **Attachment 4**)

20 November 2009

The military made a second attempt to confiscate the fuel. As testified by the Chief Mate Fausto Ocaña Cisneros, Commander Mita stated: “*Captain, you either give us the fuel today or somebody is going to suffer today. This is Bissau, this is Africa, and we are military, so the fuel is going to leave the boat today come what may*”. The gas oil cargo was discharged.

On this occasion, the captain was handed a letter issued by the Ministry of Finance forward dated to 30 November 2009 (**Memorial Annex 56**).

The letter was stamped as “received” by PETROMAR on 20 November 2009 (10 days earlier).

The letter contained Decision **317/GSET/2009**, and was addressed to the Compañía de Lubricantes y Combustibles de Guinéa-Bissau (CLC) and stated:

By virtue of Decision N° 7 of the Maritime Inspection Interministerial Commission, the Oil Tanker Virginia G was seized ex officio with its gear, engines and cargo, due to the

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repetitive practice of fishery-related activities, in the form of "non authorized sale of oil to fishery vessels in the EEZ, namely to N/M Amabal 2".

Notwithstanding the judicial order of suspension of the seizure,⁴ and not having the opposition of the Public Prosecutor, the Government Attorney and Supervisor of Legality, (Ref. n° 716/GPGR/09), for the Government to proceed to "(...) the use of the oil that the vessel traded in our EEZ (...)", we order hereby that the Oil Tanker Virginia G be authorized to discharge its content estimated at 436 tonnes gas oil in your premises.

The "non-objection" opinion by the Public Prosecutor (*Procurador-Geral da Republica*) of 13 November 2009 (**Counter-Memorial Annex 8**) wrongly refers to an alleged refuelling operation on 20 June 2009.

The Public Prosecutor also wrongly states in this legal opinion that the Decision to confiscate was "unappealable":

"The decision of the Inter-Ministerial Fisheries Commission is thus, in our opinion, correct and unappealable (cf.n°3 of article 52 of Law n° 6-A/2000). Hence the shipowner petitioned for an interim measure".

Surprisingly, the Public Prosecutor, in his legal opinion to the Prime Minister, incorrectly stated that the decision to confiscate the vessel and her cargo was not subject to appeal. The Public Prosecutor referred to the old version of the law, rather than to the 2005 amended version of Article 52(3) of the Fisheries Act. This is especially unusual in light of the information we obtained that the amendment to Article 52(3) was a result of the ITLOS Judgment in the *Juno Trader* case.

27 November 2009

The owner of the VIRGINIA G petitioned the Court, protesting against the illegality of the confiscation of the oil cargo, and requesting its immediate return. (See **Attachment 5**).

3 December 2009

The parties were notified that the Guinea-Bissau Public Prosecutor had lodged an appeal against the preliminary injunction / suspension order granted in favour of the VIRGINIA G. As stated in paragraph 4 of the attached Affidavit of Mr Mendes de Medina, the appeal of Guinea-Bissau was without suspensive effect.

11 December 2009

The owner of the VIRGINIA G, Penn Lilac, lodged a reply to the appeal

18 December 2009 (notified 4 February 2010)

The Guinea-Bissau government's appeal was rejected for having been filed out of time, and in the wrong court. (See **Attachment 6**).

⁴ Added emphasis.

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The Public Prosecutor had lodged the appeal before the Judge of the Criminal Section of the Regional Tribunal of Bissau, when he was aware that the appeal should have been lodged in the Transgression Section. A further submission was made in the Transgression Section, but this was filed 13 days after expiry of the legal limit (that is 23 November 2009).

Status

This proceeding is finalised and the judicial order grating the preliminary injunction/suspension of the confiscation was not respected by the Guinea-Bissauan Authorities. In fact, the cargo of the VIRGINIA G was confiscated and never returned.

1(b) Main Case - Proceeding No 96/2009

Summary

Based on Article 52(3) of Decree Law 6-A/20000 as amended, the shipowner lodged the main case for the annulment of CIFM Decision 07/CIFM09 of 31 August 2009 and CIFM Decision 09/CIFM09 of 25 September 2009, which decisions confirmed the seizure of the oil tanker VIRGINIA G and products on board, for the alleged breach of Decree-Law 6-A/2000.

Procedural issues were raised by Guinea-Bissau, and were replied to by Penn Lilac (in accordance with the Court's instructions). However, there is no news or progress on this case. The vessel was released in October 2011, and the shipowner's judicial recourse has been futile.

Detail

4 December 2009

Penn Lilac lodged the main action for annulment/revocation against CIFM Decision 07/CIFM09 of 31 August 2009 and against CIFM Decision 09/CIFM09 of 25 September 2009. The two Decisions confirmed the seizure of the oil tanker VIRGINIA G and any product on board.

8 December 2009

The Court issued an order to pay the court fees. These fees were duly paid on 11 December 2009, and the case proceeded. (Proof of payment of the fees is attached as **Attachment 7**)

17 February 2009

The owner of the VIRGINIA G was notified of the CIFM's reply/counter-statement

25 February 2009

Penn Lilac filed a reply to the exceptions raised by CIFM in its reply/counterstatement, namely the lack of jurisdiction and the lack of competence of the judge in this type of matter. (See **Attachment 8**)

Status

16 September 2013

We are informed that the court has issued an order for CIFM to file a rejoinder to the Penn Lilac's reply; however, according to the latest information available on this case, the CIFM was never notified of that order. Pending this, the case has not continued since February 2010 (3 years, 7 months).

2(a) Preliminary Injunction - Proceedings No 98/2009

Summary

The shipowner submitted a request for interim measures against the Ministry of Finance Order 317/GSET/2009, authorising the unloading of the cargo.

The Courts 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, which stated, in its operative part:

- 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*

Details

7 December 2009

Penn Lilac lodged a preliminary injunction against the administrative order/authorisation to unload the cargo of the VIRGINIA G. The order/authorisation was set out in an instrument numbered 317/GSET/2009, signed by the Secretary of State of the Treasury and received by PETROMAR on 20 November 2009.

8 December 2009

Penn Lilac was notified to pay the court fees. These fees were duly paid, and the case proceeded. Proof of payment is attached as **Attachment 9**.

18 December 2009

Penn Lilac was notified of the Court order dated 16 December 2009, ordering the return of the cargo which was unloaded and taken by the Guinea-Bissau administration. (See **Attachment 10**)

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4 January 2010

Since this order/preliminary injunction was not respected by the authorities of Guinea-Bissau, Penn Lilac lodged a formal request for the enforcement of the order/preliminary injunction.

14 January 2010

Guinea-Bissau's Ministry of Finance was ordered by the Court to provide an explanation of the non-observance of the order/preliminary injunction within 48 hours. The Ministry of Finance responded to this request for information in a cursory and dismissive manner (it is not clear whether this was done within the prescribed time). The Ministry of Finance stated that the State did not consider that it had infringed the law (that is, Decree Law 6-A/2000) and that, on the contrary, its acts complied with the law and with the case-law (See **Attachment 11**).

10 March 2010

Two requests were filed before the court requesting (i) an order to carry out the preliminary injunction that had already been granted, and (ii) an order to return the seized fuel.

Status

To date, Penn Lilac was not notified of any decision or any other kind of development in this case. The situation remains that the Guinea-Bissau authorities breached the order of the Court to return the fuel cargo.

2(b) Main case - Proceedings No. 14/2010

Summary

An action on the merits followed the request for an order/interim measure against the Ministry of Finance Order 317/GSET/2009, authorising the unloading of the cargo. To date, there is no news or progress on this case.

In view of the above and the fact that the vessel was later released (October 2011), the shipowner's efforts have been futile.

*Detail**18 January 2010*

Penn Lilac lodged the main action in relation to Ministry of Finance Order 317/GSET/2009, authorising the unloading of the cargo.

The action was admitted and all document stamps were duly paid. However, Penn Lilac has **never been notified** by the clerk to pay the initial court fees, which according to the Guinea-Bissau legislation is a precondition for service of notice on the defendant.

Therefore, in this case due to the absence of action from the courts, the defendant has never been officially notified to pay the fees, and the case cannot proceed.

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In this respect, the statements of Guinea-Bissau's counsel and the testimony of expert witness Mr Pinto Pereira (verbatim records 05/09/2013 a.m.p.15) requires clarification:

15 there is a conclusion that I could take. We see that once the injunction is made, the
16 ship owner has tried a main action, but this main action was not followed because
17 the ship owner was no longer interested. So that an action can be appreciated in
18 courts, an entity must pay something in the beginning, and when this is not done,
19 then the proceedings do not take place. The ship owner made an injunction, he also
20 made a main action, but when he was asked to pay this beginning amount, then
21 when this party does not pay the costs within the foreseen delay, the court also
22 allows it to be paid but it would be doubled; and as it is nothing of those, the
23 injunction is still in court and it is still running in Guinea-Bissau.

Panama states that this testimony is misleading, and requires clarification/qualification:

- (i) of the four cases brought by the shipowner, this is the only case for which the Court fee has not been paid; and
- (ii) the reason for non-payment is not as Mr Pinto Pereira suggests, but rather, the lack of notification for payment by the Courts, to the shipowner.

As stated by Mr Mendes de Medina, the owner of the VIRGINIA G complied fully and diligently with all requirements, payments and legal deadlines imposed by the Courts

* * *

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Question 4: What fine, if any, was imposed against the “Virginia G”; to whom was it communicated and what was its amount?

No fine was imposed by Guinea-Bissau against the VIRGINIA G, whether by the Courts, or by the administration.

Article 52 of Guinea-Bissau Decree Law 6-A/2000 states:

(1) All industrial or artisan fishing vessels, whether national or foreign, which carry out fishing activities within the limits of national maritime waters, without having obtained the authorisation in terms of Article 13 and 23 of this law, will be seized ex-officio, with its gear, equipment and fishery products in favour of the State, by the decision of a member of the Government responsible for Fisheries.

(2) Regardless of the confiscation provided for in the previous paragraph, the courts must apply the fines set out in Article 54(2) of this law. (emphasis added)

(3) The decision taken in terms of paragraph 1 can be appealed.

(4) The Inter-Ministerial Fisheries Commission will decide how to dispose of the confiscated property and products in terms of the provisions of this law, which will revert to the Government.

Article 54(2) of Guinea-Bissau Decree Law 6-A/2000 states:

Major fishing infractions shall be punished with a fine of:

(a) a minimum of one hundred and fifty thousand United States Dollars converted into CFA francs at the current rate of exchange;

(b) a maximum of one million United States Dollars converted into CFA francs at the current rate of exchange

Article 60(1) and (2) of Guinea-Bissau Decree Law 6-A/2000 state:

(1) Fines for infractions of this law must be paid within a maximum of fifteen days from decision by a court or from the application of the decision by the Interministerial Fisheries Commission, depending on the case.

(2) The deadline referred to in the previous paragraph may be extended for another fifteen days at the request of the ship owner or its representative.

(3) In the event of non-payment of all or part of the fine before the extended deadline referred to in the previous paragraph, any confiscated property shall revert to the government of Guinea-Bissau.

No fine was imposed against the VIRGINIA G by the Courts (in accordance with Article 52(2)) or in any case, by the administration. Reference to **Counter-Memorial Annex 15** (penultimate paragraph) demonstrates that the CIFM decided to impose a fine on both the

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AMABAL I and AMABAL II vessels; however, no such fine is mentioned in respect of the VIRGINIA G.

Both Decisions of the CIFM, that is 07/CIFM/2009 and 09/CIFM/2009, made absolutely no reference to a fine being imposed, due within 15 days of such decision.

Similarly, the Guinea-Bissau witnesses and experts provided no contrary written evidence that any sort of fine in terms of Article 52(2) and 54 (2) of Decree Law 6-A/2000 was imposed by the Courts against the VIRGINIA G.

Throughout these proceedings, the references to a possible "fine" were:

- (i) an informal and isolated proposition made to the shipowner to settle the matter by commuting the confiscation to a "fine". Mr Gamez Sanfiel (the shipowner) testified that this had nothing to do with the bond or security in respect of which he was asking for guidance so as to obtain the release of the vessel.

Verbatim Records 2 September 2013, at 3 p.m., p.16

27 MR GAMEZ SANFIEL (*Interpretation from Spanish*): What I am saying is, in Guinea-
28 Bissau – and this is in writing – we asked the authorities for the possibility to give bail
29 for the vessel's prompt release.

30 MR MENEZES LEITÃO (*Interpretation from Spanish*): To pay what?

31
32
33 MR GAMEZ SANFIEL (*Interpretation from Spanish*): No, they didn't allow me to pay
34 the bond. They didn't even reply. This is a letter in writing, a letter that was sent to
35 the prosecutor where we say that, you know, we want the amount to be paid to be
36 established; but the prosecutor didn't even mention an amount. I received a
37 communication from a local lawyer. I was invited to come to an agreement
38 recognizing the offence committed, and paying €100,000 as a bill for that lawyer; and
39 if the fine to be paid was less than €600,000, 10% of that should also be given to the
40 lawyers – and this has nothing to do with the bond.

- (ii) a communication from the VIRGINIA G's captain informing the owner that FISCAP representatives boarded the vessel and stated that these measures to confiscate the cargo were being taken as the owners did not reply to a letter where it was proposed to commute the confiscation to a fine of USD600.000.

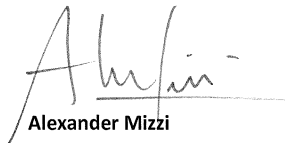
In fact, such letter was never received by the shipowner. Such letter was likewise not produced at any stage in the written or oral proceedings before the Tribunal.



Ramón García-Gallardo

Counsel and Agent for the Republic of Panama
Case No. 19 "VIRGINIA G"

* * *



Alexander Mizzi

Co-Counsel and co-Agent for the Republic of Panama
Case No. 19 "VIRGINIA G"

16 September 2013

**A Affidavit of Ismael Medina Mendes (without attachments),
16 September 2013 (in Portuguese) (not reproduced)
- English translation**

[GB LEGAL LETTERHEAD]

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AFFIDAVIT

I, the undersigned, **ISMAEL MEDINA MENDES**, lawyer, born in Bissau, Republic of Guinea-Bissau, holder of identity card number 1A1-00172248-22, issued by the Office of Civil Identification of Bissau, Ministry of Justice, valid until 27 May 2015, with office in Avenida Dom Settimio Arturp Ferrazzeta, Rosso, Bairro de Luanda, PO Box number 127, Bissau, Republic of Guinea-Bissau, holder of the professional card number 102, issued by the Bar Association of Guinea-Bissau, as responsible for the Legal Practice of GB Legal law firm and as Legal authorized representative of PENN LILAC TRADING, a company incorporated and registered under the laws of Panama, ship-owner of the vessel VIRGINIA G, declare under oath the following:

1. in the exercise of the granted mandate, have known personally and directly as appointed representative until 10 October 2010, in the case in which the vessel Virginia G is part and has a legitimate interest before the competent authorities, as well as before the Courts of Guinea-Bissau, including:

PROCEDURE No 74/2009 – INTERIM INJUNCTION

2. Through this process there was requested the interim suspension of effectiveness of Decision of the Inter-ministerial Fishing Commission N° 07/CIFM09 of 31 August and of Decision of the Inter-ministerial Fishing Commission N° 09/CIFM09 of 25 September 2009, which determining the seizure of the oil tanker VIRGINIA G and any product on board.

3. By Order of November 4, 2009, the provisional injunction was granted.

4. In this sequence, the Office of the Public Prosecutor of the State submitted an Appeal, without suspensive effect, which was rejected by the Court because it was out of time, notwithstanding having been admitted to superior consideration.

5. In spite of the granting of the injunction, the authorities did not comply with the Court's decision.

PROCEDURE No 96/2009 – MAIN ACTION

6. With this action - Appeal for Annulment - the Court was requested to annul the final Decision of the Inter-Ministerial Fishing Commission N° 07/CIFM09 of 31 August and of Decision of the Inter-Ministerial Fishing Commission N° 09/CIFM09 of 25 September 2009, which determined the seizure of the oil tanker VIRGINIA G and any product on board.

7. Following the counterstatement presented by the Inter-Ministerial Fishing Commission, the Applicant [*ed.shipowner*] lodged a Reply.

8. Subsequently, the Court ordered to notify the Defendant, if it desired, to submit the appropriate Rejoinder

9. Nevertheless, the order issued by the presiding judge in this case ordering the notification to the Defendant has not yet been fulfilled.

PROCEDURE No 98/2009 – INTERIM INJUNCTION

10. Through this injunction there was requested the suspension of effectiveness of the decision of the Secretary of the Treasury, who, through the Official Letter No. 317/GSET/2009 of November 30, 2009, ordered the discharge of the fuel on board the vessel VIRGINIA G estimated at 436 tons of diesel, at the premises of the Company Lubricants and Fuels (CLC).

11. The requested injunction was granted, and the Secretary of the Treasury was notified to clarify to the Court the grounds of lack of enforcement of interim decision in Case No. 74/2009.

12. Following the response of the Ministry of Finance to the request of the Court, the Applicant submitted two applications to the Court requesting, inter alia: (i) the forced enforcement of the injunction granted in Case No. 74/2009, and (ii) the issuance of an order to return the fuel.

13. Nevertheless, the order issued by the presiding judge in this case, which ordered the immediate return of the fuel, as well as the abstention from any action against this decision, has not been fulfilled.

PROCEDURE No 14/2010 – MAIN ACTION

14. With this action - Appeal for Annulment - the annulment of the decision of the Secretary of the Treasury was sought, which, through Official Letter No. 317/GSET/2009 of November 30, 2009, ordered the discharge of the fuel on board the vessel VIRGINIA G estimated at 436 tons of diesel, at the premises of the Company Lubricants and Fuels (CLC).

15. The Initial Petition was admitted by the Court.

16. In this sequence, the Court Registry notifies the Applicant to disburse the initial fees (court fees), which is a previous condition to order the summons of the counterpart.

GENERAL TERMS

17. During the intervention of the Applicant in the framework of the procedures abovementioned, the Applicant has complied diligently with all legal deadlines, taking on all actions, applications and burden of its responsibility which were completed within the deadlines established by law.

18. Whenever notified for this purpose, the Applicant proceeded to the immediate payment of the charges of its responsibility.

19. On 1 April 2010, there was a military uprising in Guinea-Bissau, which led the country through a situation of politico-military instability. Various situations of military revolt have occurred in the country, for example on 1 March 2009, on 26 December 2011, on 12 April 2012. As a consequence, the regular functioning of the institutions, in particular, the administration of justice was particularly affected by the instability created by the military uprising of April 2010, which led to the temporary closure of the tribunals, and of major delays in the progress of cases before the tribunals.

I understand that this statement, given under oath, may be used in legal proceedings and I confirm that the facts stated are from my personal knowledge and are true and correct.

Attachments: 8 documents

Bissau, 16 September 2013.

Declaration signed by

ISMAEL MENDES DE MEDINA

[signature]

[stamp]

**1 Request for suspension of effectiveness, received 28 October 2009,
from the lawyers of Penn Lilac Trading to the Regional Court of Bissau
(in Portuguese) (not reproduced)
- English translation**

[Stamps]

The Honorable Judge
Criminal Section
Regional Tribunal of Bissau

PENN LILAC TRADING, ship-owner of the vessel **VIGINIA G**, hereinafter Applicant, requires, under and for the purposes of point 6 of paragraph 13 of Article 820 of Administrative Code, and Articles 381 and thereafter of the Code of Civil Procedure applicable ex vi Article 862 of the Administrative Code, the

SUSPENSION OF EFFECTIVENESS

of a Decision of the Inter-ministerial Commission of Fishing N° 07/CIFM09 of 31 August and of a Decision of the Inter-ministerial Commission of Fishing N° 09/CIFM09 of 25 September, determining the seizure of the oil tanker VIRGINIA G and any product on board, of which was notified on 5 October 2009 (DOC1), hereinafter so called "Suspending Act"

What it does in the following terms and pleas:

I. THE FACTS

1.

On August 21, 2009, around 19:00, at a distance of 60 nautical miles from the coast, the National Supervision and Control of Fishing Activities in the Republic of Guinea Bissau (FISCAP), approached the vessel Virginia G.

2.

Such approach occurred in a violent way by 6 FISCAP agents aboard a fast boat, armed with combat weapons (AK).

3.

The FISCAP agents approached the vessel VIRGINIA G as if it were an assault, since there was no prior communication performed by radio and did not proceed to their identification when they were on the vessel VIRIGINIA G.

4.

The crew was forbidden to hold any communication being forced to stay in their cabins, under the threat of being fired at with the weapons that were pointed.

5.

The vessel's captain was forced to sail to Bissau in precarious conditions given the strong rain and the poor visibility of the night, putting in danger the crew and the cargo aboard of the vessel during the 14 hours it took to cross to the port of Bissau.

6.

The captain is of Cuban nationality and does not understand Portuguese, has was not made aware of the reason that led to the seizure of the vessel, nor was he given the opportunity to defend, as further in Articles 45 and thereafter of Decree-law n°6-A/2000, of 22 August, which approves the Fisheries General Law (hereinafter LGP).

7.

Apart from the seizure not being done legitimately, the reasons why the vessel was seized not having been communicated to the Applicant, or having been given the opportunity to defend, there were several other serious violations to the LGP and the United Nations Convention on the Law of the Sea.

8.

Thus the arrest of the vessel was not communicated to the State of Panama (the flag state of the vessel Virginia G as provided in Article 46 LGP

9.

Besides that the passports of the crew were improperly retained by FISCAP, and have not been returned even if a request for this purpose has been submitted (DOC 2 and DOC 3), in clear violation of the established in United Nations Convention on the Law of the Sea.

10.

Subsequently, the Applicant was informed informally that the arrest took place in consequence of an operation of illegal refuelling.

11.

It is important to note that was it the Applicant who informed FISCAP of the refuelling operation would take place following the issuance by the FISCAP of an official letter which grants the authorization to perform refuelling operation.

12 .

Besides that the entire operation took place in the presence of FISCAP agents , who always behaved as if the operation was perfectly regular, consenting with its achievement, having watched its course without ever ruling on the its possible illegality.

13 .

FISCAP, through its official letter Ref. No. 180/GCFISCAP/09 of 14 August 14 2009, authorized the execution of the operation of refuelling of vessels, provided that prior indications were given regarding the coordinates of the operation of refuelling, the date, time and name of the vessel that would carry the supply (DOC 4) .

14 .

As requested by FISCAP, on 20 August the coordinates of the refuelling as well as the date, time and name of the vessel that would carry the supply were provided to FISCAP (DOC 5).

15.

In the days after the seizure of the vessel VIRGINIA G, there was no communication by the FISCAP, even if the representative of vessel had so requested .

16 .

Only on 31 August 2009 - 10 days after the seizure of the vessel - was the representative of the vessel notified of the Official Letter from the Coordination of FISCAP Ref No. 200/GCFISCAP/09 of 31 August 2009, pursuant to which the vessel Virginia G and all cargo aboard of the same would be confiscated because of the repeated practice of fishing related operations without authorization (DOC 6).

17 .

On 4 September 2009, a letter the Penn Lilac was presented to FISCAP attaching the FISCAP official letter authorizing the execution of the refuelling operation, as well as the letter sent to FISCAP to inform of the coordinates and vessel to carry out the operation (DOC 7) .

18 .

FISCAP lodged a defence to these arguments on 11 September 2009 through the Official Letter of Coordination of FISCAP Ref No. 208/GCFISCAP/09 (DOC 8), Penn Lilac having responded to that challenge on the 14 September (DOC 9)

19.

However, on 23 September, FISCAP, through the Official Letter of Coordination of FISCAP Ref No. 227/GCFISCAP/09 (DOC 10), informed that they will publicly auction of the product of the vessel due to the fact there had been no complaints from the vessel's representation.

It follows that ,

20.

On September 25, through the Official Letter of Coordination FISCAP Ref No. 229/GCFISCAP/09 (DOC 1, Suspending Act), [...] ordered the confiscation of the ship and all the product on board.

21.

On 28 September, the Applicant sent to FISCAP a new note complaining about the decision of confiscation (DOC 11).

22.

On 30 September 30, FISCAP, through the official letter of the FISCAP coordination Ref No. 242/FISCAP/09 (DOC 12) re-challenged the note filed by Penn Lilac of 4 September, with corrections and alleging lapses committed in the Official Letter of FISCAP coordination Ref No. 208/GCFISCAP/09 of 11 September 2009.

23.

During the last days and since 30 September 2009 , several meetings have been held between the legal representatives of the Applicant and FISCAP in order to discuss the process of liberation of the vessels.

24.

However , surprisingly , the Applicant was informed that FISCAP went on board of the vessel on 27 October 2009 (yesterday) informing that the decision to confiscate the vessel would occur and the sale of fuel aboard and the evacuation of the crew is scheduled for the 28 or 29 October 2009 (today), in order to confiscate the vessel.

II - THE LAW

A. INADMISSIBILITY

25 .

Pursuant to Article 80 of the Organic Law of the Courts, approved by Law 3 / 02 of 20 November ("LOT") , the courts are the common jurisdiction for disputes arising from administrative legal relations, which no doubt covers the appreciation of the legality of administrative acts, while the administrative courts under Articles 52 and 57 of the LOT were not created .

Indeed,

26.

The Court and the parties are competent and legitimate, because the Defendant has committed the act challenged herein, addressing specifically to the Applicant.

27.

The suspending act which is the subject of this suspension of effectiveness is a harmful, final and enforceable administrative act.

28.

It is an administrative act as far as it was practice by a public authority, inserted into the legal person, population and territory. A State acting on administrative matter, particularly on matters relating to the administration of the activities of fisheries, which is one of tasks of the State.

29.

The act is harmful in the sense that it seems liable to cause serious damage, violating the rights and legitimate interests of the Applicant.

30.

The administrative act now under reviews is materially definitive, once it is this act that defines the position of the administration against the Applicant on the alleged infringements of the Fisheries General Law, being, therefore an act of sanction.

31.

It is a definitive vertical administrative act as far as is issued by a high hierarchy administrative organ – Your Honour, the Mr. Ministry of Fisheries, who is also the President of Inter-ministerial Maritime Surveillance Commission, who acted under his competences.

32.

The mentioned act is also horizontally definitive, since it is an act which terminates the procedure of the second level, enabling the utilization of the Applicant contentious judicial guarantees.

33.

Finally, the act is enforceable because it can run by itself, not being subject to a confirmation or an authorization from another organ to produce their effects .

34.

Moreover, as we shall see later, the required act has instant execution in relation to the confiscation of any product of the vessel Virginia G.

35 .

In light of the foregoing, there is no doubt that the suspending act is a challengeable administrative act.

B. THE APPLICABILITY OF THE SUSPENSION OF EFFECTIVENESS**36.**

According to Article 399 of the Civil Procedural Code applicable ex vi Article 862 ° of the Administrative Code " *when someone shows grounded fear that before the action be lodged or pending of its results, someone causes severe injury and hardly repairable their right, it may require some measures to be taken, if any of the procedures set out in this chapter provides an appropriate solution to the situation ..* "

37 .

Pursuant to paragraph 6 of Article 820 ° of Decree Law 31095/1940 (Administrative Code), is the competence to the auditor "to issue the suspension of the effectiveness of decisions and deliberations, when required, and to check if it can result in irreparable damages or difficult to repair. "

Indeed,

38 .

The applicant will now demonstrate the huge irreparable losses or difficult to repair arising from the execution of the contested act as well as the inexistence of losses for the public interest, reasons why the suspension of the effectiveness of the contested act may occur.

39 .

According to Article 60 of the Regulation of the Supreme Administrative Court approved by Decree Law 41234 of 20 August 20 1957 ("RSTA") the suspension of the effectiveness of the challenged acts can only be granted by the application of the appellant when the court recognizes that does not involve serious damage to the attainment of the public interest, that can be resulted of execution of the act irreparable damages or hardly to repair. "

40 .

Under this legal provision, the court should only not order the suspension of the effectiveness of the required acts in case it does not conclude its probability judgment, and after having considered the rights and interests to be harmed and if the negative consequences for the public interest exceed the advantage get the Applicant.

In other words,

41 .

According to this legal provision, and as regards the extent of the provisional suspension of the effectiveness of the act , the court shall make a comparative analysis between the positive effects of suspension generate to the applicant and the negative consequences of the suspension result for the public interest, and only if the court reach the conclusion that the negative consequences for the public interest exceed the advantage to be obtained by the applicant cannot enact the measure provisionally required . Otherwise , the provisional measure must be granted.

Thus,

42.

For the applicant it is sufficient to indicate that the benefits from the suspension exceed the negative consequences that it would have the public interest with the execution of the administrative act immediately concerned.

43.

The mentioned legal provision set forth as the first requirement that the execution of the act causing irreparable injury or difficult to repair to the applicant, being for those reasons the first requirement to be examined.

The irreparable injury or difficult to repair**44.**

In this case, the verification of this first requirement is unquestionable as far as the execution of the act in question will have a direct and immediate consequence for the SEIZURE of the vessel as well as the gasoil on board and it is even placing the applicant in a situation of risk financial viability .

45.

A simple reading of the act required itself is sufficient to conclude, with no room for doubt, that if the act would be performed, the applicant will suffer **an irreparable injury or at least an injury which of very difficult repairing** , as its financial situation in collapse, **its bankruptcy being certain**.

46.

The irreparable injury or the very difficult repairing injury which will result from the illegal confiscation of the vessel VIRGINIA G and the fuel on board of the same, which supplier has not been paid yet.

47.

If the Applicant is retained to use the embarkation, it will be prevented from exercising its activity , thus generating income, thus paying bills and to fulfil its obligations to third parties, including its employees .

48.

Notwithstanding what was said to assure adequate causality between the immediate execution of the act *sub judice* and the occurrence of serious injury to the Applicant, it would also have to mention that with the close of business activity of the Applicant, a number of people would you lose their job with the consequent loss of remuneration and the inevitable negative social impact .

49.

In other words, the execution of the act in question would cause harmful consequences for both the equity (financial) situation of the applicant, causing him irreparable damage or hard to repair , and for its entire crew, ground staff and their respective relatives, who would see placed in danger their source of livelihood, thus it is not possible to make an exact or even approximate evaluation of such pecuniary injury as they are objectively impossible to assess.

50.

Quoting Santos Botelho , " *As paradigmatic cases completing the concept of injury of difficult repairing, difficult both the legal theory and the jurisprudence has shown all those cases in which the execution of the act implies the closure of commercial or industrial establishments or the cessation of business activities, since those situations which leads to indeterminable loss profits and involve the beat of customers, which is also not quantifiable in basis of certainty (...) (cf. Contencioso Administrativo: 3rd edition p.455)*

51.

What is clearly the case *sub judice* , since the applicant will be forced to close its business activities.

52.

In order to illustrate the pacific understanding of the jurisprudence in matters of suspension of effectiveness of an act, in the terms and for the purpose as required herein, please find below what the Supreme Court has decided:

I - According to the pacific orientation of this Supreme Court , based on Articles 365 and 920 n . ° 6 of the Administrative Code and Article 60 of its regulation, the suspension of the effectiveness of acts can only be ordered where the applicant so requests and the Court understand that not involve serious damage to the attainment of the public interest and the immediate execution of the act may cause to the appellatant irreparable injury or injury of difficult repairing.

II - The acts that may determine (...) inhibition , although partial of the exercise of trade or industry should be considered as causes difficult reparation of damages by the difficulty of these situations have to compute the true extension of those damages (v . Judgment STA 24.05.69)

53.

It should be noted that the mentioned judgements reflect pacific jurisprudence on the application of standards that are part of the legal acquis of Guinea-Bissau, according to Law 1/73 , published in the Official Gazette No. 1 of 4 January 1975 .

54.

For all the foregoing , we believe there is no doubt that the first requirement of paragraph 6 of Article 820 of the Administrative Code is met, being clear that the possibility of immediate execution of the Act *sub judice* cause irreparable injury or of difficult repairing to the Applicant.

The absence of serious injury to the public interest**55.**

According to article 60 of the RSTA " *the suspension of effectiveness of the appealed acts can only be ordered at the request of the appellatant when the Court recognizes that this does not involve serious injury to the public interest and its execution may result of an act of irreparable damages or of difficult repairing.*

56.

Thus, we must now demonstrate the absence of serious injury to the public interest.

57.

The damages caused to the public interest arising from the suspension and effectiveness of the act should be so severe that not justify the issuance of the injunction.

58.

In the case under review, the Defendant did not notified the applicant any injury/lesion to the public interest, since the activity of the applicant does not challenge any public interest, even more that it was authorized.

59.

It should also be considered, in the framework of the analysis of this negative requirement of suspension of efficiency, the public interest underlying to the act *sub judice* .
Is that,

60.

As Osvaldo Gomes wrote, " *the existence of serious injury to the public interest must be assessed against the administrative act and its grounds, and there are no the strange reasons and / or have been invoked later*" .

61.

According to the same distinguished writer: " In fact , we understand that here also applies the rule stating reasons in written (...) because how it was decided in the Judgment of 9 December 1976 'committing an act with a certain ground, the contentious appreciation of its legality has to be done with the same stating reasons, not being lawful the Court replaces the Administration, justifying the act on different grounds (see Jose Osvaldo Gomes , Suspensão de Executoriedade de Acto Administrativo, *Revista da Ordem dos Advogados* , 44/131) .

62.

Applying the doctrine described to the case under analysis, it concludes that to consider whether or not there is serious injury to the public interest that, this Court is restricted to the grounds invoked by the defendant authority in the text of the act *sub judice* .

63.

From the analysis of the act in question there does not result the invocation of any ground of public interest that would lead to the imposition of a fine and / or confiscation of the products aboard on the vessel VIRGINIA G
Besides that,

64 .

The Suspending Act does not have any ground, reason why is null as above claimed and demonstrated .
Moreover,

65 .

Instead of targeting the public interest by good practices for monitoring and control of fishing activities, the act *sub judice*, if executed, will create serious losses to the public interest, since the good reputation of the State of Guinea-Bissau will be seriously harmed in international trade , as it demonstrates to the current and potential investors, especially foreigners, that the State is not a guarantor of economic stability and does not respect the basic principles of its own law and international trade, and this will eventually become a factor vanishing investment .

66 .

Therefore, it can only be concluded by the inexistence of severe lesion to the interest if the suspension of the effectiveness of the Suspending Act is granted.

The clear urgency of the suspension**67.**

The act which requires suspension of effectiveness if ordering the confiscation of the ship VIRGINIA G as well as any product on the same board .

68.

Despite the on-going discussion process, FISCAP agents went to the vessel with catheter on 27 October 2009 to verify what type of fuel was aboard of the vessel.

69.

Having verified that the fuel aboard of the vessel was gasoil fuel, and having such fuel a great demand in the domestic market of Guinea-Bissau, the FISCAP agent informed the captain of the vessel that between 28 and 29 October 2009 if you would proceed the sale of fuel as well as the confiscation of the vessel.

70.

For this purpose, the FISCAP agents also warned the captain that the entire crew would be evacuated during the day 28 October 2009 .

71.

Against this background, it is clear that the execution of the act is imminent and that requires its immediate suspension .

72 .

Pursuant to paragraph 2 of Article 400 ° of the Civil Procedural Code, applicable to the case under review *ex vi* Article 802 ° of the Administrative Code " *The Court will hear the defendant, if the hearing does not put at risk the purpose of the request* ' This provision is in line with the due process of law principle (paragraph 1 of Article 3 of the Civil Procedural Code) .

73.

Pursuant to paragraph 2 of the same Article 3 "*Only in exceptional cases provided for by the law, measures can be taken against a person without this person first been heard* "

74.

In the case of a preliminary injunction, anticipated contradictory and the deferred contradictory should be distinguished, which is opened only after the concession of the injunction.
Indeed,

75.

The contradictory deferred and when the audition permissible provided the defendant endangers the end of offers and thus the effectiveness of law that the applicant seeks to safeguard .
thus,

76.

The hearing of the defendant should not take place when there is a risk to frustrate the practical effect to be achieved, notably due to the urgency of the situation and the consequence that the delay resulting from the exercise of the contradictory may cause (*periculum in mora*).

More,

77.

The interference that knowledge by the defendant to cause the desired purpose by the applicant, including, in the case under review, the hasty execution of the act while injunction is pending to be granted.

78.

The Defendant, as a public entity, enjoys the privilege of calling previous execution which " ... allows the public administration to execute its decisions by each authority ... this organ by itself can employ coercive means including the police to enforce respect for their decision , and can do it without taking the court for this purpose ... In short , the unilateral decisions of the administration have as a rule its own effectiveness and can therefore even be imposed by coercion without any intervention provided the courts (*Curso de Direito Administrativo* Vol I, Diego Freitas do Amaral , Page 103) .

79.

In our legal order, contrary to what happens, for example, in Portugal , does not exist the figure of the immediate suspension of the act and provisionally syndicated , which becomes mandatory for the defendant authority from the moment this is notified to respond refraining to perform the act in crisis.

80.

And as abovementioned, the suspending act it is covered by the principle of previous execution, which means, that even after being notified of this procedure the administration can still carry out its execution based on the aforementioned principle of the previous execution, as manifestly is its intention .

Thus,

81.

The granting of the injunction without prior hearing of the defendant, under the terms of paragraph 2 Article 400 ° of the Civil Procedural Code, delaying the contradictory, is the only legal remedy which seems liable to prevent the Defendant Authority to perform the act in question while the injunction is pending to be decided.

This is because,

82.

The not immediate suspension of effectiveness of the act will cause the same even that may be enacted later , no longer has any useful effect since the simple closing of international access for a single day that is the losses would cause serious or difficult reparation that this provides is intended to safeguard .

83.

As stated in this regard Freitas do Amaral " As legal actions often take two, three or four years to be judged, the fact that the act has already been performed and only a few years later to be annulled can be a source of irreparable damages or of difficult reparation to the individuals (In *Direito Administrativo*, Volume IV, Pages 302 and 303)

84.

The same author has concluded that " *So, to prevent this, to avoid the late cancellation of the contested act is no longer useful, not bringing any benefit to the Applicant, the law set forth the instrument of the suspension of effectiveness of the administrative acts.*"

85.

For all the reasons set out above, it is clear that if all requirements are met to grant the measure required, whereby

In these terms and in other legal terms your Honour will state, should:

(i) be granted the injunction required without hearing the Defendant, ordering up with urgency the immediate suspension of the effectiveness of the administrative act contained in the Inter-ministerial Fishing Commission Decision n° 07/CIFM09 of 31 August and Decision N ° 09/CIFM09 of 25 September 25, notified by the FISCAP Letter No. 229/GFISCAP/09;

(ii) Inform to the Defendant Authority with urgency the decision mentioned above in (i) with the express mention that the Defendant should refrain to commit any acts against this decision, under penalty of disobedience to this Court.

(iii) We further require that this procedure should be conducted in accordance with paragraph 2 of Article 400 ° of the Civil Procedural Code .

Amount: Xof . 60,000,000.00 (sixty million Francs of the African Financial Community)

Attachment : Power of Attorney, (12) twelve Documents , Legal Duplicate Copies

Lawyers

Ismael Mendes de Medina

**2 Order regarding court fees, 29 October 2009, Regional Court of Bissau (in Portuguese) (not reproduced)
- English translation of Order**

Translation

Process n° 74/09

**REPUBLIC OF GUINEA BISSAU
Local Court of Bissau-**

ORDER

The Judge of Transgression of the Regional Court of Bissau, Dr Marcos Victor Indemi orders to notify duly to PENN LILLAC TRADING, duly identified in the file that pursuant Articles 88° and 89°, paragraph a) of number 1 both of the Code of Court Fees, within a deadline of 5 days, starting from the date of the notification to proceed with the payment in the Judicial Registry of this Tribunal, the quantity of 480.000 FCFA (four hundred and eighty thousand francs cfa), deriving from its responsibility, mentioned in the file for Injunction. The payment has to take place within the deadline, under penalty of ...

TO BE COMPLIED WITH,

By the official of the diligence

Bissau, 29 October 2009,

By order of the Exm. Judge

The Registrar

[Signature]

Order on costs, 23 November 2009, Regional Court of Bissau (in Portuguese) (not reproduced)
- English translation of Order

REPUBLIC OF GUINEA BISSAU
 Local Court of Bissau- Criminal Section
 (Section of Transgression)

ORDER OF COSTS

PROCEDURE	NUMBER	VARA/SECTION
Injunction	74/09	Transgression

The Judge of the Court of Transgression, Dr Marcos Victor Indami

Orders to duly notify to:

The applicant:

- PENN LILLAC TRADING, duly identified in the file.

Pursuant to Articles 88° and 89°, paragraph a) of number 1 both of the Code of Court Fees, within a deadline of 10 days, starting from the date of the notification, to proceed with the payment in the Judicial Registry of this Tribunal, the quantity of **1.906.525,00** xof (one million nine hundred and six thousand five hundred and twenty five francs cfa).

Coming from a Judgement, pages 55 to 61, of its responsibilities, mentioned in the file of Injunction, where FISCAP was the Defendant.

The payment has to take place within the deadline, under penalty of infringement.

TO BE COMPLIED WITH,

Bissau, 23 November 2009,

By order of the Exm. Judge

The Registrar

[Signature]

**Request to the Regional Court of Bissau regarding proof of payment (in Portuguese) (not reproduced)
- English translation of Request**

Exc. Sir

Dr Judge of the Court

Criminal section

Section Transgression

Procedure n 74/2009

PENN LILAC TRADING Applicant of the above mentioned file, in which the Inter-ministerial Fishing Commission (CIP), notified to the Order of pages..., requires to your Honour to accept the filling of the proof of the payment of the final court fees.

P.E.D

Lawyers Junta: 1 (um) doc.

3 Suspension of confiscation of vessel, 5 November 2009, Regional Court of Bissau to the Inter-Ministerial Fisheries Commission (in Portuguese) (not reproduced), attached:

- Warrant, 5 November 2009, Regional Court of Bissau (in Portuguese) (not reproduced)

- Order, 4 November 2009, Regional Court of Bissau (in Portuguese) (not reproduced)

- English translation of Suspension, Warrant and Order

REPUBLIC OF GUINEA BISSAU

REGIONAL COURT OF BISSAU – CRIMINAL COURT
TRANSGRESSION SECTION

TO THE
SECRETARY OF STATE OF FISHERIES
(INTER-MINISTERIAL FISHERIES COMMISSION)

BISSAU

Process n° 74/2009

Letter no. 206/2009/ S.S

Date: 05/11/2005

Subject: *SUSPENSION OF VESSEL CONFISCATION*

The Criminal Court of the Regional Court of Bissau presents its best wishes and hereby requests your due diligence in order to refrain from the practice of any and all acts relating to the confiscation of the vessel **VIRGINIA G** and its products on board and that the applicant's (**PENN LILAC TRADING**) crew is allowed entry to the vessel to proceed with their usual services, as set out in the non specified Provisional Proceeding with its Copy attached hereto.

[Cordially]

THE JUDGE

Dr. MARCOS VICTOR INDAMI

[SIGNED]

Note: Received 06/11-09

signature

REPUBLIC OF GUINEA ISSAU
SUPREME COURT OF JUSTICE
REGIONAL COURT OF BISSAU
TRANSGRESSION SECTION

WARRANT

PROCESS	No.	Departments/Sections
TRANSGRESSION	74/2009	

The Hon. Judge, Dr. Marcos Victor Indami, notifies the person or persons below mentioned of all content of the order, with copies to be delivered at the time of notification, pursuant to and for the effects below.

TO NOTIFY

1	PENN LILLAC TRADING, represented by OCTAVIO LOPES, ISMAEL MENDES DE MEDINA E EMILIA ANO MENDES, Lawyers in this city of Bissau. –
---	---

Bissau, 05 November 2009

The Court Registry

signed

Republic of Guinea Bissau
Regional Court of Bissau – Crime Court
Transgression Section

Proceedings no. 74/009

Unspecified interim measure

I – Report

--- Penn Lilac Trading, owner of the vessel VIRGINIA G, requested the present interim measure proceeding [...] against the Inter-ministerial Fisheries Commission - Cabinet of Coordination of the Surveillance and Control of Fishing Activities in the Republic of Guinea-Bissau (FISCAP) of the Ministry of Fisheries, asking the defendants to be notified and advised to refrain from the practice of any and all acts related to the confiscation of the vessel Virginia G and the products on board and that the applicant's crew be authorized and allowed to enter in the vessel to carry out its usual services.

--- Claims that on 21 August 2009, around 19 hours, at a distance of 60 nautical miles from the coast of Guinea Bissau, FISCAP approached the vessel Virginia G and that such approach was violently done by six FISCAP agents with a speedboat, armed with combat weapons (AK) as if it were a robbery. The crew was forbidden from any communication and required to remain in their cabins.

--- The vessel was forced to navigate to Bissau with poor visibility, because it was night time, while endangering the crew for 14 hours during the crossing to Bissau.

--- On the other hand, it claims that the applicant will suffer an irreparable damage or at least, very difficult to repair with the confiscation of the oil tanker Virginia G, insofar as its economic and financial situation will collapse, leading to bankruptcy.

--- Finally, it requests exemption from the previous hearing of the defendants because it may jeopardize, by which I mean, may pose serious risk to the effectiveness and usefulness of the Interim measure required e.g. Article 400 paragraph 2 and art. 3, paragraph 2 both from the Code of Civil Procedure.

II – [Procedure]

1 - The Transgression Court has jurisdiction on grounds of nationality, matter and hierarchy.

2 - The process is exempted from nullities that invalidate the whole. The initial petition is not inept. The process is proper and valid.

3 - The parties are endowed with personality and judicial capacity and are legitimate.

4 - There are no other dilatory and peremptory exceptions or procedural nullities that should be known.

III – Factual Rationale

I – A – Proved circumstantial factors

01 - PENN LILAC TRADING is registered as the owner of the vessel Virginia G and GEBASPE SL CIF nº B_38437364 in favour of the applicant, resident in Spain, for commercial activity and the vessel's owner with domicile in Poligono Industrial Guadalquivir, C Technology No. 10m 1st CP 41120 Gelves - Seville (Spain).

02 - The vessel Virginia G is owned by the applicant.

03 - In carrying out its fishing activities in the beginning of the month of August the applicant had other fishing vessels Rimal 1, Rimal 2, Amabal 1 and Amabal 2 in waters of Guinea Bissau at the care of BALMAR Pesquerías del Atlantico with accompanying documents issued by the Guinean authorities.

04 - Before proceeding to the fishing activities, the fishing company BALMAR Pesquerías DEL Atlantico had sent all relevant documents to the Bijagos Agency in Bissau, requesting necessary authorization for the supply of fuel to the vessels mentioned above. Fls. [Page] 23

05 - The Bijagos Agency confirmed the masters of the fishing vessels, that the refueling operation was authorized by FISCAP. Fls. [Page] 20

06 - Once the masters of the fishing vessels reported that the refuelling operation had been authorized, they headed together with the fuel tanker, according to the coordinates established and authorized by FISCAP, and with the observers on the fishing vessels.

07 - FISCAP observers were present at the operation of the supply of fuel on board of the fishing vessels

08 - On 21 August of the current year the vessel Virginia G, belonging to the applicant, and the fishing vessels Amabal 1 and Amabal 2, were seized and taken to the Port of

Guinea Bissau by the authorities when the applicant’s vessel had just finished refuelling the fishing vessel Amabal 2.

09 – The approach happened in a violent way by 6 agents of FISCAP on a speedboat, armed with combat arms (AK), as if it were an assault.

10 - The crew was prohibited from realizing any communication, being forced to remain in their cabins under threat of use of the arms that had been pointed at them.

11 - The reason for the seizure of the vessel was not communicated to the applicant, neither had he been given the chance to defend himself.

12 - The crew's passports were seized and retained by FISCAP, and were not returned to them even though it was requested fls [Pages] 18 and 19 of the file.

13 – However, as requested by FISCAP, on 20 August, 2009, the coordinates of the fuel supply operation were provided to FISCAP along with the date, time and name of the vessel that would carry the supply.

14 - On 31 August 2009, the applicant was notified through his legal representative of the letter of the FISCAP coordination with ref. No. 200/GCFISCAP) 09 that the vessel Virginia G was seized with all the cargo on board, due to the repeated practice of fishing-related operation without authorization.

15 - FISCAP did not apply the corresponding administrative fine to the infringement committed by the vessel Virginia G.

III – B – Unproven facts

-- It was not proved that when the defendants decided (issue the letter included in fls [Page] 17 of the files) to seize the vessel VIRGINIA G and all its product on board, that FISCAP had applied the corresponding administrative fine to the infringement committed by the applicant and the deadline for its liquidation, neither the value of the fine in quantitative terms.

III – C – Motivation

-- The Court considered the documents of fls [Pages] 17 to 28, 29 to 37, with reference to the proven facts in Articles 01 to 15.

IV – The Law

-- Under Article 399 of the Code of Civil Procedure, for the legitimacy of the interim measure it is necessary that there exists a well-grounded fear that a third party could

cause serious injury to one's right and that this injury will be difficult to repair. Thus it is important to examine the existence (only circumstantial, by the nature of the interim measure) of the applicant's right, if there is a well-founded fear of serious injury to this right and if that injury is difficult to repair.

-- Thus, the requirements of the interim measures procedures provided for in Article 399 of the CPC are:

- a) The well-founded fear that third parties, before the proposal of the main action or when it is pending, cause serious injuries or injuries which are difficult to repair, to the applicant's right;
- b) Serious, or at least apparent, probability of the existence of a threatened right;
- c) Appropriateness of the requested measures to prevent the injury;
- d) The damage resulting from the interim measure is not higher than the damage which it seeks to avoid.

It is true that the applicant has already been prevented from exercising his commercial activity, since the date of the seizure of the vessel, however "it is not the fact that at the time that the measure is required, damages to the right has or have already occurred which, per se, precludes the measure from being enacted." (Helio Neto, CPC Noted 14th edition page 433).

--- And an injury already caused may constitute grounds for fear of other injuries, and therefore are grounds for request of adequate measures to prevent further injuries.

--The applicant's vessel Virginia G is a commercial vessel to supply fuel to fishing vessels in the High Seas and if the applicant continues to be prevented from exercising his commercial activity and the vessel confiscated and all the product on board sold in public auction, it will also be hindered to obtain benefits from it.

-- We are facing a fundamental property right and on the other hand, an infraction of the fishing rules subject to fines.

---However, the defendants with their conduct caused the applicant an injury which is difficult *[missing part from copy of judgement: to repair due to the fact that, even with the [...] action, he will remain months without being able to carry out his activities or loss of the vessel which certainly causes the degradation of the vessel.*

---- *The process of confiscation of a good, because it is a fundamental property par excellence, and competence of courts established under the Constitution of the Republic*

and nobody is allowed to take justice into their own hands. In this case, it is FISCAP itself attempting to confiscate the ship and every product on board.

- Waiting for the decision contemplated in the appeal for a declaratory action, could constitute a severe impact to the legitimate aspirations of the applicant, endangering the applicant, social development partners, suppliers and providers, workers and service providers that will receive nothing for their money and credit.

--- A guaranteed delay in the declaratory action, may, in fact imply that the harm is difficult to repair.

--- Using the provisional proceeding (interim measure) appears to be appropriate and proportionate,] since its enactment will mean a much lesser harm to the applicant than what its refusal may lead to the applicant, since to fulfil the request it is enough with the immediate suspension of the confiscation of the vessel Virginia G and all products on board. That is, the harm alleged by the applicant is comparably higher in relation to the economic and social damage than what the loss, even temporary, will mean to the defendants.

V – Operative part

-- I find the present provisional proceeding (interim measure) well-founded and consequently I:

- a) Order the suspension and warn the defendants (FISCAP, the Inter-ministerial Commission for Fisheries) to refrain from the practice of any and all acts concerning the confiscation of the vessel Virginia G and any product onboard until final decision in the declaratory process that will be brought.
- b) Authorize the applicant and force the defendants [the defendants] to allow the entrance of its staff [crew] in the vessel to proceed with its services of maintenance of the vessel without prejudice that the parties bring a main action.
- c) Authorize the applicant to perform the tasks related to a normal management and maintenance of the vessel.
- d) In case the defendants infringe or prevent the fulfillment of the above mentioned, they incur in the penalty of the crime of disobedience, in the terms of the criminal law.

- e) Determine the personal notification to the defendants and the applicant in these terms.
- f) Costs by the applicant with the court fee reduced to $\frac{1}{4}$ - Article 453 and 446 both from the Code of Civil Procedure.

Notify

Bissau, 4 November 2009

**4 Request for Notification from the lawyers of Penn Lilac Trading to the Regional Court of Bissau (in Portuguese) (not reproduced)
- English translation**

[LOGO]

OCTÁVIO LOPES

[STAMPS]

Proceedings n.º 74/2009

Excellency

Hon. Judge

Regional Court of Bissau

Transgression Section

PENN LILAC TRADING, owner of the vessel VIRGINIA G, applicant in the proceedings *[identified in the margin of the page]* in which the defendant is the Inter-ministerial Commission of Fisheries, hereby requests your Excellency to order the notification, as a matter of urgency, to the Ministry of Finance and the Ministry of Defence the content of the Order of pages [...] regarding the unspecified interim measure requested and granted, as otherwise the Decision would not produce the desired effect.

P.E.D.

Advocates

[Signatures]

[STAMP]

Signature Ismael Mendes de Medina

[STAMP]

mirandalliance

[LOGO]

**Letter dated 10 November 2009 from the lawyers of Penn Lilac Trading to the Minister of Defense transmitting Order (without annex) (in Portuguese) (not reproduced)
- English translation**

[LOGO]
OCTÁVIO LOPES

Advocates

MINISTRY OF DEFENCE
Excellency Sir Minister
Dr. Aristides Ocante da Silva
Bissau-Guiné Bissau

Bissau, 10 November 2009

Subject: Vessel Virginia G - suspension of confiscation

Excellency,

By reference to the above subject, we provide you in an annex the Order of the Interim measure, delivered by the Judge of the Transgression Section, of the Regional Court of Bissau, regarding the confiscation of the Vessel Virginia G, for your knowledge. This Order was already notified to the Secretary of State of Fisheries, as President of the Inter-ministerial Commission of Fisheries, and to FISCAP, the past day 06 of the current month.

The referred Order of the Judge orders the administrative authorities to refrain of the practice of any acts referred to the confiscation of the Vessel Virginia G and its products on board and that the applicant of the interim measure, the vessel's owner Penn Lillac Trading, is allowed the entrance of its crew in the mentioned Vessel to proceed with its normal services.

We have information of the existence of manoeuvres in the port of the old enterprise DICOL, located in Alto Bandim, where the Vessel was ordered to berth the past Friday, day 06 of the current month, aimed at the taking of the product (fuel) on board.

Guinea Bissau is a democratic country, where the judicial decisions are sovereign, and where its non-compliance puts into question, on one hand, the national sovereignty, and on the other hand, the respect of the principle of separation of powers expressed in the Constitution of the Republic. Therefore, we request the collaboration of Your Excellency in order to enforce the decision taken by the Court of the Republic of Guinea Bissau.

Being sure of your best understanding for the explained above, and being thankful in advanced for the attention given, we remain at the disposal of your Excellency for any clarification you may find appropriate.

Please, your Excellency, Sir Minister, accept our best wishes.

Ismael Mendes de Medina

[Signature]

[STAMP]

**Letter dated 10 November 2009 from the lawyers of Penn Lilac Trading to the Minister of Finance transmitting Order (without annex) (in Portuguese) (not reproduced)
- English translation**

[LOGO]
OCTÁVIO LOPES

Advocates

MINISTRY OF FINANCE

Excellency Sir Minister

Dr. José Mário Vaz

Bissau-Guiné Bissau

Bissau, 10 November 2009

Subject: Vessel Virginia G- suspension of confiscation

Excellency,

By reference to the above subject, we provide you in an annex the Order of the Interim measure, delivered by the Judge of the Transgression Section, of the Regional Court of Bissau, regarding the confiscation of the Vessel Virginia G, for your knowledge. This Order was already notified to the Secretary of State of Fisheries, as President of the Inter-ministerial Commission of Fisheries, and to FISCAP, the past day 06 of the current month.

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We have information of the existence of manoeuvres in the port of the old enterprise DICOL, located in Alto Bandim, where the Vessel was ordered to berth the past Friday, day 06 of the current month, aimed at the taking of the product (fuel) on board.

Guinea Bissau is a democratic country, where the judicial decisions are sovereign, and where its non-compliance puts into question, on one hand, the national sovereignty, and on the other hand, the respect of the principle of separation of powers expressed in the Constitution of the Republic. Therefore, we request the collaboration of Your Excellency in order to enforce the decision taken by the Court of the Republic of Guinea Bissau.

Being sure of your best understanding for the explained above, and being thankful in advanced for the attention given, we remain at the disposal of your Excellency for any clarification you may find appropriate.

Please, your Excellency, Sir Minister, accept our best wishes.

Ismael Mendes de Medina

[Signature]

[STAMP]

5 Petition (confiscation of oil cargo) from the lawyers of Penn Lilac Trading to the Regional Court of Bissau (in Portuguese) (not reproduced) - English translation

REGIONAL COURT OF BISSAU

Section of Infringements

Proceeding No 74/2009

URGENT

Exc. Mr. Judge

PENN LILAC TRADING, applicant in the aforementioned proceeding, where the respondent is the Interministerial Commission of Fisheries ("CIP" in Portuguese) and FISCAP, exposes and requires to your Exc. the following:

1. The CIP published decisions No. 07/CIFM09 on August 31st and No 09/CIFM09 on September 25th, the latter being notified to the applicant on October 5th 2009, through the Office of FISCAP No 229/GCFISCAP of September 25th, 2009, pursuant to which it was determined the seizure of the oil tanker VIRGINIA G and all products on board (documents 1 to 6 attached to the initial request for the suspension of effects, reproduced completely);
2. On October, 28th 2009, the applicant submitted to this Court a request for suspension of effects of the aforementioned decisions in order to avoid the enforcement of the seizure over the vessel VIRGINIA G and all products found on board, as well as all damages that the seizure could have caused.
3. By decision of this Court dated November 4th, 2009 a protective order was declared and, consequently, the execution of the seizure was suspended, requiring expressly the respondents CIP and FISCAP to:
 - a) "Abstain [...] of any acts in relation to the seizure of the VIRGINIA G vessel and any product found on board, until final decision in the process is published. [...]"
4. On November, 6th 2009, the applicant and the respondents were notified of the protective order, pursuant to the protective order, as stated in pages...
5. On November, 9th 2009, the applicant requested this Court to proceed with the urgent notification to the Ministry of Defence and to the Ministry of Finance of the protective order, even though both institutions are members of the CIP.
6. In addition to submitting the application referred to in previous point 5, the applicant itself proceed as well to the delivery copy of what was established by protective order to the Ministry of Finance and the Ministry of Defence (see DOC 1 and 2 attached to this application, reproduced entirely).
7. Despite all aforementioned, on November, 20th 2009, the State Secretary of the Treasury from the Ministry of Finance issued a decision with Reference No 317/GSET/2009, addressed to CLC (Company of Lubricants and Fuel), with an acknowledgment of receipt by PETROMAR, dated November, 20th 2009 (see DOC. 3 attached which is reproduced entirely).
8. The decision issued by the State Secretary of the Treasury from the Ministry of Finance states the following:

"[...] Subject: Unload seized oil tanker

Pursuant to Decision No 07 of the Interministerial Commission on the Maritime Surveillance, the oil tanker Virginia G was seized ex officio, with all its gears, gadgets and products on board, due to the repeated operations of related fishing, on its form of "*non-authorized sale of fuel to other fishing vessels within our EEZ, namely the N/M AMABAL 2*".

Despite to the Court decision on the suspension of the seizure - the emphasis added – and not opposing to the Public Prosecutor, State Lawyer and State Prosecutor (Ref. No 716/GPGR/09) so the government proceeds “(...) to use the fuel that the vessel was transferring in our EEZ (...)”, we state with the present that the oil tanker Virginia G is authorised to unload all products on board, estimated to be 436 tm of oil, in our facilities [...]”

A. NULLITY OF THE DECISION TAKEN BY THE STATE SECRETARY OF THE TREASURY

9. The power to seize any type of asset is not listed as those assigned to the General Direction of Treasury, listed by the Decree-Law No 9/2006, of 29 June 2006, passed by the Ministry of Finance Organic Law.
10. As a result, given that the State Secretary of the Treasury took a decision for which it had no competence, the decision must be considered null and void, as stated by the Article 363 of the Administrative Code.

B. NULLITY PURSUANT TO ARTICLE 201 CPC

11. The letter of Mr State Secretary of the Treasury refers to the non-opposition by the Public Prosecutor, State Lawyer and State Prosecutor “to the utilisation of the fuel traded by the vessel within the EEZ”, referring as well Ref. No 716/GPGR/09.
12. The opinion of the Public Prosecutor with Ref. No 716/GPGR/09, as stated by the letter of the State Secretary of the Treasury, was never notified to the applicant.
13. Article 229(1) CPC establishes, furthermore, that “must be notified, without need of an express order, all judgments and letters as stated by the law and **any other document which could cause damages to the parties**” – emphasis added.
14. Moreover, Article 201(1) CPC states that “the performance of an illegal act, as a failure to act or to comply with a formality prescribed by the law, only produce nullity when the law so declares or when the wrongdoing can influence the consideration or decision of the case”.
15. *In casu*, failure to give notice of the opinion of the Public Prosecutor Ref. No 716/GPGR/09 to the applicant, prevented it from exercising its right of examination, which had a clear impact on the examination and decision of this case (see Article 3 CPC; Article 201(1) CPC).
16. Hence, it is therefore declared manifestly null and void due to the lack of notification of the Public Prosecutor’s opinion to the applicant (see Article 201(1) CPC).

C. QUALIFIED CONTEMPT

17. Following the terms of the Republic of Guinea Bissau’s Constitution (“CRGB”), “every citizen has the right to appeal to the courts against acts that violate his rights recognised by the Constitution or the Law”, and the Courts are organs of sovereignty competent to administer justice in the people’s name (Articles 32 and 119 CRGB and Article 1 Organic Law of Tribunals (“LOT”)).
18. And, by the law, “the decisions of the courts are compulsory for **all public and private entities** and prevail over those of any other authorities” (Article 6 LOT).
19. Hence, the act performed by the Secretary of State to order the seize of the fuel on board of the oil tanker Virginia G, is clearly against the established by the protective order, has a defect as it violates the law, being voidable, on the basis of what Article 364 of the Administrative Code establishes.
20. Additionally, the CRGB establishes that the State and other public bodies, as well as other political positions, must provide answers through political, civil and criminal means for those acts or omissions in the exercise of their duties” (Articles 33 and 61 CRGB).

21. As stated in point 14 above, the decision of the Secretary of State of the Treasury violates directly and unscrupulously the order of pages... which decreed the suspension of the effects of the CIP's decision, as it instructs the execution of an act whose performance was suspended by decision of this Court.
22. The order of pages...which decreed the protective order, as stated in point 4 above, was duly notified to the Secretary of State of the Treasury.
23. Under paragraph d) of the order pages..., it was issued a warning to the effect that if there was a violation or impairment of the compliance of the content of the order by the contested authorities (among which is the Ministry of Finance, as a member of the CIP) the protective order states that in case any acts would be committed relating to the seizure of the vessel Virginia G and of any product on board before the final decision, it would incur in the penalty of qualified contempt as established by the Criminal law.
24. Article 239 of the Criminal Code states that:

"1. Who, after being warned that his conduct is likely to incur in criminal liability, continues to grant duly obedience to a lawful order or mandate, properly communicated and reported by a competent entity, shall be punished with prison or fine up to 5 years".
25. As aforementioned, the Secretary of State of the Treasury acted acknowledging that a judicial decision had been issued suspending the seizure, being duly notified its content.
26. The acknowledgment of receipt by the Secretary of State of the Treasury of the protective order has been proved (Ref. No 317/GSET/2009), as its order specifically states that "[...] despite the judicial decision suspending the seizure [...]" it is ordered the unload of the fuel found on board of the vessel Virginia G".
27. As a result, bearing in mind that the decision within the protective order was issued by the Regional Court of Bissau, competent authority, and that the decision was notified to the concerned authorities, among them the Ministry of Finance, no doubt remains as to the existence of a contempt crime as provided by Article 239 of the Criminal Code.

Within the terms that your Exc. will apply, the present request must be issued, as a result:

- i. To declare the nullity of the act executing the seizure whose suspension was ordered by this Court, and which was performed by the Secretary of State of the Treasury, due to his lack of jurisdiction and the violation of a judicial decision decreed through the mentioned protective order;

FOR THE RECOVERY OF THE LEGALITY, THIS COURT SHOULD DECIDE THE:

- ii. Order the immediate suspension of all ongoing actions of disposal of the unloaded fuel from the vessel Virginia G, including its sale or any other use of it, in order to avoid its destruction;
- iii. Order the immediate return of the fuel to the applicant, being loaded by the authorities to the vessel Virginia G, and bearing all costs for such operation;
- iv. Order the Secretary of State of the Treasury **to refrain of any acts** which could violate the protective order of the decision in pages...
- v. It furthermore requires your Exc. to give notice of the present case to the Hon. Representative of the State Prosecutor in order to, as a guarantor of legality, to promote or to deem as appropriate as strong evidence of the performance of a crime of qualified contempt, within the terms aforementioned.

E.D.

6 Injunction, 10 February 2010, Regional Court of Bissau (in Portuguese) (not reproduced)
Order, 18 December 2009, Regional Court of Bissau (in Portuguese) (not reproduced)
- English translation of Injunction 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, Virgina 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]

7 Order regarding court fees, 96/09, 8 December 2009, Regional Court of Bissau (in Portuguese) (not reproduced)
- English translation

Translation

REPUBLIC OF GUINEA BISSAU
 Local Court of Bissau-Criminal Section
 (Section of Transgression)

ORDER

PROCEDURE	NUMBER	SECTION
Declarative procedure	96/09	Transgression

The Judge of the Court of the Criminal Section of the Local Tribunal of Bissau Criminal section- Section of Transgression, Dr Marcos Victor Indami

Orders to notify duly to:

The Creditor:

- **PENN LILLAC TRADING**, through the legal representative Dr Ismael Mendes de Medina, with office in this city of Bissau, in the district of Luanda

Pursuant to Articles 88° and 89° a) of number 1 both of the Code of Court Fees, within a deadline of **5 days**, starting from the date of the notification to proceed with the payment in Court Registry of this Tribunal, the quantity of **480.000,00 Ffca** (four hundred and eighty thousand francs cfa).

Coming from initial expenses, from its responsibility, mentioned in the file for the declarative action.

The payment has to take place within the deadline, under penalty of infringement of the law..

TO BE COMPLIED WITH,

Bissau, 8 December 2009,

The Registrar,

[Signature]

**Listing of fees, 96/09, 8 December 2009, General Treasury of the Tribunals
(in Portuguese) (not reproduced)
- English translation**

Translation

**REPUBLIC OF GUINEA BISSAU
GENERAL TREASURY OF THE TRIBUNALS**

Procedure Nr. 96/0009

Responsibility of.

Value of the action or fine.....60.000.000,00 XOF

Judicial tax10%.....480.000,00 XOF

GENERAL TREASURY OF THE TRIBUNALS

1% of the fine

40% of the fine

Surcharge of number 5 of Article 6 of Dec. 48152

Article 48 of the Code of Justice

Role in the process

Legal charges.....

Costs and attorneys

Interpreter or public defender

TREASURY OF THE TRIBUNAL

Expenses of Article 53 of Code of Justice.....

Statistical entry.....

PRISION ESTABLISHMENTS

Decree-Law 892 and 1075.....

1/2 of the fine.....

60% of the judicial tax.....

Role in the process.....

Stamp assistance.....

R. National.....

Amount: 480.000, 00.....

There are: four hundred and eighty thousand francs cfa.....

Bissau, 8.12.2009

The Register

The accountant

**Request to court regarding proof of payment (96/2009) addressed to
Regional Court of Bissau (in Portuguese) (not reproduced)
- English translation**

Honorable Judge
[...]
Transgressions Section

Procedure No. 96/2009

PENN LILAC TRADING Applicant of the above mentioned file, in which the Inter-ministerial Fishing Commission (CIP) is the defendant, notified to the Order of pages...., requires to your Honour to accept the filling of the proof of the payment of the initial court fees.

P.E.D [*requested for granting*]

Advocate:

1 attachment

11 12 09

8 Reply received on 25 February 2010 from the lawyers of Penn Lilac Trading to the Regional Court of Bissau (in Portuguese) (not reproduced) - English translation

[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.

It 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 case (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

9 Order regarding court fees, 98/09, 8 December 2009, Regional Court of Bissau (in Portuguese) (not reproduced)
- English translation

Translation

REPUBLIC OF GUINEA BISSAU
Criminal Local Court of Bissau
(Section of Transgression)

ORDER

PROCEDURE	NUMBER	SECTION
Injunction	98/09	Transgression

The Judge of the Court of the Criminal Section of the Local Tribunal of Bissau Criminal section- Section of Transgression, Dr Victor Indami

Orders to notify duly to:

The Creditor:

- **PENN LILLAC TRADING**, through the legal representative, Dr Ismael Mendes de Medina, with office in this city of Bissau, in the district of Luanda

Pursuant Articles 88° and 89° a) of number 1 both of the Code of Court Fees, within a deadline of **5 days**, starting from the date of the notification, to proceed with the payment in the Judicial Registry of this Tribunal, the quantity of **480.000,00 Fcfa** (four hundred and eighty thousand francs cfa).

Coming from initial expenses, from its responsibility, mentioned in the file for the injunction.

The payment has to take place within the deadline, under penalty of infringement of the law.

TO BE COMPLIED WITH,

Bissau, 8 December 2009,

The Registrar

[Signature]

**Listing of fees, 98/00, 8 December 2009, General Treasury of the Tribunals
(in Portuguese) (not reproduced)
- English translation**

Translation

**REPUBLIC OF GUINEA BISSAU
GENERAL TREASURY OF THE TRIBUNALS**

Procedure Nr. 98/0009

Responsibility of.

Value of the action or fine.....60.000.000,00 XOF

Judicial tax 10%.....480.000,00 XOF

GENERAL TREASURY OF THE TRIBUNALS

1% of the fine
 40% of the fine
 Surcharge of number 5 of Article 6 of Dec. 48152
 Article 48 of the Code of Justice
 Role in the process
 Legal charges.....
 Costs and attorneys
 Interpreter or public defender

TREASURY OF THE TRIBUNAL

Expenses of Article 53 of Code of Justice.....

Statistical entry.....

PRISON ESTABLISHMENTS

Decree-Law 892 and 1075.....

1/2 of the fine.....

60% of the judicial tax.....

Role in the process.....

Stamp assistance.....

R. National.....

Amount: 480.000, 00.....

There are: four hundred and eighty thousand francs cfa.....

Bissau, 8.12.2009

The Registrar

The accountant

**Request to court regarding proof of payment (98/2009) addressed to
Regional Court of Bissau (in Portuguese) (not reproduced)
- English translation**

Translation

Exc. Sir

Dr Judge of the Court

Criminal section

Section Transgression

Procedure n 98/2009

PENN LILAC TRADING Applicant of the above mentioned file, in which the Inter-ministerial Fishing Commission (CIP), notified to the Order of pages..., requires to your Honour to accept the filling of the proof of the payment of the initial court fees.

P.E.D

Lawyers Junta: 1 (um) doc.

**10 Warrant, 18 December 2009, Regional Court of Bissau (in Portuguese)
(not reproduced)**

**Order, 16 December 2009, Regional Court of Bissau (in Portuguese) (not
reproduced)**

- English translation of Warrant 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.
---	---

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,

11 Order, 17 February 2010 (in Portuguese) (not reproduced)
Statement from the Ministry of Finance to the Regional Court of Bissau
(in Portuguese) (not reproduced)
- English translation of Order
- English translation of Statement

Proc. 98/2009

- Order –

Proceed with the notification of the deed and the content of the Ministry of Finance's reply, as stated in pages 55 of the judgment.

- [...]

Bissau, 17/02/2010

Mr Judge
Criminal Court
Regional Tribunal
BISSAU

Proc. Number 98/2009

The Ministry of Finance, notified of order dated 13.01.2010, claims

1st

Its obligation, under the pending protective order is of not acting

2nd

Meaning that the State, through any of its ministerial departments / Secretary of State of the Treasury should not interfere in the possession of any gear or equipment and much less on the seized vessel.

3rd

We manifest our perplexity and incomprehension of the order notified and we express our disagreement.

4th

The State, through the Inter-ministerial Commission for Maritime Surveillance, which is the other interested party in this dispute, considers it has respected all decisions from this Tribunal regarding this case.

5th

In relation to the State, its legal representation is performed by the Public Prosecutor's Office. It has not been proved that the Public Prosecutor's Office has been notified of your order.

Conclusion

Respecting all stated in your order, the State does not consider it has infringed the law, namely Law 6-A/2000, of 22 August.

On the contrary, its acts comply with the case-law and jurisprudence, as well as with that stated in Articles 3(3)(c) and 52 of the aforementioned Law 6-A/2000, of 22 August.

The Lawyers,

Mario Filomeno Mendes Pereira

Mario Bandanhe

(h) Reply by the Republic of Panama to additional questions of the Tribunal, 13 September 2013, Reply to “Questions to Parties, II”, with attachments

13 September 2013

**Case No. 19 “VIRGINIA G”
Reply by the Republic of Panama to additional questions of the Tribunal
dated 6 September 2013**

Reply to “Questions to Parties, II”



Question: *Could the parties submit documents (including copies of invoices) in support of the amount of compensation claimed?*

In reply to the question set by the Tribunal, please find enclosed the below documents (fully indexed in each of the folders), as well as Panama’s remarks contained in this cover letter.

Folder 1

1. The expert report prepared by Alfonso Moya Espinosa (reproduced for ease of reference).
2. The expert report prepared by Kenneth Arnott (reproduced for ease of reference).
 - A. Further information and background to some of the crew’s engagement conditions.
 - B. Evidence by some suppliers that the debts included in the expert reports are still active.
 - C. Additional information in respect of the legal fees incurred in this Case No. 19.

Folder 2

A package of principal supporting documents in 17 categories (reflecting the same chronology set out in the Moya and the Arnott reports).

*

Remarks of Panama:

• **Chronology/organisation**

The documents attached in “Punto 1” to “Punto 16” as well as the charterparty agreement in “Punto 17” (as rectified)¹ relate to the main category of compensation requested by Panama; that is, the costs, damages and losses suffered by the owner of the VIRGINIA G and by other operators and entities directly connected with, or with an interest in, the vessel’s operation, including, without limitation, the cargo interest.

For ease of reference, the chronology of Punto 1 – 17 follows the same order set out in the Moya and Arnott reports. Each of the categories is explained in more detail in the respective sections of the Arnott report, page 12 onwards.

• **“Punto 12” – clarification regarding legal and expert costs (until 2011)**

The costs set out in “Punto 12” relate to legal and expert fees incurred in this matter as at January 2011. The fees relate mainly to work carried out by local counsel in Guinea-Bissau in relation to the

¹ This document was previously submitted as Memorial Annex 13.

13 September 2013

legal action / measures instituted by the owner. The fees also include the legal opinion of Professor Juan Soroeta Licerias (Professor of Public International Law) who provided a preliminary analysis of the matter from an international law perspective, as well as fees of SJ Berwin's first engagement to provide advice and guidance on international maritime proceedings.

It is acknowledged that the provisional estimate of legal costs set out in Panama's Reply at paragraphs 450 and 485 and as reflected in Punto 12 (i.e. +/- €150,000) was, in fact, part of the estimate of costs included in the overall figure calculated by Alfonso Moya and confirmed by Ken Arnott. This was an oversight, and was intended to highlight estimated incurred legal costs rather than to claim the amount twice.

The amount of USD 150,000 remains valid and claimed, but not as part of the amount of €4,221,222,54 set out in paragraph 450 of Panama's Reply.

Nevertheless, additional legal costs have been incurred from 2011 to date in relation to the fees of Counsels and Agents for Panama, in the amount of +/- €160,000, as indicated in **Folder 1, Document C**.

The Tribunal is respectfully requested to take this amount into consideration together with the previous legal and expert costs, when determining the allocation of this category of costs.

- **“Punto 14” - pro-rata amortisation of VIRGINIA G value over period of detention**

(Insurance value) $€1,000,000 \times 5\% \times 474/365 = €64,931.51$

The loss claim for the amortisation of 5% over the Vessel's detention period, calculated as 474 days, was considered as being wholly applicable to the Vessel's detention period in Guinea Bissau. The insured value of the Vessel was Euro 1,100,000. The amount of Euro 1,000,000 was used for the calculation of the amortisation of the Vessel taken over a service life period of 20 years. The loss in fact may have been greater as the market value of the Vessel after it had been released from arrest after 14 months may have also suffered a reduction, thus exacerbating the actual loss to the owner.

- **“Punto 17” – Charterparty agreement with Lotus Federation dated 1 January 2009**

This document has already been submitted as Annex 13 to Panama's Memorial. However, inaccuracies in translation were noticed during the hearing. The document is, therefore, being re-submitted, together with an *errata corrige* setting out the corrections made.

- **10% increment**

An increment of 10% was applied to the calculated costs, damage and losses. This percentage was added as a lost business-related consideration to reflect the future business lost as a result of the negatively affected reputation of the vessel and her owner as a result of the published falsehoods, and the arrest and detention.

- **Debts still claimed**

In order to update and further verify the information relating to the existence of debts of the shipowner in respect of its suppliers/creditors covering the VIRGINIA G and the IBALLA G, we have requested and obtained declarations from some of the suppliers in order to evidence that the amounts are still claimed. These are included in **Folder 1, Document B**, and relate to the following:

13 September 2013

HOZMAR

- Invoice 361/08 **Punto 13**
- Invoice 97/10 **Punto 8**
- Invoice 98/10 **Punto 8**
- Invoice 99/10 **Punto 8**
- Invoice 100/1 **Punto 8**
- Invoice 101/10 **Punto 8**
- Invoice 121/10 **Punto 8**

S.M.A

- Invoice 20090926 **Punto 7**
- Invoice 20101045 **Punto 7**
- Invoice 20100542 **Punto 7**

RAMOS

- Invoice 410/10 **Punto 8**
- Invoice 460/10 **Punto 8**
- Invoice 482/10 **Punto 8**
- Invoice 48310 **Punto 8**
- Invoice 490/10 **Punto 8**
- Invoice 498/10 **Punto 8**

BRIDGECOM

- Invoice 1119/10 **Punto 8**
- Invoice 1195/10 **Punto 8**
- Invoice 49/11 **Punto 8**
- Invoice 252/11 **Punto 8**

REPNAVAL

- Invoice 08/03648 **Punto 13**

- **Crew members' Boarding Contracts**

Specimens of three Boarding Contracts relating to Captain Eduardo Blanco Guerrero, Chief Mate Fausto Ocana Cisnero and Seaman Pablo Do Santos Mota are being provided as background information in relation to the engagement conditions on board the VIRGINIA G. **Folder 1, Document A.**

There are no specific invoices for food costs. As reflected in the Arnott report, crew changes were made over the 14 months in order to mitigate costs whilst keeping the optimum number on board for purposes of safety. Over the 14-month period, there were 125 man months for food and salaries. The food costs are estimated and claimed at an average rate of €168 / crew member / month (which is deemed reasonable).

Following the release of the VIRGINIA G, and in the period of immediately preceding her return to service, the calculation of food costs is taken on a basis of €6 / crew member / day. Considering the previous average calculation made for the detention period as a comparison, the food cost for the "post-release" period is €2,964 (which is considered reasonable).

13 September 2013

- **Other interests directly connected with the VIRGINIA G, including the IBALLA G**

In its written submissions, Panama explained how the vessel *IBALLA G* (also Panama-flagged) was registered to a sister company Penn World Inc. and was bareboat chartered to Penn Lilac for 4 years (reference is made to Memorial Annex 12).

The *VIRGINIA G* was detained (and out of use) for 14 months, during which time her owner incurred heavy financial losses, seriously affecting the liquidity of the company, which in turn affected the operation of the *IBALLA G*. As a result, the *IBALLA G* was also proceeded against by creditors. On 6 September 2009 the *IBALLA G* berthed in the Reina Sofia pier in Las Palmas Port to receive bunkers, fresh water and food. She was seized by creditors via four legal actions (brought by Central Reparaciones La Luz, Albatros, Cepsa and Taller Sanper). The *IBALLA G* was docked in the Las Palmas Port. The crew then also seized the vessel for lack of payment of wages. The creditor REPNAVAL has a credit against the *IBALLA G* which is still being claimed (**Folder 1, Document B**).

Moreover, when the *VIRGINIA G* was arrested and detained together with the cargo of gas oil on board, the charter contract with Lotus was rescinded. Owing to this cancellation, the companies with a direct interest in the *VIRGINIA G*'s operation, including Gebaspe SL, lost a main source of income, and experienced sudden and serious liquidity problems.

The Tribunal is respectfully requested to consider the costs, damages and losses suffered by entities directly connected to the operation of the *VIRGINIA G*, and to allocate an amount it might deem appropriate in this regard.

Reference is made to paragraph 172 of the *Saiga No.2* judgement of the International Tribunal:

172. In the view of the Tribunal, Saint Vincent and the Grenadines is entitled to reparation for damage suffered directly by it as well as for damage or other loss suffered by the Saiga, including all persons involved or interested in its operation. Damage or other loss suffered by the Saiga and all persons involved or interested in its operation comprises injury to persons, unlawful arrest, detention or other forms of ill-treatment, damage to or seizure of property and other economic losses, including loss of profit.

- **Loss/damages suffered by the Republic of Panama**

As stated in the final submissions of Panama, which were presented to the Tribunal during the hearing of 6 September 2013, Panama withdraws one of the categories of claims for financial compensation, namely that of damages (material and moral) to the Panamanian flag in the amount of €1.200.000. For this category alone, Panama requests instead that the Tribunal orders reparation in the form of satisfaction / apology by Guinea-Bissau to Panama and her Vessel, the *VIRGINIA G*, and all its interests, specifically for the allegations made and published following the arrest, and the harm caused thereby.

- **Compensation for the crew**

Panama has requested the Tribunal to evaluate Panama's request of damages in the amount of €65.000 for the crew of the *VIRGINIA G* as compensation of the hardship suffered over during the arrest and throughout the 14-month detention period as a result of the conduct of the Guinea-Bissau government. This amount is requested to be evaluated by the Tribunal on the grounds of equity, as may be established on the basis of international law and past cases. An indication in this respect has been provided in the Memorial and in the Reply.

13 September 2013

- **Reasonableness of compensation claimed/documentation**

Panama considers that the documents and arguments submitted reveal a fair and reasonable evaluation of the costs, damages and losses suffered by the owner of the VIRGINIA G and IBALLA G as well as all entities and persons involved or interested in their operation, as a direct result of the actions of the Guinea-Bissau authorities on 21 August 2009 and the ensuing months of detention.

The documents presented have been reviewed for consistency. Any differences which may be encountered should be of a minor nature. Documents are either in original or copies of the original.

- **Conclusion**

In conclusion, Panama would respectfully refer the Tribunal to the section of the *Saiga No.2* judgement dealing with reparation:

Reparation

170. It is a well-established rule of international law that a State which suffers damage as a result of an internationally wrongful act by another State is entitled to obtain reparation for the damage suffered from the State which committed the wrongful act and that "reparation must, as far as possible, wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed" (Factory at Chorzów, Merits, Judgment No.13, 1928, P.C.I.J., Series A, No. 17, p. 47).

171. Reparation may be in the form of "restitution in kind, compensation, satisfaction and assurances and guarantees of non-repetition, either singly or in combination" (article 42, paragraph 1, of the Draft Articles of the International Law Commission on State Responsibility). Reparation may take the form of monetary compensation for economically quantifiable damage as well as for non-material damage, depending on the circumstances of the case. The circumstances include such factors as the conduct of the State which committed the wrongful act and the manner in which the violation occurred. Reparation in the form of satisfaction may be provided by a judicial declaration that there has been a violation of a right.

172. In the view of the Tribunal, Saint Vincent and the Grenadines is entitled to reparation for damage suffered directly by it as well as for damage or other loss suffered by the Saiga, including all persons involved or interested in its operation. Damage or other loss suffered by the Saiga and all persons involved or interested in its operation comprises injury to persons, unlawful arrest, detention or other forms of ill-treatment, damage to or seizure of property and other economic losses, including loss of profit.

We trust that the above and the attached sets out sufficient detail for purposes of the Tribunal's considerations. We remain fully available for any additional questions the Tribunal may have.

Sincerely,


 Ramón García-Gallardo

Counsel and Agent for the Republic of Panama
 Case No. 19 "VIRGINIA G"


 Alexander Mizzi

Co-Counsel and co-Agent for the Republic of Panama
 Case No. 19 "VIRGINIA G"

13 September 2013

INDEX**FOLDER 1**

TAB	
1	Report prepared by Alfonso Moya Espinosa
2	Report prepared by Kenneth Arnott
A	Examples of crew Boarding Contracts (x3)
B	Statements by several suppliers confirming that the debts/invoices are still due
C	SJ Berwin statement of legal fees incurred – 2011 to date

FOLDER 2 (in two parts)

TAB	Category
Punto 1	Salaries and maintenance of crew in Port of Bissau 21/08/2009 – 22/10/2010
Punto 2	Salaries and maintenance of crew following release of VIRGINIA G 23/10-2010 – 10/12/2010
Punto 3	Travel expenses of the crew to return home and to reconvene after release
Punto 4	Salary apportionment of administration staff (acting in support during detention)
Punto 5	Travel expenses of the operations staff to Bissau (vessel inspection) and Brussels (to meet legal counsel)
Punto 6	Africargo (P&I Guinea Bissau) invoice costs
Punto 7	Inspections and Certificates of seaworthiness issued by Shipping & Management agency Corp.
Punto 8	Repairs and revalidation certification of vessel (“Plan A”)
Punto 9	Expenditure plan, maintenance when vessel resumes trading (“Plan B”)
Punto 10	P&I Club coverage during detention
Punto 11	Cost of marine gas oil seized – 547.68t at \$ 730/t
Punto 12	Juridical, legal defence and expert reports
Punto 13	Proportional costs (50%) of dry-docking work carried out on 4 August 2009 (2 weeks prior to arrest), representing benefits negated by detention
Punto 14	Pro-rata amortisation of vessel value over effective period of detention (explained in Moya and Arnott reports, point 14)
Punto 15	Financial costs/penalties for delay in payment of invoices for fuel seized (Gebaspe to Lotus Federation)
Punto 16	Loss of profit on contract with Lotus Federation due to arrest of VIRGINIA G
“Punto 17” (Charterparty Agreement)	Losses incurred as a result of the recession of the contract with Lotus Federation, relating to the new operating contract, including copy of charterparty agreement dated 1 January 2009