

(e) Letter from Mr Staker to the Registrar dated 8 December 2004 (not reproduced) transmitting:

- Reply to the questions of the Tribunal from Mr Alves Silva dated 7 December 2004, attached:

- Extract from decision no. 008046 of 22 May 1970 of the Portuguese Administrative High Court (in Portuguese, not reproduced)
- Extract from decision no. 039613 of 7 March 1996 of the Portuguese Administrative High Court (in Portuguese, not reproduced)
- *Boletim Oficial, República da Guiné-Bissau*, 4 January 1975, Number 1, Law No. 1/73 (in Portuguese, not reproduced)

ST. VINCENT AND THE GRENADINES

VS

THE REPUBLIC OF GUINEA-BISSAU

-THE JUNO TRADER CASE-

Reply to the questions placed by the Tribunal
Mr. Ricardo Alves Silva,
Counsel for the Republic of Guinea Bissau

Hamburg, 07 December 2004

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The first law passed by Guinea-Bissau's Parliament after independence, Law No. 1/73, of 24 September 1973, sets forth that:

"Portuguese legislation in force as of the date of Proclamation of the Sovereign State of Guinea-Bissau remains in force insofar as it is not contrary to national sovereignty, the Constitution of the Republic, its statutory law (...)."

Given this statute, all answers given below will be based on the applicable Portuguese and Guinea-Bissau law, as well as on the applicable Portuguese case law pursuant to the relevant legal statutes.

The answers to these questions will be given in a general manner, and do not relate specifically to the particular case of the "Juno Trader". The specific situation in relation to the "Juno Trader" was described in the oral argument given during the afternoon proceedings of 6 December 2004. In relation to question 3, the position of the "Juno Trader" is affected by the specific circumstance that no appeal against the administrative act imposing the fine was lodged within the 15 day time limit.

Question 1: Under the Guinea-Bissau legal system, can a decision of the Inter-ministerial Commission be subject to judicial review by the domestic court system?

Yes. The law of Guinea-Bissau sets forth that any final and enforceable administrative decision (in the original "*acto definitivo e executório*") may be subject to review, as long as the appeal is filed within the prescribed time limit, and the other legal requirements are met, including the requirement that the party has standing. Article 62.1 of the Fisheries Law sets forth that the Inter-ministerial Commission is the competent authority for determining and applying the fines for offences under that law, and its decisions are final and can only be directly challenged before the judicial courts. Given this, the decision of the Commission can be subject to review and is currently being subject to review in the Regional Court of Bissau.

In 22 May 1970, the Portuguese Administrative High Court (*Supremo Tribunal Administrativo*) decided in Case No. 008046 (respecting the acts of a Colonial Authority) that:

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“Dos actos administrativos definitivos e executórios dos secretários provinciais de Angola praticados por delegação do respectivo governador-geral cabe recurso contencioso para o Conselho Ultramarino.”

“The final and enforceable acts of the provincial secretaries of Angola, adopted by delegation of the respective governor-general, may be appealed through an administrative action filed before the Ultramarine Council”.

Given the change of political and judicial entities operated in Guinea-Bissau since independence, this case law must be interpreted as “the final and enforceable administrative acts may be appealed through an administrative action filed before the Judicial Courts.”

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 Inter-ministerial 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?

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 High Court in the judicial hierarchy. This appeal will not suspend the effects of the decision of the first instance court.

In respect of this question, we will quote the judgement of the Portuguese Administrative High Court¹, rendered on 7 March 1996, in case No. 008046, which stated:

“Tem efeito meramente devolutivo o recurso de decisão que suspendeu a eficácia de acto contenciosamente impugnado...”

“The appeal of the judgement that stayed the execution of an administrative act subject to an administrative action does not suspend such judgement.”

¹ Previous case law from the years prior to independence was not available. However, this judgement was passed based on legal statutes which set forth the same regime.

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Given this rule, the appeal does not "suspend the suspension".

Question 3: What remedies are available to the ship owner whose ship has been forfeited to the State as a result of an administrative decision?

- (i) A ship owner whose ship has been forfeited as a result of an administrative decision may resort to the same remedies that were mentioned in the answer to question 1.
- (ii) We must distinguish this situation from the situation in which the ship is automatically forfeited (*reverte para o Estado*²) as a direct result of the law. In this situation, it is our opinion that the forfeiture cannot be challenged directly before the courts. However, if in the original administrative action destined at annulling the act that levied the fine that was not paid, said act is annulled or considered null and void, then it will be possible to claim compensation for the immobilization of the vessel, as set forth in article 67 of the Fisheries Law, which establishes the ship owner's right to compensation. Said compensation, if the Fisheries Law did not exist, would still be claimable pursuant to the legal regime set forth in Decree Law 48 051, of 21 November 1967, still in force in Portugal. Besides this, if the act that was the basis for the reversion due to non-payment of the fine is declared null and void or annulled, then all of the subsequent acts dependant or derived from said initial act will also be considered null and void. This rule means that the act of reversion will also be null and void, and the vessels property will return to the original owner.

Question 4: Are all members of the crew free to leave Bissau?

On this question we refer to the oral statement provided by the co-agent of Guinea-Bissau, Mr. Octávio Lopes, and to the declaration received on 7 December 2004, from the Directorate-General for Fisheries of the Government of Guinea-Bissau.

² Reverts to the State.

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Ricardo Alves Silva

Ricardo Alves Silva

Counsel for the Republic Guinea-Bissau

A handwritten signature in black ink, appearing to read 'Ricardo Alves Silva', written in a cursive style.