

## ANSWERS TO CMI'S QUESTIONNAIRE

### PART 1

#### Question 1 :

Different ministers are implicated : each one is jealous of his prerogatives :

- Justice (for law, rules and sentences),
- Army (national marine) for traffic controls and reports of breaches of the law
- Finances (through customs)
- Transports : the use of the personnel of Army to control ships (CROSS) and for investigations.

The maritime Prefect (*Préfet maritime*) represents all these services in sea.

#### Question 2 :

It is required :

- an administrative and technical inquiry (« BEA MER »),
  - a nautical or judicial inquiry ; it depends on circumstances.
- The maritime Prefect informs the public Prosecutor who after consulting experts orders the ship to go into a french port and the ship will be retained until a financial security is given.

#### Question 3 :

Criminal charges can be contemplated against all persons who may be held responsible of a marine accident and/or a marine pollution. The public Prosecutor may ask the investigating Magistrate to initiate investigations against any seafarer (actually the master only and the owner) and this one may be indicted (*mis en examen*) if charges may be retained against him and he will have to be at the service of the investigating Magistrate.

The examining Judge at the request of the public Prosecutor may decide the detention of the seafarer before any judgement to avoid trouble of public order or to avoid the loss of pieces of evidence and/or to avoid him to communicate with the owner but only if the seafarer incurs sentence equal or over 3 years of imprisonment ; the Magistrate will ask the Judge of Liberties to order the detention. However no detention can be ordered without a debate between the public Prosecutor and the seafarer who shall be assisted by a lawyer ; the seafer will have some delay to prepare his defence if he wishes it. The detention before judgement must be exceptional as any person is presumed innocent in French law.

Until now, only the master of the ERIKA has been detained during fifteen days.

If the indicted seafarer is left free, the judge to prevent him from leaving France may oblige him to respect some conditions such as to give an address, to check in the police

services every week. We say that the person is under judicial control.

**Question 4 :**

Technical inquiries may be done by « BEA MER » in case of marine accident in the same time as criminal inquiry.

**Question 5 :**

Yes, see answers to question 3.

**Question 6 :**

The seafarer required to be present for any investigation trial and other hearing may be permitted to leave the state. Its depends on the judge and on the criminal charges against him.

**Question 7 :**

Usually financial security is asked to authorize the ship to leave the port but not to ensure that seafarers return for any subsequent hearing ; however this is possible according to French law.

**Question 8 :**

There is no particular protection for the seafarers. As every citizen in France, the seafarer has the right to be assisted by a lawyer and if he cannot afford the fees, a lawyer will be appointed by the President of local Bar.

No maritime Administration or other authority has legal responsibility for the protection, rights and welfare of seafarers.

**PART 2**

**Question 9 :**

If a foreign flag vessel with a crew of different nationalities is involved in a maritime accident resulting in serious pollution, the expected role of the vessel crew members is to be at the disposal of the authorities.

**Question 10 :**

No.

**Question 11 :**

Criminal proceedings may be undertaken even without wilfull misconduct by responsible crew members.

**Question 12 :**

The proceedings will not be different.

**Question 13 :**

The relevant vessel crew members may be detained before judgement (if incurred prison sentence is equal or over 3 years) :

- a. to avoid trouble to public order, to avoid communication with the owner and/or charterer and to avoid loss of piece of evidence before investigation
- b. they have the same rights as those available to french citizens : crew members will be assisted by a lawyer, the lawyer will visit him in jail. He will refer the investigating Magistrate's orders to the Judge of Liberties and will insure defence in every step of the case in all hearings and investigations.
- c. Yes
- d. The detention cannot exceed 4 months if a person has never been condemned before and if the possible prison sentence is not more than 5 years. This delay may be extended to 4 more months by a motivated order of the Judge of Liberties after a debate with the seafarer's lawyer.
- e. The seafarers involved may be detained in state prison : « House of Arrest ». They are separated from the persons already condemned and they would have an individual cell.
- f. They will be assisted by a lawyer.
- g. The lawyer will have immediate access to those detained but not the vessel 's representatives agents and labour organisation representatives. The family's members visits cannot be refused after one month detention except for particular reasons which the Judge will have to explain in his refusal order and this order may be appealed before the President of The Court of Instruction who will judge it within 5 days.
- h. The seafarers have the right to refuse to answer any question out of the presence of their lawyer and they have the legal right not to answer questions.

**Question 14 :**

The french law (july 5<sup>th</sup> 1983 modified in 2004) is extremely severe for any breach to MARPOL Convention :

- In case of pollution in territorial waters the punishment may be up to 10 years imprisonment with a fine up to 1.000.000 euros for all Masters (foreign or french).
- In case of MARPOL CONVENTION breach in « Z.E.E. » only french Captains may be punished of prison but foreign Masters can only be punished of fines, usually paid by the owner.

However, until now Masters have never been sentenced to firm imprisonment but only were given suspended sentences. The amount of the fine has never been higher than 600.000 €

The Master of ERIKA has been detained during 15 days before judgment for pollution in the « Z.E.E ». This was in contradiction with French law and Montegobay Convention.