



INTERNATIONAL
OIL POLLUTION
COMPENSATION
FUND 1971

EXECUTIVE COMMITTEE
60th session
Agenda item 3

71FUND/EXC.60/3/Add.1
29 January 1999

Original: ENGLISH

INCIDENTS INVOLVING THE 1971 FUND

AEGEAN SEA

Note by the Director

Summary:	The Director has been informed that the Court of Appeal has rejected an appeal submitted by the UK Club against a decision of the judge in charge of the execution of a judgement rendered by the Court of Appeal in 1997.
Action to be taken:	Information to be noted.

1 Introduction

On 18 June 1997 the Court of Appeal in La Coruña rendered a judgement in the criminal proceedings in the *Aegean Sea* case. This judgement dealt with, inter alia, the criminal liability of the master of the *Aegean Sea* and the pilot, the distribution of liability between various parties involved and a number of claims for compensation. The Court awarded specific amounts of compensation in respect of certain claims, but the majority of the claims were referred to the procedure for the execution of the judgement, since the Court considered the evidence presented by the claimants to be insufficient to substantiate the amount of the losses suffered.

2 Appeal against the Court of Appeal's judgement

2.1 The 1971 Fund was notified on 16 September 1997 of a decision, issued by the judge in charge of the execution of the judgement of the Court of Appeal, ordering the master of the *Aegean Sea* and the pilot to pay the fines in accordance with the judgement of the Court of first instance which had been upheld by the Court of Appeal. This decision also ordered the two defendants who had been held directly liable, namely the shipowner's P & I insurer (the United Kingdom Mutual Steam Ship Assurance

Association (Bermuda) Ltd (UK Club)) and the 1971 Fund, to pay the claimants the amounts of compensation awarded by the judgement as modified by the Court of Appeal.

2.2 Although the enforceability of judgements rendered by national courts was recognised in the 1971 Fund Convention, the Executive Committee considered at its 55th session that, in view of the provisions of Article 8, the Convention also provided that such enforcement could be subject to a decision of the Assembly or of the Executive Committee under Article 18.7 concerning the distribution of the total amount available for compensation under the 1969 Civil Liability Convention and the 1971 Fund Convention.

2.3 In view of the high degree of uncertainty as to the total amount of the established claims, both as regards many of the claims covered by the judgements of the Court of first instance and the Court of Appeal, and as regards the claims which might be presented at a later stage in the civil proceedings (although the 1971 Fund took the view that these claims were time-barred), the Executive Committee decided that payments to the claimants who had been awarded a specific amount in the judgements should be limited to 40% of the respective amounts so awarded (document 71FUND/EXC.55/19, paragraph 3.3.30).

2.4 The UK Club appealed against the September 1997 decision referred to in paragraph 2.1 on the following grounds. Firstly, the court decision did not order the two persons who were directly liable for the incident, namely the master and the pilot, to pay claimants the compensation awarded by the judgement. Secondly, if the master and the pilot were insolvent, the parties which were subsidiarily liable, namely the shipowner and the Spanish State, would have to pay compensation to claimants. Thirdly, the court should have taken into account the fact that the UK Club had already paid compensation to victims of the *Aegean Sea* incident for a total of Pts 782 million (£3.3 million). Fourthly, the Court should have also taken into account the fact that the Club had established a limitation fund in the amount of Pts 1 121 219 450 (£4.8 million) in accordance with Articles V.1 and V.3 of the 1969 Civil Liability Convention. Finally, the Court should have borne in mind the fact that a sufficient sum should have been set aside to enable other claimants who had reserved their right to take civil action to enforce their claim against the limitation fund (Article V.7 of the 1969 Civil Liability Convention).

2.5 The UK Club's appeal was rejected on 12 November 1997 by the judge who rendered the decision of 16 September 1997, except that the judge agreed that the order should be directed also to the master and the pilot.

2.6 The UK Club appealed against the decision of 12 November 1997 to the Court of Appeal.

2.7 As a result of the UK Club's appeal, the Court order referred to in paragraph 2.1 was not enforceable.

3 Court of Appeal's decision

3.1 On 29 January 1999 the Director was informed that on 18 January 1999 the Court of Appeal had rejected the appeal submitted by the UK Club on the ground that the judgement rendered by the Court on 18 June 1997 was final. The Court of Appeal stated that the execution of the judgement could not legally be delayed. The Court also stated that, in accordance with Article IX.3 of the 1969 Civil Liability Convention, it was the Court where the limitation fund had been established which would distribute the limitation fund between claimants. The Court made the point that the Club should not be concerned with the rights of claimants since the Club had limited its liability under the 1969 Civil Liability Convention and had therefore no further liability. The Court of Appeal referred to the fact that claimants had two other sources of compensation available to them, namely the 1971 Fund and other parties which were directly or subsidiarily liable for the damage caused by the incident.

3.3 The 1971 Fund has not yet been notified of this decision.

3.4 The Court of Appeal's decision is final. Once this decision has been notified to the parties involved in the appeal proceedings, the judge will execute the judgement against those parties held liable by the judgement of the Court of Appeal.

4 Action to be taken by the Executive Committee

The Executive Committee is invited:

- (a) to take note of the information contained in this document; and
 - (b) to give the Director such instructions as the Committee may deem appropriate in respect of this incident.
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