# Damage to environment (art. 228)

### France

Cour de Cassation  5 May 2009, *The “Trans Arctic”* (2009 DMF 717)

          In proceedings brought in the Tribunal de Grande Instance of  Brest against the master of the “Trans Arctic”, flying the Norwegian  flag, in respect of pollution caused by the vessel within the French EEZ the Tribunal refused direct application of article 228 of UNCLOS and maintained its competence even after the request by Norway to stay the proceedings in order to carry our an investigation on the accident and held the master liable to pay a fine. The decision of the Tribunal was subsequently reversed by the Cour d’Appel of Rennes with judgment of 27 September 2007 (2008 DMF 36). Third parties that suffered loss on account of the pollution appealed to the Cour de Cassation.

          Held, by the Cour de Cassation, that:

          *[1] The Court that has declared the proceedings brought in France against the master of a Norwegian vessel on account of pollution within the French EEZ terminated after delivery in Norway of a final judgment,  in connection with that accident, has made correct application of article 228 of UNCLOS and of article 4(2) of MARPOL*.

Cour de Cassation  5 May 2009, *The “Fast Independence”* (2009 DMF 719)

          In proceedings brought in the Tribunal de Grande Instance of  Brest against the master of the *“Fast Independence”*, flying the Maltese flag, in respect of pollution caused by the vessel within the French EEZ the master and the owner were condemned to the payment of a fine of globally 500,000 Euro. In the meantime the Malta Maritime Authority had issued proceedings and condemned the master to pay a fine of 9,500 Maltese pounds (corresponding to about 24,000 Euro). Neither the Tribunal nor the Court of Appeal of Rennes considered that decision relevant, in view of the very small amount of the fine, as compared with that applied by the Tribunal of Brest. The owners appealed to the Cour de Cassation.

          Held, by the Cour de Cassation, that:

*[1] The Court of the state within whose EEZ a foreign flag vessel has caused pollution damage, that has refused to take into consideration the decision of the competent authority issued in the state of the flag of the vessel, on account of the small amount of the fine applied by that authority, has misapplied article 228 of UNCLOS.*