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COURT ANNULS REGULATION ON BALLAST WATER AT THE PORT OF SANTOS

DECISION WAS PROMPTED BY A COMPLAINT FROM CENTRONAVE AND ABAC, WHICH POINTED TO MILLION-DOLLAR ADDITIONAL COSTS FOR COMPLIANCE WITH THE RULE

The 1st Federal Court of Santos annulled the regulation issued by the Santos Port Authority (APS) that required a report on the control and treatment of ballast water as a condition for ships to dock at the Port of Santos. Additionally, the state-owned company that manages the port complex was ordered to refund the amounts charged to companies due to the requirement of the report.

The regulation was published in April of last year by the Port Authority, making it mandatory to contract a remote monitoring system, which generated significant additional operational costs and regulatory overlap. Before resorting to the courts, the Brazilian Association of Cabotage Shipowners (Abac) and the National Center for Transatlantic Navigation (Centronave) filed complaints with the National Waterway Transport Agency (Antaq), which were accepted and led to the suspension of the rule.

Before the new regulation, inspections on vessels were conducted by sampling, based on information provided by the captains. Under the new rule imposed by APS, all vessels had to be monitored to ensure more effective control.

However, only one company was accredited by the state-owned authority for this purpose. It was responsible for certifying compliance with the regulation based on information provided by the ships, such as geographic coordinates, using artificial intelligence tools, GPS, and other technologies to verify whether the ballast water was discharged in permitted areas or if the filtration systems required by the International Maritime Organization (IMO) and Brazil's NORMAM 401 were used.

The ruling that annulled the regulation was issued by federal judge Alexandre Berzosa Saliba in a lawsuit filed by Centronave and Abac, with legal arguments presented by attorney Marcelo Sammarco. The associations argued that the regulation encroached upon the exclusive jurisdiction of the Brazilian Navy, as ballast water (used by ships for stability and capable of transporting invasive organisms from other countries) is already regulated by the São Paulo Port Authority (CPSP).

Another point raised was the unnecessary double certification, leading to increased costs and legal uncertainty, as only one company, G7 Consultoria Ltda., was accredited to issue the reports. According to the decision, the company does not have a corporate purpose compatible with the activity and performed only automated document checks using artificial intelligence, without ensuring the technical effectiveness of the service.

According to Sammarco, the APS regulation adds nothing in terms of environmental damage prevention and increases the "Brazil Cost." *"In practice, it amounts to a re-certification with an average cost of US\$1,500 per vessel, which constitutes regulatory abuse. The ruling aligns with a prior decision by Antaq, which had already declared the absolute nullity of the regulation."*

The lawyer also emphasized that the ruling recognized that the authority to control and monitor compliance with ballast water management systems for merchant ships in Brazilian jurisdictional waters lies exclusively with the Brazilian Navy, *"as established by the Federal Constitution and the International Convention for the Control and Management of Ships' Ballast Water and Sediments."*

In this context, the judge accepted the arguments, as outlined in his decision. *"It should be noted that the company accredited at the time was G7 Consultoria, whose corporate purpose registered with the National Registry of Legal Entities bears little relation to environmental certification matters. Moreover, the system to be adopted for the control and treatment of ballast water should be specific to each vessel. However, the records show that the accredited company used a simple document check via artificial intelligence to issue the certificate. There is no evidence of technical quality or the necessary preparation for issuing environmental certifications, nor of actual provision of ballast water conformity certification services by the accredited company,"* the judge highlighted.

BALLAST WATER

According to the Santos Port Authority, the new regulation was created to address the global problem of bioinvasion by exotic species, which threatens marine life and has already caused significant environmental and social damage, including impacts on subsistence fishing in coastal communities in Brazil.

The International Convention for the Control and Management of Ships' Ballast Water and Sediments (BWM Convention) aims to prevent, minimize, and eliminate the risks of introducing harmful aquatic organisms and pathogens into aquatic environments through the discharge of ballast water and sediments from ships. It establishes rules requiring ships in operation to adopt efficient management measures, such as installing onboard treatment systems. The Convention was adopted by the IMO in 2004 in London and ratified by Brazil's National Congress in 2010.

In Brazil, NORMAM 401 sets the standards for ballast water management and the penalties for non-compliance. There are two options for ballast water discharge: D1, which requires oceanic discharge, and D2, which requires onboard treatment before discharge. According to the Brazilian Navy, the IMO Convention stipulates that oceanic exchange of ballast water, under the D1 standard, must occur at least 200 nautical miles from the coast in waters at least 200 meters deep, or 50 nautical miles from the coast, provided the depth is also at least 200 meters. When a vessel complies with the D2 standard, known as the performance standard, it typically installs onboard treatment systems. The most common methods combine filters with ultraviolet lamps or filters with electrochlorination processes.