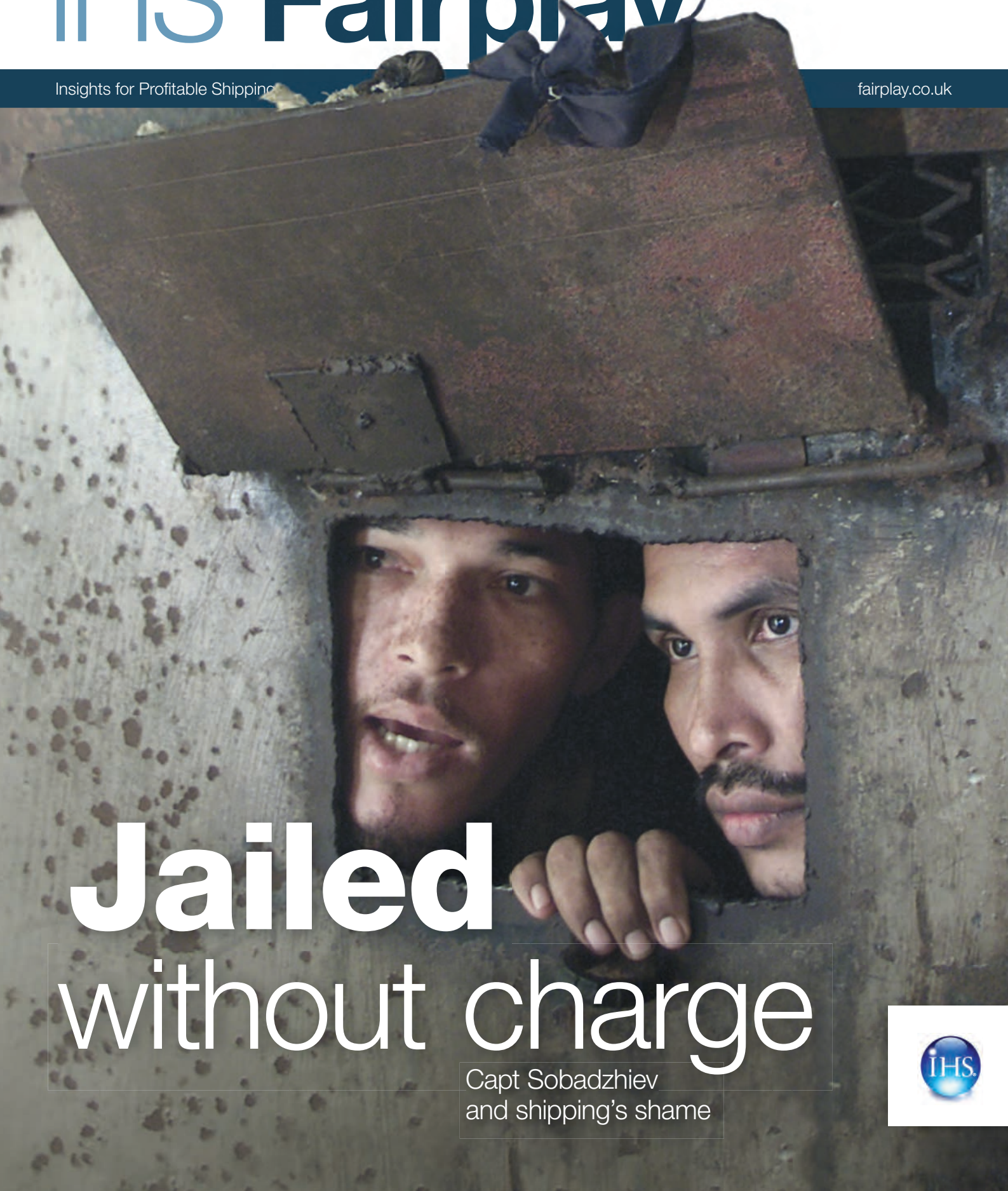


IHS Fairplay

Insights for Profitable Shipping

fairplay.co.uk



Jailed without charge

Capt Sobadzhiev
and shipping's shame



>> EXCLUSIVE

The Prisoner of Panama

Justice is demanded for a captain caught in a Panamanian legal trap, reports **Greg Miller**

> **Few countries, if any, have a greater financial interest in being 'shipping friendly' than Panama.** With its historic \$5.25Bn canal expansion project well under way and its ports investing \$500M in fresh capacity, the last thing Panama needs is a high-profile incident that blackens its reputation among global seafarers. And yet, the single case of a Bulgarian master, Lyubomirov Sobadzhiev, could do just that.

Improper imprisonment ranks among the greatest fears of today's masters and crew. That fear turned to reality for 54-year-old Sobadzhiev, who has been incarcerated for 19 months without being charged in one of Latin America's most notorious prisons – Panama's La Joya.

Smuggling allegations against Sobadzhiev mirror other cases previously reported by *Fairplay*. When drugs are found either aboard or attached to a ship, a master can be jailed, despite clear possibilities of how contraband could have been placed without a master's involvement.

What makes the Sobadzhiev case different is where it's happening. Many of the previous drug-related seafarer prosecutions occurred in Venezuela, a country with very little reputation left to lose in shipping circles. Not so in Panama, whose future is highly leveraged to its industry image.

Sobadzhiev was the master of the formerly Netherlands-flagged, Reider Shipping-operated container ship *Maas Trader*. More than 160kg of cocaine was found aboard the vessel in March 2011 when it arrived in Cristobal after departing Barranquilla,

Colombia. The ship and crew were released soon after, but not Sobadzhiev.

According to Sobadzhiev's legal team, the drugs were found in the ship's forecabin, an area accessible by other crew. Furthermore, upon arrival in Cristobal, the *Maas Trader* was diverted to a repair yard "where two people, one of whom was Colombian, came aboard in advance of Panamanian authorities. The two people have not been made available for the defence to interview," said Sobadzhiev's legal team, which comprises Panama's Francisco Carreira-Pitti; John Cartner of Washington, DC; and New York-based Peter Wolf.

Sobadzhiev has not even been officially charged. Under Panama's legal system, "there are no provisions for bail or for house arrest or detention in a less harsh environment" prior to charging, said his legal team.

As previously reported by *Fairplay*, Venezuelan prosecutors targeting *B Atlantic* master Volodymyr Ustyomenko and second

'We are living like rats'
Captain Lyubomirov Sobadzhiev, in a letter from prison



Passport photo of Lyubomirov Sobadzhiev

PA

'The system is rigged against any person if drugs are found' attorney John Cartner

19
months jailed without charges

the context of common versus civil law systems. Under the common law system of the UK and US, rulings have precedential value and judges are highly educated legal experts, weighing special circumstances. Under the civil law system prevalent in most of Latin America, including Panama, laws are strictly codified and judges are civil servants paid to rule upon laws as written.

Panamanian law, added Cartner, is highly focused on combating drug trafficking. "The legislature has enacted laws in which drugs, specifically, are dealt with up to the very edge of the presumption of guilt, without getting rid of the presumption of innocence," he said.

Panama "borrowed the concept from tort law of strict liability" for its drug laws, Cartner explained. "The system is rigged against any person if drugs are found, no matter if their innocence is proclaimed."

According to Wolf, this strict liability model has combined with an erroneous presumption that "the master is in command, so if drugs

are found and the master is there, the master is somehow involved with the drugs".

Wolf says Panama's legal system requires "almost tangible evidence to show the master is not involved, which is very difficult. Unless you could come up with a cogent theory on what exactly happened and have plausible evidence, the captain is in jeopardy."

The central rationale of the civil law philosophy is to provide a clear and understandable message on the legal consequences for those to whom the laws apply. Given Sobadzhiev's plight, the civil law message for the international seafaring community appears to be that in Panama's waters, there is risk of imprisonment in extremely harsh conditions, even before any finding of guilt.

Other jurisdictions, such as Jamaica, have reportedly shown flexibility in applying drug laws to shipping interests. Whether Panama maintains its reputation among seafarers could be swayed by whether Sobadzhiev is freed or remains locked in La Joya. ■

sends the message that it "can take a captain off a ship and not even charge him and leave him in jail just because drugs were found aboard. Justice delayed is justice denied."

While Panamanian law does not allow the prosecutor to pursue a lesser charge, it does allow for the case to be dropped and for Sobadzhiev to be freed, noted Cartner.

Wolf and Cartner put Sobadzhiev's case in

officer Yuriy Datchenko in 2007-11 did allow a period of house arrest, implying Panama's treatment of Sobadzhiev is even harsher.

Fairplay is warned that if Sobadzhiev is ultimately convicted – he faces a 15-year prison term – it would equate to a life sentence, given his age and the prison's violent conditions.

A letter from Sobadzhiev that was provided to *Fairplay* says there are many prisoners in La Joya who have been waiting five years for their court date. To even appear in court, prisoners must bribe guards. "If we do not pay, they delete our names and we have to wait another six to 12 months," he wrote.

Sobadzhiev and other prisoners get only 10 minutes per day to bathe and clean clothes with "light to dark brown" water. La Joya does not even provide free toilet paper. "We are living like rats," Sobadzhiev wrote.

Wolf argues it is in Panama's interest to "liberate" Sobadzhiev, because otherwise it

> Caribbean prosecution risk rampant

The threat to seafarers and operators from misguided drug prosecutions remains widespread across the Caribbean Basin.

"The narcotics trade is a problem of great concern," said SeaFreight president Roland Malins-Smith at last month's Caribbean Shipping

Association conference. But different jurisdictions treat drug finds differently. "Jamaican authorities are not quick to assume guilt on the part of operators and crew," Malins-Smith reported. In contrast, operators face a "lack of understanding" in Suriname, Guyana, Trinidad and

"Venezuela in particular".

Drugs are usually attached to the hull by divers. Marlins-Smith advised that dives to ensure hulls are clean must be done as close to departure as possible.

Venezuela recently made dives mandatory. "This was welcomed

by carriers. The problem was that the authorities appointed only one dive company, which extorts a large amount of money for the dive," said Malins-Smith. The first ship using the appointed company was charged \$9,700 for one dive, after protest lowered to \$6,000/dive.