EUROPEAN COURT OF HUMAN RIGHTS

THIRD SECTION

BRYAN AND OTHERS

V.

RUSSIA

(Application no. 22515/14)

OBSERVATIONS OF THE APPLICANTS

12 July 2018

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Introduction

1. These observations are submitted on behalf of the applicants: Ms Gizem AKHAN, a national of the Republic of Turkey; Mr Andrey ALLAKHVERDOV, a national of the Russian Federation; Ms Ana Paula ALMINHANA MACIEL, a national of the Federative Republic of Brazil; Mr Philip Edward BALL, a national of the United Kingdom of Great Britain and Northern Ireland; Mr Jonathan David BEAUCHAMP, a national of New Zealand; Mr Kieron John BRYAN, a national of the United Kingdom of Great Britain and Northern Ireland; Mr Cristian D'ALESSANDRO, a national of the Italian Republic; Mr Roman DOLGOV, a national of the Russian Federation; Mr Tomasz DZIEMIANCZUK, a national of the Republic of Poland; Ms Alexandra Hazel HARRIS, a national of the United Kingdom of Great Britain and Northern Ireland; Mr David John HAUSSMANN, a national of New Zealand; Mr Francis Patrick Michael HEWETSON, a national of the United Kingdom of Great Britain and Northern Ireland; Ms Anne Mie Roer JENSEN, a national of the Kingdom of Denmark; Mr Dimitri LITVINOV, a national of the Kingdom of Sweden and of the United States of America; Ms Faiza OULAHSEN, a national of the Kingdom of the Netherlands; Mr Alexandre PAUL, a national of Canada; Mr Miguel Hernan PEREZ ORSI, a national of the Argentine Republic; Mr Anthony Ian PERRETT, a national of the United Kingdom of Great Britain and Northern Ireland; Mr Francesco PISANU, a national of the French Republic; Mr Iain ROGERS, a national of the United Kingdom of Great Britain and Northern Ireland; Mr Colin Keith RUSSELL, a national of the Commonwealth of Australia; Mr Paul Douglas RUZYCKI, a national of Canada; Ms Sini Annukka SAARELA, a national of the Republic of Finland; Mr Denis SINYAKOV, a national of the Russian Federation; Ms Camila SPEZIALE, a national of the Argentine Republic; Mr Mannes UBELS, a national of the Kingdom of the Netherlands; Mr Marco Paolo WEBER, a national of the Swiss Confederation; Mr Peter Henry WILLCOX, a national of the United States of America; Mr Ruslan YAKUSHEV, a national of Ukraine; and Ms Ekaterina ZASPA, a national of Ukraine.
2. The applicants are collectively known as "the Arctic 30".
3. These observations are submitted in response to those of the Russian Government dated 14 May 2018 and contain replies to the questions posed to the parties by the Court.
4. These observations include the applicants' position regarding the facts of the case, admissibility of their application, merits of the claim, as well as just satisfaction due to them pursuant to Article 41 of the Convention.

Facts

5. The applicants express their agreement with the factual narrative of the events in question contained in the statement of facts prepared by the Registry at the moment of the communication of this case to the Russian Government in December 2017.
6. Where appropriate, the applicants are providing additional information about the facts of the case *sub judice*, with the relevant sources cited. This particularly concerns events at and around the *Prirazlomnaya* on 18 September 2013, the capture of the *Arctic Sunrise* by Russian agents on 19 September 2013, and the subsequent towing of the *Arctic Sunrise* to the Russian port of Murmansk.
7. The applicants point out that the Court might find it useful to rely on the facts of the case established in the course of the intergovernmental arbitration initiated by the Kingdom of the Netherlands against the Russian Federation pursuant to Annex VII of the United Nations Convention on the Law of the Sea. Those factual conclusions and the particular pieces of evidence on which they are based are listed in the Award on the Merits rendered by the arbitral tribunal on 14 August 2015 ("14 August 2015 Award"), §§ 81-139. The applicants agree with those factual findings. The text of the 14 August 2015 Award was earlier provided to the Court by the applicants. It is also obtainable from the website of the Permanent Court of Arbitration,[1] together with the documents and evidentiary material, including photographs and videos, which were filed with the tribunal in the course of the arbitration proceedings.

Admissibility

8. The applicants note that the respondent Government raised no specific objections against the admissibility of their application. The applicants submit that their application is admissible and respectfully invite the Court to adjudicate it on its merits.
9. The applicants submit that their application lodged with this Court pursuant to Article 34 of the Convention is not "substantially the same" within the meaning of Article 35 § 2 (b) of the Convention as that examined in the course of the intergovernmental arbitration between the Kingdom of the Netherlands and the Russian Federation under the United Nations Convention on the Law of the Sea, given that the applicants did not take part in that arbitration as parties.[2] Moreover, the Netherlands did not invite the arbitral tribunal to

[1] https://pca-cpa.org/en/cases/21/.
[2] See *OAO Neftyanaya Kompaniya YUKOS v. Russia* (dec.), no. 14902/04, § 521, 20 September 2011.

determine whether the Russian Federation had breached the Convention.[3] Although the arbitral tribunal had "regard to the extent necessary to rules of customary international law, including international human rights standards, not incompatible with the [United Nations Convention on the Law of the Sea]", it expressly stated that it did not have jurisdiction directly to apply provisions of international human rights law, such as the relevant articles of the International Covenant on Civil and Political Rights.[4]

10. It follows that the 14 August 2015 Award, although relevant for the proceedings before the Court as it concerned the same factual situation, should not be interpreted as precluding the applicants from seeking justice for the violations of their rights, as the decision rendered by the arbitral tribunal did not deal with the violations of their human rights as individuals but rather provided a remedy to the Netherlands as the flag State of the *Arctic Sunrise* under applicable rules of international maritime law.

11. The applicants agree with the respondent Government that, in the particular circumstances of the present case, and for the period of time when the facts of which the applicants complain took place, they were within the jurisdiction of the Russian Federation within the meaning of Article 1 of the Convention[5] and that, therefore, their application is compatible *ratione loci*, *ratione personae* and *ratione materiae* with the provisions of the Convention.[6]

Merits

Deprivation of liberty of Ms Saarela and Mr Weber on 18-19 September 2013

12. It is the applicants' submission that the two climbers, Ms Saarela and Mr Weber, were "deprived of their liberty" within the meaning of Article 5 of the Convention by Russian agents from the moment of their apprehension in the vicinity of the *Prirazlomnaya* platform on 18 September 2013 until the moment of their delivery to the *Arctic Sunrise* where they re-united the rest of the Arctic 30, already in Russian custody, on 19 September 2013.

13. It is well-established case-law of the Court that, in order to determine whether someone has been "deprived of his [or her] liberty" within the meaning of Article 5 of the Convention, the starting-point must be his or her concrete situation, and account must be taken of a whole range of criteria such as the type, duration, effects and manner of implementation of the measure in question (see *Amuur v. France*, no. 19776/92, § 42,

[3] 14 August 2015 Award, § 196.
[4] *Ibid.*, § 198.
[5] See *Medvedyev and Others v. France* [GC], no. 3394/03, §§ 66-67, ECHR 2010.
[6] Observations of the respondent Government, § 9.

Reports 1996-III). In other words, deprivation of liberty is a factual situation that does not depend on its status in domestic law.

14. Ms Saarela and Mr Weber were captured on 18 September 2013 following their attempt to conduct a peaceful protest by climbing the side of the *Prirazlomnaya* platform with the aim to unfurl a banner protesting oil drilling in the Arctic. Russian agents brought Ms Saarela and Mr Weber on board the *Ladoga*, a Russian coast guard ship, where they were detained until the next day. They were effectively in Russian custody throughout that period.
15. The argument of the respondent Government that Ms Saarela and Mr Weber were kept on board the *Ladoga* as persons in distress within the meaning of the 1979 International Convention on Maritime Search and Rescue[7] is untenable for the following reasons.
16. First, it was never raised before by the Russian Federation in the domestic and international proceedings.
17. Second, it is not supported by the contemporaneous operational documents submitted to the Court by the respondent Government. Mr Ivan Solomakhin, a military serviceman and crewmember of the *Ladoga*, when questioned by a Russian investigator on 24 September 2013,[8] explained how Ms Saarela and Mr Weber had been apprehended by Russian agents, in particular, how the Russian agents had forced them to descend into an inflatable boat and had brought them to the *Ladoga*. Mr Solomakhin referred to Ms Saarela and Mr Weber as "detainees" (*задержанные*) in his testimony (p. 4). It is clear that the Russian security agents perceived those two applicants as detained persons.
18. Finally, in any event, even accepting, for the sake of the argument, the version of the respondent Government that Ms Saarela and Mr Weber were brought to the *Ladoga* as "persons in distress", nothing justified their continued detention thereafter given that the captain of the *Arctic Sunrise* repeatedly demanded their release,[9] and the *Arctic Sunrise* was located in the vicinity of the *Ladoga*, not more than 20 nautical miles from the *Prirazlomnaya*, and was able to accept Ms Saarela and Mr Weber on board at once.
19. The applicants emphasize that in the text of the 14 August 2015 Award the time spent by Ms Saarela and Mr Weber on 18-19 September 2013 on board the *Ladoga* is referred to as "detention".[10]
20. Ms Saarela testified about her time on the *Ladoga* in the following terms: "There was all the time somebody guarding me… We were not free to move on the ship. So if I, for

[7] Observations of the respondent Government, § 15.
[8] The testimony of Mr Solomakhin has been submitted to the Court by the respondent Government.
[9] This is confirmed by the testimony of Mr Marchenkov (p.5) submitted to the Court by the respondent Government.
[10] 14 August 2015 Award, p. 16 *et seq*.

example, needed to go to the restroom, I had to ask that, and then somebody would come with me there, and guard me all the way there. So I was not able to move freely on the ship. We did not have any connection to the outer world".[11] Ms Saarela testified that when she was taken to the *Ladoga* she was interrogated and body-searched, and her personal belongings, including her medicine, were taken away.[12] It is the applicants' submission that the circumstances in which Ms Saarela and Mr Weber found themselves on board the Russian coast guard ship *Ladoga* on 18-19 September 2013, given the type, duration, effects, and the manner of implementation of the measures in question by the Russian servicemen amounted to "deprivation of liberty" within the meaning of Article 5 § 1 of the Convention.

21. It is further submitted by the applicants that the detention of Ms Saarela and Mr Weber by Russian agents on 18-19 September 2013 was not compatible with Article 5 § 1 of the Convention as it was not "in accordance with a procedure prescribed by law".
22. It is confirmed by the respondent Government that the Russian officials did not draw up any reports or other documents to justify the applicants' detention.[13]
23. The respondent Government did not suggest that the detention of Ms Saarela and Mr Weber on 18-19 September 2013 was in conformity with any substantive and procedural rules of Russian and/or international law, and that it was based on a competent authority's order. In these circumstances, it ran contrary to the most basic requirements of Article 5 § 1 of the Convention.
24. Moreover, as confirmed by the respondent Government, the deprivation of liberty of Ms Saarela and Mr Weber on 18-19 September 2013 was never properly recorded. The applicants submit that it therefore constituted a complete negation of the fundamentally important guarantees contained in Article 5 of the Convention, and was incompatible with the requirements of lawfulness and with the very purpose of Article 5 of the Convention (see *Fartushin v. Russia*, no. 38887/09, § 54, 8 October 2015).
25. The violation of the applicants' Article 5 rights is aggravated by the fact that the Leninskiy District Court of Murmansk, when ordering the applicants' detention, and the Murmansk Regional Court, when reviewing the District Court's detention orders on appeal, refused to scrutinize the applicants' situation before 24 September 2013 altogether, thus placing them in a legal limbo.

[11] 14 August 2015 Award, § 102.
[12] See transcript of the testimony of Ms Saarela before the arbitral tribunal on 11 February 2015: https://pcacases.com/web/sendAttach/1415, at p. 9.
[13] Observations of the respondent Government, § 19.

26. There has accordingly been a violation of Article 5 of the Convention in respect of the time Ms Saarela and Mr Weber spent in Russian custody on 18-19 September 2013.

Deprivation of the applicants' liberty on 19-24 September 2013

27. The applicants submit that they were all deprived of their liberty within the meaning of Article 5 of the Convention while on board the *Arctic Sunrise* on 19-24 September 2013.
28. On 19 September 2013, at sunset, an unmarked helicopter bearing only a red star on its bottom approached the *Arctic Sunrise*. In the context, the helicopter must have belonged to the Russian armed forces. This has never been denied by the respondent Government. The helicopter hovered over the *Arctic Sunrise* with a rope lowered from it by which several masked armed servicemen in unmarked uniforms descended. Some crewmembers of the *Arctic Sunrise* stood on the deck with their arms in the air while others took pictures.[14] The Russian agents took control of the *Arctic Sunrise* and everyone on board, namely the Arctic 30, except Ms Saarela and Mr Weber, who were brought under guard from the *Ladoga* later that day and joined the rest of the group on board the *Arctic Sunrise*.[15]
29. The respondent Government has never denied that those who descended from the helicopter and took control of the *Arctic Sunrise* on 19 September 2013 were indeed Russian agents. In this regard the applicants invite the Court to adopt the factual conclusion reached by the arbitral tribunal that the *Arctic Sunrise* was boarded by Russian officials.[16]
30. On 19-24 September 2013 the applicants were kept in *de facto* detention on board the *Arctic Sunrise*. The applicants were searched and then allowed to return to their cabins.[17] Mr Willcox, captain of the *Arctic Sunrise*, was held separately on the bridge. He was requested to set sail for Murmansk, which he refused to do unless granted an opportunity to inform *Greenpeace International*, the vessel's operator, which he was denied.
31. The *Arctic Sunrise* was then towed by the *Ladoga* in the direction of Murmansk. It reached Murmansk on 24 September 2013.
32. While on board the *Arctic Sunrise* after its capture on 19 September 2013 the applicants were not allowed to move freely and were always guarded by armed Russian agents. It is

[14] There are several photographs and two video recordings available of this moment. One of those videos was published and became widely known: https://www.buzzfeed.com/tomphillips/watch-the-first-video-of-the-arctic-sunrise-being-boarded?utm_term=.nvJOYxEqEd#.caqz2x7M71. The applicants are ready to submit photos and videos of this episode which are in their possession if the Court deems it helpful.
[15] See transcript of the testimony of Ms Saarela before the arbitral tribunal on 11 February 2015: https://pcacases.com/web/sendAttach/1415, at p. 7.
[16] 14 August 2015 Award, § 101.
[17] See transcript of the testimony of Mr Litvinov before the arbitral tribunal on 10 February 2015: https://pcacases.com/web/sendAttach/1414, at pp. 121-122.

confirmed by the respondent Government that access of the applicants to certain areas of the *Arctic Sunrise* was restricted, and that the captain, although allowed to move around, was always "accompanied" by officers of the Federal Security Service of the Russian Federation.[18]

33. The applicants point out that they, and their personal belongings left in the cabins, were searched, and their digital equipment including communications devices were seized by the Russian agents who were in control of the *Arctic Sunrise*.[19] The emergency escape hatches of the *Arctic Sunrise* were locked by the Russian guards.

34. Given that they were placed under the control of the Russian special forces and confined to their cabins and that the course of the *Arctic Sunrise* was imposed by the Russian forces (see *Medvedyev and Others v. France* [GC], no. 3394/03, § 74, ECHR 2010), the applicants submit that their situation on board the *Arctic Sunrise* after its capture on 19 September 2013 and until their landing in Murmansk on 24 September 2013 amounted to a deprivation of liberty within the meaning of Article 5 § 1 of the Convention, particularly given that they were obliged to remain where they were and submit to a search, which indicated an element of coercion on the part of the Russian authorities (see *Gillan and Quinton v. the United Kingdom*, no. 4158/05, § 57, ECHR 2010, and *Foka v. Turkey*, no. 28940/95, §§ 77-79, 24 June 2008).

35. The applicants highlight that the fact of their detention by the Russian agents on board the *Arctic Sunrise* before 24 September 2013 was confirmed by the Russian authorities themselves. In this regard the applicants refer to the decision of the Federal Migration Service, Directorate for St Petersburg and Leningrad Region, issued in respect of Mr Perrett, one of the applicants, on 25 December 2013, not to pursue administrative offence proceedings against him for unlawful presence in the Russian Federation.[20] The Federal Migration Service established that Mr Perrett had been detained (*задержан*) by Russian border guards outside the territory of the Russian Federation and had not voluntarily crossed the Russian border. Identical decisions were taken by the Federal Migration Service, Directorate for St Petersburg and Leningrad Region, in respect of all applicants. It follows that the Russian migration authorities confirmed that the applicants had been detained by border guards (part of the Federal Security Service) and had been in their custody when brought to the Russian territory.

[18] Observations of the respondent Government, § 20.
[19] See transcript of the testimony of Mr Litvinov before the arbitral tribunal on 10 February 2015: https://pcacases.com/web/sendAttach/1414, at pp. 120-123.
[20] Annex 1.

36. The applicants submit that their detention on 19-24 September 2013 was incompatible with Article 5 § 1 of the Convention as it was not in accordance with any procedure prescribed by applicable law and it did not conform to the substantive and procedural rules of Russian and/or international law. The detention of the applicants on 19-24 September 2013 was not based on a competent authority's order, and it was not properly recorded.
37. The only document produced by the respondent Government as a basis for the applicants' detention is the report on delivery (*протокол о доставлении*) of the *Arctic Sunrise* to Murmansk issued on 20 September 2013 by the captain of the *Ladoga* for the purposes of bringing administrative offence proceedings there. Aside from the unlawfulness of that measure under Russian law and international maritime law, the applicants submit that it did not constitute a valid ground for their detention. The applicants, with the exception of Mr Willcox, were not even named in that document.
38. Mr Willcox was named in the 20 September 2013 report on delivery in his capacity of captain of the *Arctic Sunrise*. However, it is apparent from the text of that document that it covered the vessel rather than those on board. The legal basis for the deprivation of liberty in the context of administrative offence proceedings in Russia is administrative detention (*административное задержание*) which is constitutionally permitted for no longer than forty-eight hours (see *Frumkin v. Russia*, no. 74568/12, § 79, ECHR 2016). No report on administrative detention was issued in respect of Mr Willcox, and in any event the duration of his detention on board the *Arctic Sunrise* exceeded forty-eight hours. It is submitted, therefore, that his situation did not differ from that of all other applicants. There was no legal basis for their detention, which was accordingly in breach of Article 5 of the Convention.
39. The applicants observe that they were deprived of their liberty on board a vessel flying the flag of the Kingdom of the Netherlands outside the territorial waters of the Russian Federation. The applicants therefore draw the Court's attention to the conclusion reached by the arbitral tribunal in the 14 August 2015 Award, that by detaining the applicants the Russian Federation breached its obligations under various provisions of the United Nations Convention on the Law of the Sea (UNCLOS). Given the non-participation of the Russian Federation in the arbitral proceedings, the tribunal assessed all possible legal bases for the boarding, seizure, and detention of the *Arctic Sunrise* under UNCLOS and concluded that no such basis existed.[21] This includes the right of the coastal State to protect its sovereign

[21] 14 August 2015 Award, § 333.

right to living resources (*i.e.* to combat illegal fishing) provided for by Article 73 UNCLOS,[22] invoked by the respondent Government in the present case.[23]

40. Where the lawfulness of detention is in issue, the Convention refers essentially to national law but also, where appropriate, to other applicable legal standards, including those which have their source in international law (see *Medvedyev and Others*, cited above, § 79). Given the absence of any formal basis for their detention under Russian law, and the fact that the detention constituted a violation of international maritime law, the applicants submit that their rights under Article 5 of the Convention were violated by the Russian Federation which unlawfully deprived them of their liberty while on board the *Arctic Sunrise* on 19-24 September 2013.

41. The applicants would like to highlight the respondent Government's own admission that "[i]n the period from 18 to 24 September 2013, i.e. until towing the vessel Arctic Sunrise to the Murmansk port, the officials of the Border Guards Department of the Federal Security Service of the Russian Federation for the Murmansk Region did not draw up any reports or other documents in respect of [the applicants]".[24]

42. This approach runs contrary to the very purpose of Article 5 of the Convention, namely, to protect the individual from arbitrariness. The applicants were deprived of their liberty in arbitrary fashion, with no lawful basis, while they were on board the vessel exercising freedom of navigation in international waters.

43. This argument was not examined by the Murmansk Regional Court when it was raised by the applicants' legal team in their appeals against the detention orders of the Leninskiy District Court of Murmansk. According to the Russian courts, the applicants' situation before 24 September 2013 was inconsequential. The applicants were thus left in total legal limbo while detained *incommunicado* and with no legal basis on board the *Arctic Sunrise*. Their detention was not recorded, it was not even acknowledged as such, the applicants were thus denied access to all commensurate guarantees provided for by Article 5 of the Convention and domestic law.

44. The applicants recall that the unacknowledged detention of human beings is a complete negation of the guarantees of Article 5 of the Convention and the gravest violation of that provision.[25] It is exactly the situation that the whole machinery of the Convention is established to prevent. The fact that criminal proceedings were initiated against the

[22] 14 August 2015 Award, § 282.
[23] Observations of the respondent Government, § 12.
[24] Observations of the respondent Government, § 19. The respondent Government refer to all the applicants as "the Greenpeace activists".
[25] See *El-Masri v. The Former Yugoslav Republic of Macedonia* [GC], no. 39630/09, § 233, ECHR 2012.

applicants on 24 September 2013 does not alter the conclusion that they were unlawfully deprived of their liberty on the preceding days.

45. There has therefore been a violation of Article 5 of the Convention in respect of the applicants' detention by Russia on board the *Arctic Sunrise* on 19-24 September 2013.

46. The applicants confirm the facts about the administrative offence proceedings brought against Mr Willcox, captain of the *Arctic Sunrise*, as contained in §§ 42-45 of the observations of the respondent Government. Mr Willcox did not appeal against the decision to impose an administrative fine upon him and paid that fine in full. This fact cannot justify the unlawful and unacknowledged deprivation of liberty of Mr Willcox and other applicants on board the *Arctic Sunrise*.

Deprivation of the applicants' liberty after 24 September 2013

47. On 24 September 2013 investigator Mr S.O. Torvinen instituted criminal proceedings under section 227 § 3 of the Criminal Code of the Russian Federation (piracy committed by an organised group, punishable by up to fifteen years' imprisonment). The decision referred to an "attack" by unidentified individuals using the *Arctic Sunrise* against the *Prirazlomnaya*, the latter being referred to as "marine vessel – marine ice-resistant stationary platform".

48. Under section 227 of the Criminal Code of the Russian Federation ("the Criminal Code") piracy is an attack against a marine or river vessel (*судно*) with the aim of capturing property, committed with the use of violence or threat of violence.

49. Although the term "vessel" does not have uniform legal definition, vessel (*судно*) is defined as a floating object in Russian law,[26] and in international maritime law vessel is defined as any ship or craft, or any structure capable of navigation.[27] In any event, ability to float, or to navigate is, by any sound definition, an essential characteristic of a vessel.

50. On 24 September 2013 all the applicants were formally detained by the Russian Investigations Committee on suspicion of having committed a crime of piracy.

51. On 26-29 September 2013 the Leninskiy District Court of Murmansk issued detention orders in respect of all the applicants, referring to the suspicion that they had been involved in piracy. The applicants' counsel appealed against the detention orders referring, among many other arguments, to the fact that the *Prirazlomnaya* was not a vessel but a stationary platform which was unable to float/navigate, therefore, no piracy could have been committed by the applicants under Russian law.

[26] Section 7 § 1 of the Code of Merchant Shipping of the Russian Federation.
[27] Article 1 (b) of the 1989 International Convention on Salvage.

52. The District Court's detention orders were upheld on appeal by the Murmansk Regional Court on various dates in October 2013. The Regional Court refused to deal with the applicants' argument about the status of the *Prirazlomnaya*. According to the Regional Court, this issue fell to be examined as part of the merits of the case during the trial.

53. It is this Court's well-established case-law that the requirement in Article 5 § 1 (c) of the Convention that a suspicion must be based on reasonable grounds forms an essential part of the safeguard against arbitrary arrest and detention, and that the words "reasonable suspicion" in Article 5 § 1 (c) of the Convention mean the existence of facts or information which would satisfy an objective observer that the person concerned may have committed the offence (see, as a recent authority, *Mammadli v. Azerbaijan*, no. 47145/14, § 50, 19 April 2018). The persistence of reasonable suspicion that the person arrested has committed an offence is a prerequisite for the lawfulness of the continued detention (see *Mammadli*, cited above, § 53).

54. Apart from its factual aspect, the existence of "reasonable suspicion" within the meaning of Article 5 § 1 (c) of the Convention additionally requires that the facts relied on can reasonably be considered criminal behaviour under domestic law. Thus, according to the Court, "clearly there could not be a "reasonable suspicion" if the acts held against a detained person did not constitute an offence at the time they were committed" (*Mammadli*, cited above, § 52).

55. The applicants have always denied the charges brought against them in Russia. It was never their intention to conduct an attack against the *Prirazlomnaya* or to use weapons in the process, nor did the authorities have any "reasonable suspicion" within the meaning of Article 5 § 1 (c) of the Convention in this regard. The arbitral tribunal, having examined the evidence provided and the track record of *Greenpeace International*, concluded that "the Russian authorities were aware of the likelihood of a protest action by the *Arctic Sunrise* at the *Prirazlomnaya* (indeed, the presence of the *Ladoga* in the vicinity of the platform is evidence of the fact that the Russian authorities anticipated protest action) and of the kind of protest action that it would be, *i.e.*, non-violent and in keeping with the kind of protest action Greenpeace had staged before as part of its campaign to 'Save the Arctic'."[28]

56. Moreover, even supposing the suspicions of the Russian investigation as to the applicants' aims and methods had been genuine, there could not be a "reasonable suspicion" that the

[28] 14 August 2015 Award, § 319.

applicants committed piracy punishable under section 227 of the Criminal Code as the *Prirazlomnaya* – the object of the alleged attack – was not a vessel.

57. There were several separate grounds for this conclusion regarding the status of the *Prirazlomnaya* which was, in the applicants' submission, the only reasonable conclusion in the circumstances of their case, and from the outset excluded any criminality of their actions under Russian law.

58. From the very start of the proceedings, the Russian officials referred to the *Prirazlomnaya* as a marine ice-resistant stationary platform (*морская ледостойкая стационарная платформа, МЛСП*): the *Prirazlomnaya* was referred to as a stationary platform in particular in the 18 September 2013 report from the officer of the Federal Security Service to his superior,[29] in the 24 September 2013 decision to institute criminal proceedings on piracy charges, and in the District Court's detention orders. It should be obvious to any reasonable observer that classification of the *Prirazlomnaya* as a stationary platform excludes its classification as a vessel.

59. First, by its very characteristics, an ice-resistant stationary platform, which is installed on the seabed to drill for oil and pull oil, cannot float or navigate: it is a stationary installation, and thus does not satisfy the most basic criterion of a vessel under both Russian and international law. As publicly explained by Mr Lyubin, Executive Director of *Gazprom Neft Shelf* LLC, the *Prirazlomnaya* is built directly on the seabed.[30]

60. Second, under Russian regulations, the classification of the object as a marine stationary platform excludes its classification as a vessel. In 2003 the Ministry of Transport of the Russian Federation adopted Regulations on the classification of vessels *and* marine stationary platforms[31] which, as subsequently amended, were in force in 2013. Those Regulations clearly distinguish between vessels, being floating structures, and marine stationary platforms, being installations fixed on the seabed (§ 1.1).

61. Third, the classification of the *Prirazlomnaya* as a stationary platform excludes its simultaneous classification as a vessel under applicable rules of international maritime law. UNCLOS provides for the exclusive right of the coastal State to construct, in its exclusive economic zone, artificial islands, installations and structures (Article 60). *Prirazlomnaya* is clearly such an installation (structure) constructed in the exclusive economic zone of the Russian Federation, and it was perceived as such by the Russian authorities. Mr N.A.

[29] Attached to the respondent Government's observations.
[30] Interview with *Gazprom Neft Shelf* LLC Executive Director Gennady Lyubin, available at: http://www.gazprom-neft.com/press-center/lib/1107913/.
[31] Adopted by the order of the Ministry of Transport of 9 July 2003 no. 160. *Положение о классификации судов и морских стационарных платформ*.

Marchenkov, an officer of the Federal Security Service of the Russian Federation who was questioned as a witness on 24 September 2013,[32] testified that on 16-17 September 2013 he had repeatedly informed the *Arctic Sunrise* by radio that they should not approach the *Prirazlomnaya* with reference, in particular, to Article 60 of the [United Nations] Convention on the Law of the Sea. Mr Marchenkov further referred to the Russian notice to mariners 6623/11. The officially published Russian notice to mariners[33] gives the terrestrial coordinates of the *Prirazlomnaya* and refers to it as a drilling rig. This official notification confirms the applicability of Article 60 of UNCLOS in respect of the *Prirazlomnaya*, as under Article 60 § 3 of UNCLOS the coastal State must give due notice of the construction of such artificial islands, installations or structures. The fact that the Russian authorities gave particular terrestrial coordinates of the *Prirazlomnaya* and defined it as a drilling rig in their published notice to the mariners excludes the possibility of classification of the *Prirazlomnaya* as a vessel, because by its very definition a vessel does not have fixed terrestrial coordinates.

62. Fourth, before the events in question, a Russian court had already ruled that the *Prirazlomnaya* was not a vessel. On 23 October 2012, by its final judgment in case no. A26-3152/2012,[34] the Thirteenth Appellate Commercial Court in St Petersburg found that on 26 September 2012 the *Prirazlomnaya* had been registered as a marine stationary ice-resistant platform and should be treated as such. The applicants' counsel referred to that judgment of the Russian court in their appeals against the detention orders, but this argument of the defense team was dismissed in a summary fashion by the Murmansk Regional Court, which failed to deal with its substance and disregarded its legal significance. The applicants point out that the failure of the domestic courts to analyse the legal status of the *Prirazlomnaya* when deciding on the detention of the applicants pending investigation is tantamount to their failure to establish the existence of "reasonable suspicion" within the meaning of Article 5 § 1 (c) of the Convention.

63. Eventually, it became undeniable even for the investigators that the *Prirazlomnaya* was not a vessel and therefore the piracy charges against the applicants under Article 227 of the Criminal Code had no basis in Russian law as confirmed by the written directions of 21 October 2013 from General A.Yu. Mayakov to Captain S.O. Torvinen.[35] As of that date

[32] Record of the interview of Mr Marchenkov is submitted by the respondent Government as enclosure to their observations.
[33] http://structure.mil.ru/files/morf/military/files/NM1151.PDF, at p.7.
[34] For the text of that judgment, which is publicly available in Russian judicial database, see Annex 32 to the Application lodged with the Court.
[35] See § 68 of the observations of the respondent Government. For the text of that letter see Annex 66 to the Application lodged with the Court.

the Murmansk Regional Court was still considering the remaining appeals against the detention orders issued in respect of some of the applicants. However, the investigators failed to communicate their change of opinion to the Regional Court, and it became known to the defense team only when the initial two-months period of the applicants' detention was about to expire. It follows that even the investigators upon whose motion the Russian courts deprived the applicants of their liberty confirmed they lost reasonable suspicion of the applicants being involved in piracy, but the applicants remained in detention pursuant to the detention orders issued by the District Court solely on the basis of piracy charges against them.

64. Mr Vladimir Putin, the President of the Russian Federation, while criticizing the applicants' actions in his public statement at the Third International Arctic Forum in Salekhard on 25 September 2013, remarked: "It is absolutely evident that of course they are not pirates".[36] It was "absolutely evident" to President Putin, and to any reasonable observer at the very initial stage of the criminal proceedings that there existed no reasonable suspicion that the applicants had committed a crime of piracy, but the day after that statement the District Court started issuing detention orders in respect of the applicants on piracy charges.

65. It is submitted that this case is exceptional given that piracy charges are extraordinarily rare both in international practice and in Russia. Piracy is a very serious crime of international concern and under customary international law States have universal jurisdiction in respect of it. Pursuant to section 227 of the Criminal Code piracy has a strictly defined object of criminal assault, namely a vessel. An attack against any other object can never constitute a crime of piracy within the meaning of section 227 of the Criminal Code. It was clear to any reasonable observer that the *Prirazlomnaya* was not a vessel, and therefore, there could not be a reasonable suspicion within the meaning of Article 5 § 1 (c) of the Convention that the applicants had committed piracy. The detention of the applicants on piracy charges was tantamount to detaining someone on murder charges when it is clear from the outset that the victim's corpse is not that of a human being.

66. The applicants note the reference of the respondent Government to the ownership certificate of 26 April 2012 in respect of the *Prirazlomnaya*.[37] This document demonstrates the ownership of the *Prirazlomnaya* (its co-owners are *Gazprom* JSC and *Gazprom Neft*

[36] The official transcript of that statement is available at the website of the Russian Presidency: http://kremlin.ru/events/president/transcripts/19281.
[37] Observations of the respondent Government, § 67, Attachment 7.

Shelf LLC) rather than its legal status as a vessel. Moreover, that certificate still classifies the *Prirazlomnaya* as *МЛСП*, that is a marine ice-resistant stationary platform, which is not a vessel.

67. It follows that given that the *Prirazlomnaya* stationary platform was clearly not a vessel (ship) there could not be a "reasonable suspicion" that the applicants had committed piracy punishable under section 227 of the Criminal Code. Therefore, their detention from 24 September 2013 until their release from Russian custody was not compatible with the requirements of Article 5 § 1 (c) of the Convention.

68. As an additional argument under this heading, the applicants note that in order to comply with the requirements of Article 5 § 1 (c) of the Convention an arrest or detention of a person should be "lawful", that is have a "legal basis" under public international and domestic law (see *Medvedyev and Others*, cited above, § 82). The United Nations Convention on the Law of the Sea, as an international treaty ratified by the Russian Federation, is directly applicable in Russian criminal proceedings. In case of conflict, it prevails over the provisions of the Code of Criminal Procedure (section 1 § 3 of the Code of Criminal Procedure of the Russian Federation).

69. The arbitral tribunal established under Annex VII to UNCLOS found that by arresting and detaining the applicants the Russian Federation had breached various provisions of the UNCLOS.[38] It follows that the deprivation of the applicants' liberty by the Russian authorities did not have a legal basis under public international law, namely, it was contrary to the international obligations of the Russian Federation flowing from UNCLOS. Consequently, it was not lawful within the meaning of Article 5 § 1 (c) of the Convention.

70. The applicants' detention on remand in the Russian Federation from 24 September 2013 up until their release was incompatible with Article 5 § 1 (c) of the Convention and breached their right to liberty and personal security.

Violation of the applicants' freedom of expression (Article 10 of the Convention)

Whether there was an interference with the applicants' freedom of expression

71. The applicants note the position of the respondent Government that "there was no interference with the applicants' freedom of expression in the present case" as their "action did not evidence their intention to receive and disseminate information".[39] The applicants disagree with that position for the following reasons.

[38] 14 August 2015 Award, § 401 (C).
[39] Observations of the respondent Government, § 75.

72. The *Arctic Sunrise* was navigating in the Pechora Sea in the context of a global *Save the Arctic* campaign conducted by *Greenpeace International*. As Captain Willcox explained in his contemporaneous handwritten note attached to the 24 September 2013 administrative offence report:[40] "We came to the Russian exclusive economic zone because we are very worried about the problems which can be caused by drilling for oil in the Arctic Ocean… We believe the future of our children requires us to switch from oil and coal to renewable resources like wind and solar".

73. The aim of the protest action was clearly explained beforehand in the letter of 18 December 2013 faxed by *Greenpeace International* to the management of the *Prirazlomnaya* and *Gazprom Neft Shelf* LLC, its co-owner:

> "*Greenpeace International* is currently conducting a non-violent direct action on your platform. The purpose of the action is to convince *Gazprom* to drop its plans to conduct oil drilling operations in the Arctic. The action we are taking consists of scaling the platform and the establishment of a camp in a survival capsule. Everything will be done safely and non-violently. A number of activists are determined to stay on in the capsule until such time as *Gazprom* promises to abandon its plans to drill for oil at *Prirazlomnaya*, or publishes its oil spill response plan in full and explains in a credible way how such drilling can be done without creating an unacceptable threat to the environment… Oil drilling in the offshore Arctic presents unacceptable dangers. There is a high risk of a significant oil spill that would devastate the local environment. Disaster response in the Arctic is extremely challenging due to the harsh climatic conditions and remoteness; an oil spill could continue unchecked for a long time, and there is no effective technology to recover oil spilled in ice. Moreover, Arctic oil production will accelerate human-induced climate change… We are now taking action in a peaceful and non-violent way to ensure that the operators of the platform and the government of the Russian Federation do what they should – stop all exploration and drilling for oil on the Arctic shelf. We are taking this action as a last resort, and with the intentions to prevent a grave danger that threatens all of us and future generations".[41]

74. Direct protest, even if it takes form of impeding the activities of which protesters disapprove, constitutes an expression of opinion protected by Article 10 of the Convention

[40] Attachment 3 to the observations of the respondent Government.
[41] For the full text of this letter see 14 August 2015 Award, § 84.

(see *Hashman and Harrup v. the United Kingdom* [GC], no. 25594/94, § 28, ECHR 1999-VIII, and *Taranenko v. Russia*, no. 19554/05, § 70, 15 May 2014). The Court has confirmed in its case-law that the expression protected by Article 10 of the Convention includes non-verbal means of communication, such as displaying a placard and banners (see *Karacsony and Others v. Hungary* [GC], nos. 42461/13 and 44357/13, § 120, ECHR 2016). Moreover, according to the well-established case-law of the Court, Article 10 of the Convention protects not only the substance of the ideas and information expressed but also the form in which they are conveyed (see *Women on Waves and Others v. Portugal*, no. 31276/05, § 30, 3 February 2009).

75. It follows that the protection of Article 10 of the Convention extends to the form of protest action, including protest at sea. Under international maritime law, as reflected in UNCLOS, peaceful protest at sea is an internationally lawful use of the sea related to the freedom of navigation.[42]

76. Through their ship tour and protest, the Arctic 30 intended to impart information about the threat to the environment caused by the planned drilling for oil at the *Prirazlomnaya* and draw global attention to this issue of public interest. It follows that the applicants were exercising their freedom of expression protected by Article 10 of the Convention.

77. The role of two applicants, namely Mr Sinyakov and Mr Bryan, is distinct. They joined the *Arctic Sunrise* in order to report on the protest. Mr Sinyakov is a globally known photographer whose work has been published by leading news agencies. Mr Bryan is a prominent videographer who worked with several media outlets in the United Kingdom.

78. Messrs Sinyakov and Mr Bryan made their status as journalists known to the Russian authorities as early as practicable. Mr Sinyakov produced his press card. Mr Bryan explained that he was a journalist on 24 September 2013 to the investigators in Murmansk. The facts that Messrs Sinyakov and Bryan were not acting on journalistic assignments from a media outlet and that Mr Bryan did not have accreditation as a journalist in the Russian Federation are irrelevant given that they acted as journalists with the intention to collect information, make photographs and video recordings of the direct protest action and to impart them to the public via means of mass communication. Therefore, they should be able to rely on the protection afforded to the press under Article 10 of the Convention (see *Butkevich v. Russia*, no. 5865/07, §§ 131-132, 13 February 2018).

79. The instructions to stay well away from the platform (issued in the knowledge that a peaceful protest was planned), the forceful intervention by the Russian armed agents on

[42] 14 August 2015 Award, § 227.

18-19 September 2013, the applicants' apprehension and detention on board the *Arctic Sunrise*, the criminal proceedings instituted against them, and their detention on remand for two months in Russia constituted interferences with the applicants' freedom of expression within the meaning of Article 10 § 2 of the Convention (see *Kandzhov v. Bulgaria*, no. 68294/01, § 70, 6 November 2008, and *Döner and Others v. Turkey*, no. 29994/02, § 88, 7 March 2017), taking into account, in particular, that the criminal charges against them concerned, in essence, either their participation in the protest action or their coverage thereof (see, *a contrario*, *Kovyazin v. Russia*, no. 50043/14, § 37, 29 May 2018).

80. Although the criminal proceedings against the applicants were terminated following the amnesty in December 2013, they were not entitled to compensation under domestic law and the Russian authorities did not acknowledge the breach of their rights under the Convention, therefore, the applicants cannot be considered to have lost their victim status (see *Kovyazin*, cited above, § 33, and *Döner and Others*, cited above, § 89).

81. The applicants observe that the respondent Government state in passing in their observations that "the applicants did not file with the national courts any complaints against the alleged interference with their right to freedom of expression, in particular the right to receive and disseminate information in connection to the events that took place in September 2013".[43] In so far as the respondent Government may be understood as claiming non-exhaustion of domestic remedies with respect to the complaint under Article 10 of the Convention, the applicants recall that it is incumbent on a Government claiming non-exhaustion to indicate with sufficient clarity the remedies to which an applicant has not had recourse and to satisfy the Court that those remedies were effective and available in theory and in practice at the relevant time, that is to say that they were capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success (see, among many other authorities, *Kandzhov*, cited above, § 43). The respondent Government in their observations failed to indicate with sufficient clarity the remedies to which the applicants had not had recourse in the circumstances of the present case, let alone to prove that those remedies were effective and available to the applicants both in theory and in practice. Therefore, if the Court understands the respondent Government to claim non-exhaustion in respect of the applicants' complaint under Article 10 of the Convention, the applicants respectfully invite the Court to dismiss any such objection as unsubstantiated. It is the applicants' submission that they did not have at their disposal any

[43] Observations of the respondent Government, § 82.

effective and available domestic remedy with respect to their complaint under Article 10 of the Convention, also taking into account the unacknowledged nature of their detention on 18/19-24 September 2013.

82. In any event, the applicants attempted to raise the substance of their complaint under Article 10 of the Convention in the appeals against the detention orders issued by the Leninskiy District Court of Murmansk lodged with the Murmansk Regional Court by their counsel. They were all dismissed by the Regional Court in a summary fashion. As an example, Mr Bryan referred to his status as a journalist, but the Murmansk Regional Court dismissed that argument due to the absence of accreditation and the fact that he had not submitted a contract with a media outlet.[44] The similar argument raised on behalf of Mr Sinyakov by his counsel[45] was not addressed by the Regional Court at all.

Whether the interference was "prescribed by law"

83. The interference with the applicants' rights protected by Article 10 of the Convention was not "prescribed by law" within the meaning of Article 10 § 2 of the Convention as the applicants' arrest and detention by the Russian authorities was not "lawful" within the meaning of Article 5 § 1 (c) of the Convention (see *Kandzhov*, cited above, § 72, and, *mutatis mutandis*, *Kasparov v. Russia*, no. 53659/07, § 69, 11 October 2016).

Whether the measures taken were "necessary in a democratic society"

84. Furthermore, the interference in question was not "necessary in a democratic society" within the meaning of Article 10 § 2 of the Convention as it was not proportionate to the aim pursued and the reasons adduced by the national authorities to justify it were not relevant and sufficient.

85. The applicants point out that, as the issues of freedom of expression and freedom of peaceful assembly are closely linked in the present case, the principles and approaches developed by the Court in its case-law under Article 11 of the Convention are relevant to the interpretation of the scope of the guarantees provided by Article 10 thereof (see *Taranenko*, cited above, § 69).

86. In line with the core values of *Greenpeace*, the protest action at the *Prirazlomnaya* in September 2013 was entirely peaceful and non-violent. It directly related to a matter of significant public interest, namely environmental concerns about the opening of a new oil frontier in the offshore Arctic. As noted above, the arbitral tribunal, having examined the evidence provided and the track record of *Greenpeace International*, concluded that the

[44] See p.2 of the appellate ruling of the Murmansk Regional Court of 11 October 2013 in the case no. 22-2199/2013.
[45] See p.2 of the appellate ruling of the Murmansk Regional Court of 08 October 2013 in the case no. 22-2164/2013.

Russian authorities were aware in advance of the likelihood of the protest action in question and "of the kind of the protest action it would be, *i.e.*, non-violent".[46]

87. Not has it ever been credibly suggested that the protest action endangered safety of the *Prirazlomnaya* and its personnel, or of anyone else. The platform was not yet in production at the relevant time. It sits on a massive base made of steel, concrete and rubble designed to withstand strong impacts by sea ice. Mr Gennady Lyubin, Executive Director of *Gazprom Neft Shelf*, has claimed that the platform base is capable of withstanding a torpedo strike.[47] The respondent Government incorrectly suggested, without any conviction, that the protest could have endangered persons performing diving operations in the area adjoining the platform.[48] Recordings of radio traffic show these diving operations were due to start at 7 a.m.,[49] by which time the protest had already ended, and that they would take place from the vessel *Iskatel*,[50] which was far away from the *Prirazlomnaya* and the *Arctic Sunrise* during the events.[51] The *Arctic Sunrise* had previously confirmed it was aware of and would not interfere with the planned operations.[52]
88. The protest action in question was definitely very visible and highly symbolic but entirely safe. It is telling that the similar action conducted by *Greenpeace* activists in 2012 was met with no response on the part of the Russian law-enforcement authorities.
89. According to the Court's well-established jurisprudence under Article 11 of the Convention, which is applicable *mutatis mutandis* in the circumstances of this case, "where demonstrators do not engage in acts of violence it is important for the public authorities to show a certain degree of tolerance towards peaceful gatherings" (see *Kudrevičius and Others v. Lithuania* [GC], no. 37553/05, § 150, ECHR 2015, and cases quoted therein). The appropriate "degree of tolerance" of protest actions to be expected of the authorities depends on "the particular circumstances of the case" (*Ibid.*, § 155).
90. The circumstances of this case called for a high degree of tolerance on the part of the Russian authorities, for the following reasons:
    a. The imminent opening of a new frontier for oil development in the Arctic was a serious matter of public interest. It has been the Court's "constant approach to

[46] 14 August 2015 Award, § 319.
[47] Interview with *Gazprom Neft Shelf* LLC Executive Director Gennady Lyubin, available: http://www.gazprom-neft.com/press-center/lib/1107913/.
[48] Observations of the respondent Government, § 36.
[49] Audio file 4, recorded by the *Arctic Sunrise* on 17 September 2013, at around 0'50, available: https://www.pcacases.com/web/view/21.
[50] Audio file 2 recorded by the *Arctic Sunrise* on 17 September 2013, at around 0'05, available: https://www.pcacases.com/web/view/21.
[51] Video file 4, recorded from the *Iskatel* during the protest, available: https://www.pcacases.com/web/view/21.
[52] Audio file 2, at around 1'03, available: https://www.pcacases.com/web/view/21.

require very strong reasons for justifying restrictions on political speech or serious matters of public interest" (*Sergey Kuznetsov v. Russia*, no. 10877/04, § 47, 23 October 2008);

b. The protest was part of a campaign by *Greenpeace International*, an environmental non-governmental organisation (NGO). When an NGO draws attention to matters of public interest, "it is exercising a public watchdog role of similar importance to that of the press … and may be characterised as a social "watchdog" warranting similar protection under the Convention as that afforded to the press" (*Magyar Helsinki Bizottság v. Hungary* [GC], no. 18030/11, § 166, ECHR 2016; see also, with specific reference to an environmental NGO, *Vides Aizsardzibas Klubs v. Latvia*, no. 57829/00, § 42, 27 May 2004);

c. The protest was directed against *Gazprom*, the world's largest energy company. Large public companies "inevitably and knowingly lay themselves open to close scrutiny of their acts and… the limits of acceptable criticism are wider in the case of such companies" (*Steel and Morris v. United Kingdom*, no. 68416/01, § 94, ECHR 2005-II). The applicants submit that this principle should apply equally to criticism in the form of peaceful protest, and the authorities' response to such protest;

d. The authorities had prior knowledge that a peaceful demonstration would take place[53] and could thus prepare for it appropriately (*Balçık and Others v. Turkey,* no. 25/02, § 51, 29 November 2007).

91. A failure to observe the required degree of tolerance became evident even before the protest, when the Coast Guard vessel *Ladoga* instructed the *Arctic Sunrise* to stay at least 3 nautical miles away from the *Prirazlomnaya*.[54] The Court has previously considered that "the practice whereby the authorities allow an assembly to take place, but only at a location which is not within sight and sound of its target audience and where its impact will be muted, is incompatible with the requirements of Article 11 of the Convention" (*Lashmankin and Others v. Russia,* nos. 57818/09 and 14 others, § 426, 7 February 2017). The applicants submit that the same holds true for protest actions protected by Article 10 of the Convention.

92. At the start of events on 18 September 2013, the Russian authorities resorted almost immediately to the use of force, including pointing knives and guns and firing warning shots, in an attempt to prevent the protest from taking place. In this respect their actions fit

[53] Record of the interview of Mr Marchenkov submitted by the respondent Government, p. 2.
[54] Observations of the respondent Government, § 32.

within the pattern of "zero tolerance towards [allegedly] unlawful assemblies, even if they are peaceful", which the Court held to be a violation of Article 11 of the Convention in *Lashmankin and Others* (cited above, § 461). In that case, as in this one, "the domestic authorities made no attempt to verify the extent of the risks posed by the protestors, or to verify whether it had been necessary to disperse them …Moreover, the dispersal and arrest of participants occurred within a very short time after the beginning of the assembly, showing the authorities' impatience to end the [allegedly] unlawful public event before the protesters had had sufficient time to express their position of protest and to draw the attention of the public to their concerns" (*Ibid*.).

93. After the protest, the use of armed coercion continued with the firing of warning shots from the cannons of the *Ladoga* and the use of heavily armed special forces to take control of the *Arctic Sunrise*. These measures exceed even the sending of a warship against a civilian campaign vessel at issue in *Women on Waves and Others*, which the Court considered an unjustifiably "radical measure" which would "inevitably have a deterrent effect not only on the applicants but also on other persons wishing to communicate information and ideas contesting the established order" (*Women on Waves and Others*, cited above, § 43).

94. The decision to bring piracy and later hooliganism charges against the applicants was a further disproportionate measure, taking into account that "a peaceful demonstration should not, in principle, be made subject to the threat of a penal sanction" (*Pekaslan and Others v. Turkey,* nos. 4572/06 and 5684/06, § 81, 20 March 2012). In that case the Court found that the decision to prosecute the applicants for a criminal offence on account of the mere fact of their participation in a peaceful demonstration violated their rights under Article 11 of the Convention, notwithstanding the fact that they were released shortly after arrest and subsequently acquitted (*Ibid*., §§ 13, 81-83).

95. In respect of Messrs Sinyakov and Bryan, the freelance journalists contracted by *Greenpeace International* to document the peaceful protest action, the applicants refer with approval to the legal and policy arguments persuasively developed in their joint submissions[55] by *ARTICLE 19* and *Media Legal Defence Initiative*, non-governmental organisations intervening in the present case as third parties with the leave granted by the President of Chamber. The applicants respectfully request the Court to consider those arguments incorporated in the present Observations.

96. The applicants wish to underline in addition that, in view of the remote location of the *Prirazlomnaya* and the duration of the journey there and back, the only practical possibility

[55] Written comments of the Interveners submitted to the Court under the cover of the letter by Mr Padraig Hughes dated 11 April 2018.

for journalists to document the peaceful protest – and the only possibility for *Greenpeace International* to ensure professional documentation by journalists – was for the journalists to join the *Arctic Sunrise* on its voyage. The ability to bring reporters to the scene of a protest in a remote location serves an important interest. Protest that goes unreported is incapable of informing public opinion and, as highlighted by the intervening NGOs, reporters introduce an important element of accountability for both protest organisers and public authorities in a place where none would otherwise exist.[56] Indeed, it is due to the courageous journalistic work of Messrs Bryan and Sinyakov that the circumstances of the protest action in question and the brutal manner in which the Russian special forces captured the *Arctic Sunrise* on 19 September 2013 became internationally known.

97. The Russian authorities' refusal to distinguish between participation in and documenting of a protest action has a chilling effect on the work of journalists and other observers and, by extension, on the ability of those engaging in protest, particularly in remote and/or inaccessible locations, to do so effectively and safely.

98. The failure of the Russian authorities, at the pre-trial stage of the proceedings, to delve into whether the alleged actions of Messrs Bryan and Sinyakov "were excusable or otherwise mitigated" given that they stated they had been acting as journalists (see *Butkevich*, cited above, § 133) constitutes a failure to adduce relevant and sufficient arguments justifying the proportionality of the interference with the rights of Messrs Bryan and Sinyakov, in violation of Article 10 of the Convention.

99. Separately, the applicants wish to draw the Court's attention to the fact that the Russian Coast Guard agents who intervened during the protest on 18 September 2013, and the members of special forces who boarded the *Arctic Sunrise* on 19 September 2013, wore balaclavas or other face masks and were not identifiable by any markings such as a warrant number. Personnel of the Russian special forces declined to answer any questions posed by the applicants about their affiliation.[57]

100. In *Ataykaya v. Turkey*, a case concerning the death of a bystander amidst a series of very tense and violent demonstrations, the Court did not consider it necessary to "assess in general terms whether it is compatible with the Convention for balaclavas to be worn by security forces whose task it is to confront demonstrators", but it pointed out that it had "already stated that where the competent authorities deploy masked police officers to maintain law and order or to make an arrest, those officers should be required to visibly

[56] Written comments of the Interveners, § 18.
[57] See transcript of the testimony of Mr Litvinov before the arbitral tribunal on 10 February 2015: https://pcacases.com/web/sendAttach/1414, at pp. 114-119.

display some distinctive insignia – for example, a warrant number" (*Ataykaya v. Turkey*, no. 50275/08, §§ 52, 53, 22 July 2014), a requirement not complied with in this case.

101. The applicants respectfully invite the Court to hold in the present case that the deployment of masked agents in the circumstances where the authorities were aware they would be confronting an entirely peaceful and non-violent protest was not in conformity with the requirements of Article 10 of the Convention. The use of face masks by State agents has a very intimidating effect and is thus capable of chilling the exercise of the rights guaranteed by Articles 10 and 11 of the Convention. Further, among many other disadvantages, the use of face masks greatly diminishes the ability of officers to engage in effective communication. The importance of effective communication between protesters and security personnel to lowering tensions during demonstrations is stressed in numerous international guidelines,[58] and has been emphasized by the Court in the context of its case-law under Article 11 of the Convention concerning the authorities' positive obligations in respect of the conduct of public assemblies (see *Frumkin*, cited above, §§ 128-130). It is the applicants' submission that the same approach is appropriate in the present case.

102. In conclusion, there has been a violation of Article 10 of the Convention in respect of all the applicants.

Claim for just satisfaction

103. The applicants hereby submit their claim for just satisfaction pursuant to Article 41 of the Convention and Rule 60 of the Rules of Court.

104. Having been apprehended by the Russian authorities in flagrant violation of the applicable rules of international law, the applicants spent several days *incommunicado* in unacknowledged detention in complete negation of the most basic guarantees enshrined in Article 5 of the Convention. Their subsequent detention in Russia for two months was incompatible with Article 5 of the Convention. The measures taken before, during, and after the peaceful protest in question against the applicants, including the order to stay a substantial distance away from the *Prirazlomnaya*, the dispersal of the protest action with the use of excessive force, capture of the *Arctic Sunrise*, apprehension, arrest, and detention of the applicants, filing of very serious criminal charges against them, constituted unlawful,

[58] See OSCE-ODIHR and Venice Commission *Guidelines on Freedom of Peaceful Assembly*, 2nd edition, 2010, Explanatory Notes, § 147; United Nations Human Rights Council, *Joint Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association and the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions on the Proper Management of Assemblies*, A/HRC/31/66 (4 February 2016), § 42; African Commission on Human and Peoples' Rights, *Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa* (4 March 2017), § 7.2.2.

unjustified and disproportionate restrictions of their rights protected by Article 10 of the Convention. As a consequence of those egregious human rights violations, the applicants suffered severe anguish and distress. The effects of their trauma are lasting and long-term. Some of the applicants received medical and psychological treatment in respect of post-traumatic stress disorder.

105. The applicants observe that the award on compensation rendered by the arbitral tribunal on 10 July 2017[59] has not to date been complied with by Russia.

106. The applicants respectfully request monetary compensation of non-pecuniary damage sustained by each of them. The applicants rely on the Court's wisdom in determination of the particular amount of compensation due to each of them.

107. The applicants respectfully request the Court to indicate in its judgment that the compensation should be transferred by the Russian authorities to the bank account of *Greenpeace International* in the Netherlands, for the latter to distribute the compensation between the individual applicants.

Conclusion

108. The applicants were apprehended by the Russian agents on 18/19 September 2013 and kept in unacknowledged detention up until 24 September 2013 in breach of the most fundamental guarantees of Article 5 of the Convention.

109. The applicants' detention in Russian custody from 24 September 2013 up until their release was in breach of Article 5 of the Convention, given that "reasonable suspicion" within the meaning of Article 5 § 1 (c) of the Convention of them having committed a crime of piracy was lacking and that it was unlawful as it constituted the breach of the international obligations of the Russian Federation under the United Nations Convention on the Law of the Sea.

110. The measures taken in respect of the applicants constituted an unlawful and disproportionate interference with the freedom of expression, therefore, they breached Article 10 of the Convention.

111. The applicants request just satisfaction of non-pecuniary damage pursuant to Article 41 of the Convention in the form of appropriate compensation.

[59] The text of that Award is available at: https://pcacases.com/web/sendAttach/2214.