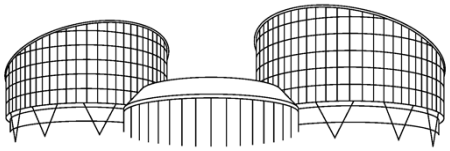

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF BRYAN AND OTHERS v. RUSSIA

(Application no. 22515/14)

JUDGMENT

Art 35 § 2 (b) • Matter already submitted to another international procedure • Inter-state arbitration proceedings under the United Nations Convention on the Law of the Sea relating to the detention of a vessel sailing under the flag of the Netherlands and the Greenpeace activists on board • Subject-matter, objectives of procedures and complainants before the Court and the arbitral tribunal substantially different
Art 34 • Victim • Settlement reached in inter-State dispute awarding, *inter alia*, the applicants' compensation, not depriving them of their victim status • Lack of acknowledgment by the respondent Government, at the domestic and international level, of a Convention violation • General amnesty resulting in discontinuation of criminal proceedings against the applicants, not relating to their specific situation or acknowledging a breach of their rights
Art 5 § 1 • Art 5 § 1 (c) • Unlawful arrest and detention • Applicants' unacknowledged detention on board the vessel following a protest at an offshore oil drilling platform in the Pechora Sea within the Russian Federation's exclusive economic zone • Subsequent arrest and detention arbitrary
Art 10 • Freedom of expression • Unlawful nature of detention impacting on lawfulness of interference

STRASBOURG

27 June 2023

FINAL

27/09/2023

This judgment has become final under Article 44 § 2 of the Convention.
It may be subject to editorial revision.

In the case of Bryan and Others v. Russia,

The European Court of Human Rights (Third Section), sitting as a Chamber composed of:

Pere Pastor Vilanova*, President*,
Jolien Schukking,
Yonko Grozev,
Georgios A. Serghides,
Peeter Roosma,
Ioannis Ktistakis,
Andreas Zünd*, judges*,
and Olga Chernishova, *Deputy Section Registrar,*

Having regard to:

the application (no. 22515/14) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by thirty applicants ("the applicants"), on 17 March 2014;

the decision to give notice to the Russian Government ("the Government") of the complaints concerning their detention and the alleged interference with their right to freedom of expression;

the observations submitted by the Government and the observations in reply submitted by the applicants;

the comments submitted by the Government of the Kingdom of the Netherlands ("the Netherlands"), the Government of the Kingdom of Sweden ("Sweden"), the Government of Ukraine ("Ukraine") and two non-governmental organisations (NGOs), the Media Legal Defence Initiative (MLDI) and ARTICLE 19, who were granted leave to intervene in the written procedure by the President of the Section (Article 36 §§ 1 and 2 of the Convention and Rule 44 § 3 of the Rules of Court) and the fact that the Governments of Denmark, Finland, France, Italy, Poland, Switzerland, Türkiye and the United Kingdom did not submit any comments;

the decision of the Court not to hold a hearing under Rule 54 § 5;

the decision of the President of the Section to appoint one of the elected judges of the Court to sit as an *ad hoc* judge, applying by analogy Rule 29 § 2 of the Rules of Court (see, for a similar situation, *Kutayev v. Russia*, no. 17912/15, §§ 5-8, 24 January 2023);

Having deliberated in private on 6 June 2023,

Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The present application concerns a protest action attempted by the applicants – thirty Greenpeace activists, including two freelance journalists – at the *Prirazlomnaya* offshore oil drilling platform, located in the Pechora

Sea within the exclusive economic zone ("EEZ") of the Russian Federation, and their subsequent arrest and detention.

THE FACTS

2. A list of the applicants, their personal details and details of their cases are set out in the appendix. The applicants were represented by Mr S.A. Golubok and Mr J. Teulings lawyers practising, respectively, in Russia and in the Netherlands, and later also assisted by Mr M. de Jong, lawyer practicing in the Netherlands.

3. The Government were represented by Mr M. Galperin, former representative of the Russian Federation to the European Court of Human Rights, and later by his successor in that office, Mr M. Vinogradov.

4. The facts of the case may be summarised as follows.

I. ARREST OF THE APPLICANTS

5. Since 2010 Greenpeace International and other national and regional Greenpeace organisations have been promoting a "Save the Arctic" campaign. The objective of the campaign is to "secure international agreement to create a global sanctuary in the uninhabited area around the North Pole and a ban on offshore oil-drilling and industrial fishing in Arctic waters". In the course of this campaign Greenpeace has staged a number of peaceful protests at sea, including in August 2012 at the Russian offshore oil production platform *Prirazlomnaya*, which is located in the Pechora Sea within the exclusive economic zone of Russia ("the EEZ").

6. An ownership certificate dated 26 April 2012 issued by the State Registry of Vessels states that "vessel – MISP [marine ice-resistant stationary platform] *Prirazlomnaya*" belonged to the Russian companies Gazprom JSC (93.6%) and Gazprom Neft Shelf LLC (6.4%). On 23 October 2012, by a final judgment in case no. A26-3152/2012, the St Petersburg Thirteenth Appellate Commercial Court held that on 26 September 2012 the *Prirazlomnaya* had been registered as a marine ice-resistant stationary platform and should be treated as such. The *Prirazlomnaya* reportedly commenced oil production in December 2013 and is operated by Gazprom Neft Shelf LLC.

7. In September 2013 the "Arctic 30" (twenty-eight Greenpeace activists (including a Greenpeace press-officer, Mr Allakhverdov) and two freelance journalists (Mr Bryan and Mr Sinyakov)) travelled to the Pechora Sea (the south-eastern part of the Barents Sea) on board a vessel called the *Arctic Sunrise*, which was sailing under the flag of the Netherlands. The activists intended to stage a peaceful protest at the platform. They informed the *Prirazlomnaya* operator of their plan, supplying a description of the form the protest would take ("non-violent direct action"), and stating that some

activists would scale the platform and set up a survival capsule where they would stay until Gazprom dropped its plans to drill for oil in the Arctic. The Russian Coast Guard was likewise informed about the forthcoming protest.

8. On 16 September 2013 the crew on the Russian Coast Guard vessel the *Ladoga* detected the *Arctic Sunrise* in the southern part of the Barents Sea in the vicinity of the *Prirazlomnaya*. They sent a radio signal informing the crew of the *Arctic Sunrise*, in English, that (i) they had steered a course that was in breach of the 1982 United Nations Convention on the Law of the Sea which provided for safe navigation around, *inter alia*, offshore structures, including the *Prirazlomnaya* platform, which was within the Russian EEZ; (ii) they had no permission to transit Russian territorial waters or to use the Northern Sea Route; and (iii) countermeasures would be applied against the *Arctic Sunrise*. The *Arctic Sunrise* set a course for the Kara Strait.

9. On 17 September 2013 the *Arctic Sunrise* steered a course towards the *Prirazlomnaya*. The crew of the *Ladoga* alerted the *Arctic Sunrise* to the Notice to Mariners concerning the *Prirazlomnaya* (see paragraph 36 below) and issued a warning not to enter the platform's three-nautical-mile danger zone or its five-hundred-metre exclusion zone. After that, the *Arctic Sunrise* stayed outside a three-nautical-mile radius of the platform.

10. On 18 September 2013 five inflatable boats left the *Arctic Sunrise* and headed towards the *Prirazlomnaya*, carrying a survival capsule with them. The *Arctic Sunrise* remained outside the three-nautical-mile zone around the *Prirazlomnaya*. When the survival capsule's towline snapped, the *Arctic Sunrise* retrieved the capsule and the activists on the inflatable boats went on without it to the *Prirazlomnaya* platform.

11. Two of the applicants (Ms Sini Annukka Saarela and Mr Marco Paolo Weber) began scaling the outside structure of the platform with the aim of unfurling a banner protesting against the imminent commencement of oil extraction at the *Prirazlomnaya* platform. According to the applicants, the climbers did not intend to reach the deck or take control of the platform and their ropes were attached about ten metres below the deck. In response to those actions the *Ladoga* sent two unmarked inflatables, each manned by at least three Russian State agents wearing balaclavas and armed with weapons. The agents threw lines towards the motors of the Greenpeace inflatables and threatened the activists with guns and knives. Water cannon was fired from the platform at the two climbers and they climbed down. The Russian agents took the climbers on to the *Ladoga* and the Greenpeace inflatables returned to the *Arctic Sunrise*. The *Ladoga* then repeatedly radioed the *Arctic Sunrise*, ordering it to stop and to allow an investigation team on board on the grounds that the activists had attacked the *Prirazlomnaya* platform and were suspected of piracy and terrorism. The *Arctic Sunrise* refused to comply, the captain arguing that it was in international waters and requesting the return of the two climbers. When agents from one of the *Ladoga* inflatables attempted to board the *Arctic Sunrise*, it undertook evasive manoeuvres. The *Arctic Sunrise*

continued cruising in the vicinity of the *Prirazlomnaya* platform awaiting the return of the two climbers.

12. On 19 September 2013, after another order to stop and to allow an investigation team on board, armed agents of the Russian Federal Security Service ("the FSB") boarded the *Arctic Sunrise* from a helicopter. The FSB agents took control of the vessel and its crew. Sometime later on that day the two climbers (Ms Saarela and Mr Weber) were transferred from the *Ladoga* to the *Arctic Sunrise*.

13. On 20 September 2013 the commanding officer of the *Ladoga* decided to move the *Arctic Sunrise* to the port of Murmansk in order to initiate administrative-offence proceedings against the captain, Mr Willcox, under Article 19.4 § 2 of the Code of Administrative Offences ("the CAO") (see paragraph 33 below) for failure to comply with the lawful order of an officer within the EEZ to stop a vessel and allow an inspection. Between 20 and 24 September 2013 the *Arctic Sunrise* was towed to Murmansk.

II. CRIMINAL PROCEEDINGS AGAINST THE APPLICANTS

14. On 24 September 2013, when the *Arctic Sunrise* entered Russian territorial waters near Murmansk, the Investigative Committee of the Russian Federation opened criminal proceedings against the applicants for piracy. The decision referred to an "attack" by unidentified individuals using the *Arctic Sunrise* against the *Prirazlomnaya*, the latter being referred to as a "marine vessel – marine ice-resistant stationary platform". A group of investigators led by Captain T. under the command of General M. were appointed to carry out the investigation. On the same day the applicants were transferred from the *Arctic Sunrise* to the premises of the investigative authorities. On 24 and 25 September 2013 they were officially arrested as suspects.

15. On 26, 27 and 29 September 2013 (see the appendix) the Leninskiy District Court of Murmansk ("the District Court") authorised the applicants' detention until 24 November 2013. The District Court found that the prosecution had reasonable grounds to suspect the applicants of the particularly serious crime of piracy committed by a group of persons and to consider that the applicants, mostly foreign nationals, might abscond or interfere with the investigation. It determined that their pre-trial detention had begun on 24 September 2013. The applicants appealed against the detention orders, arguing that there were no grounds for bringing charges of piracy since the *Prirazlomnaya* was clearly not a vessel. The applicants also asserted that their arrest and detention had been unlawful because, among other reasons, they had not been brought before a judge within forty-eight hours of their actual arrest. In the proceedings before the District Court, Mr Allakhverdov stated that he was the head of Greenpeace's press unit and Mr Sinyakov pointed out that he was a freelance journalist.

16. On 2 and 3 October 2013 the applicants were charged with committing piracy "under the disguise of environmental defence activities".

17. On 7 October 2013 the District Court ordered the arrest of the *Arctic Sunrise*.

18. On various dates between 8 and 24 October 2013 (see the appendix), the Murmansk Regional Court ("the Regional Court") upheld the applicants' detention orders on appeal. The Regional Court agreed, in particular, with the reasoning of the District Court that the prosecuting authorities had had a reasonable suspicion that the applicants had committed piracy, although the objective and subjective elements of the crime of piracy would be determined later on the basis of the evidence during the criminal proceedings against the applicants. As for the status of the *Prirazlomnaya*, the Regional Court noted that it was registered in the State Registry of Vessels with no mention of the word "platform". The Regional Court also held that the applicants had not been detained when the *Arctic Sunrise* had been towed to Murmansk. After their arrival in Murmansk the procedure for the applicants' arrest had complied with the legal requirements and time limits.

19. In the proceedings in the Regional Court, the three journalist applicants (Mr Allakhverdov, Mr Bryan and Mr Sinyakov) also referred to their professional occupation and contended that they had only been present to report on the protest action. Two applicants, Mr D'Alessandro and Mr Haussmann, said that as members of Greenpeace they had only ever taken part in peaceful protests. The Regional Court held that the pre-trial detention of Mr Allakhverdov had been justified because, as a Greenpeace employee, he "could be in possession of information concerning the group's structure and plans". The Regional Court refused to consider Mr Bryan as a journalist because, as the court established, he had no employment contract with any foreign publisher and was not accredited as a journalist on the territory of Russia. The Regional Court did not address the same argument with regard to Mr Sinyakov but stated only that he had no official employment and had been a flight risk. The Regional Court ignored the arguments of Mr D'Alessandro and Mr Haussmann on this point.

20. On 21 October 2013 General M. wrote to Captain T. that it had been established that the *Prirazlomnaya* platform was not a vessel but a port facility. That conclusion precluded criminal liability for piracy and the applicants' actions were therefore to be reclassified as hooliganism.

21. On 23 October 2013 Captain T. issued a decision to amend the charges against the applicants to hooliganism. On various dates between 24 and 31 October 2013 (see the appendix) the applicants were charged with hooliganism. No information has been submitted to the Court as to whether the reasons for their continuing pre-trial detention were reviewed by the domestic courts after the charges against them were amended.

22. On 11 and 12 November 2013 the applicants were transferred to St Petersburg. On various dates between 18 and 28 November 2013 (see the

appendix) the applicants were granted bail. Eventually, on various dates between 20 and 29 November 2013 (see the appendix) the applicants were released.

23. On 18 December 2013 the Russian Parliament enacted an amnesty of people accused or convicted of certain less serious offences (including hooliganism) to commemorate the twentieth anniversary of the Constitution of the Russian Federation. On 24 and 25 December 2013 the criminal prosecution against the applicants was discontinued because of the amnesty.

III. ARBITRATION PROCEEDINGS UNDER THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA

24. On 4 October 2013 the Netherlands initiated inter-state arbitration proceedings against Russia pursuant to Article 287 and Annex VII of the United Nations Convention on the Law of the Sea ("the UNCLOS"), in connection with the measure taken by Russia against the *Arctic Sunrise*. On 22 November 2013 the International Tribunal for the Law of the Sea ("ITLOS") granted the request of the Netherlands for provisional measures and issued an order prescribing Russia (i) to immediately release the vessel Arctic Sunrise and all persons who had been detained, upon the posting of a bond or other financial security by the Netherlands which was set at 3,600,000 euros and (ii) to ensure that the vessel *Arctic Sunrise* and all persons who had been detained were allowed to leave the territory and maritime areas under the jurisdiction of the Russian Federation. The Government of the Netherlands alleged in its memorandum, submitted in the arbitration proceedings, that Russia had not fully complied with the provisional measures prescribed by the ITLOS, as the arrest of the vessel (see paragraph 17 above) had been lifted by the Investigative Committee only on 6 June 2014 and the non-Russian nationals had been cleared to depart the country only on 26 and 27 December 2013.

25. On 22 October 2013 Russia sent a *Note Verbale* to the Netherlands referring to the Declaration it made when ratifying UNCLOS, in which it stated that it did not accept the procedures under UNCLOS which entailed binding decisions with respect to disputes concerning law-enforcement activities in regard to the exercise of sovereign rights of jurisdiction. In another *Note Verbale* dated 27 February 2014 and addressed to the Permanent Court of Arbitration Russia stated that "[the] Russian side confirms its refusal to take part in this arbitration and abstains from providing comments both on the substance of the case and procedural matters."

26. On 26 November 2014 the arbitral tribunal constituted under Article 3 of Annex VII of UNCLOS issued its award on jurisdiction stating that "[t]he Declaration of Russia upon ratification of [UNCLOS] does not have effect of excluding the present dispute from the procedures of Section 2 of Part XV

[UNCLOS] and, therefore, does not have the effect of excluding the present dispute from the jurisdiction of the Tribunal."

27. The Russian Federation did not participate in the arbitration proceedings.

28. On 14 August 2015 the arbitral tribunal issued its award on the merits of the case. Having examined the video recorded at the *Prirazlomnaya* and interrogation records, it held, *inter alia*, that the two activists who had climbed the platform, Ms Saarela and Mr Weber, had been forced to descend from it by the employees of the platform firing water cannons at them.

29. The arbitral tribunal found, among other things, that

(i) while, in interpreting provisions of the UNCLOS, it could have regard to the extent necessary to rules of customary international law, including international human rights standards, it did not have jurisdiction to apply provisions of the International Covenant on Civil and Political Rights (1966), such as, for example, the right to liberty and security, directly to persons on board a vessel or to determine breaches of such provisions;

(ii) the boarding, seizure and detention of the *Arctic Sunrise* on 19 September 2013 could not have been justified as an exercise of the right of visit to a vessel on suspicion of piracy under Article 110 of the UNCLOS and that those actions did not comply with the UNCLOS; and

(iii) all law-enforcement measures taken by Russia in respect of the *Arctic Sunrise* following its unlawful boarding, seizure and detention of the vessel had had no basis in international law.

30. On 10 July 2017 the arbitral tribunal issued its award determining the compensation to be paid under the provisions of UNCLOS by the Russian Federation to the Netherlands for the damage caused. It ordered the Russian Federation to pay 5.4 million euros (EUR) to the Kingdom of the Netherlands, which included compensation for "non-material damage to the Arctic 30 for their wrongful arrest, prosecution and detention" in the amount of EUR 600,000.

31. On 8 November 2019 the applicants informed the Court that they had each received a payment, in accordance with the terms of a confidential settlement agreement reached in the inter-State dispute between the Kingdom of the Netherlands and the Russian Federation. In particular, the Kingdom of the Netherlands had transferred a sum of EUR 2,700,159.16 to Greenpeace International, which in turn had transferred a sum of EUR 605,000 to the thirty applicants, divided into equal shares (a sum of EUR 20,167 had been transferred to each of the bank accounts designated by the applicants). Neither the applicants nor Greenpeace International had been a party to the settlement and they had not taken part in the negotiations.

RELEVANT LEGAL FRAMEWORK

32. The United Nations Convention on the Law of the Sea, to which the Kingdom of the Netherlands and the Russian Federation are parties, provides as follows:

Article 60

Artificial islands, installations and structures in the exclusive economic zone

"1. In the exclusive economic zone, the coastal State shall have the exclusive right to construct and to authorize and regulate the construction, operation and use of:

...

(b) installations and structures for the purposes provided for in article 56 and other economic purposes;

...

2. The coastal State shall have exclusive jurisdiction over such ... installations and structures, including jurisdiction with regard to customs, fiscal, health, safety and immigration laws and regulations."

33. The Code of Administrative Offences of the Russian Federation provided as follows, at the relevant time:

Article 19.4
Failure to follow the lawful order of a public officer of a body exercising State or municipal supervision (control)

"...

2. Failure to follow the lawful command of a public officer (*должностное лицо*) working for the body protecting the continental shelf or the exclusive economic zone of the Russian Federation to stop a vessel, and impeding the exercise by such a public officer of the powers conferred upon him, including inspection of a vessel,

- shall entail the imposition of an administrative fine ... in the amount of fifteen thousand to twenty thousand roubles."

34. The Criminal Code of the Russian Federation provided as follows, at the relevant time:

Article 227
Piracy

"1. Any assault on a sea-going ship or a river-going boat with the aim of capturing other people's property, committed using violence or under the threat of its use, shall be punishable by deprivation of liberty for a term of five to ten years.

...

3. The actions referred to in the first or second part of this Article, if they have been committed by an organised group ..., shall be punishable by deprivation of liberty for a term of ten to fifteen years ...".

35. Section 7 § 1 of the Code of Merchant Shipping of the Russian Federation defines a vessel as a mobile or stationary floating construction used for merchant shipping. Section 7 § 2 defines a "floating marine platform" as a vessel for exploration and for the exploitation of mineral and other inanimate seabed resources.

36. The Notice to Mariners no. 6618-6774 of 10 December 2011 issued by the Department of Navigation and Oceanography of the Russian Ministry of Defence gives the terrestrial coordinates of the *Prirazlomnaya* and refers to it as a drilling rig.

THE LAW

I. ARTICLE 1 OF THE CONVENTION

37. The applicants and the respondent Government agreed, and the third-party interveners who submitted comments (the Governments of the Netherlands, Sweden and Ukraine; and also MLDI and ARTICLE 19) did not object, that at the time when the events complained about by the applicants had taken place, the applicants had been within the jurisdiction of the Russian Federation for the purposes of Article 1 of the Convention (see *Pad and Others v. Turkey* (dec.), no. 60167/00, § 54, 28 June 2007; *Medvedyev and Others v. France* [GC], no. 3394/03, §§ 9 and 67, ECHR 2010; and *Al-Skeini and Others v. the United Kingdom* [GC], no. 55721/07, §§ 136-37, ECHR 2011). The Court notes that, since the Russian authorities exercised full and exclusive control over the *Arctic Sunrise* and its crew, at least *de facto*, from the time of its interception, in a continuous and uninterrupted manner until they arrived at Murmansk, the applicants were effectively within Russia's jurisdiction for the purposes of Article 1 of the Convention (see, for similar reasoning, *Medvedyev and Others*, cited above, §§ 66-67).

II. JURISDICTION

A. Compliance with Article 35 §§ 2 (b) and 3 (a) of the Convention

1. Compliance with Article 35 § 2 (b) (whether the application has been submitted to another procedure of international investigation or settlement)

38. The Court observes that the factual circumstances giving rise to the present application have already been examined by an arbitral tribunal constituted in accordance with the UNCLOS (see paragraph 29 above). The Court reiterates that Article 35 § 2 (b) of the Convention is intended to avoid a situation where several international bodies would be simultaneously dealing with applications which are substantially the same. A situation of this type would be incompatible with the spirit and the letter of the Convention,

which seeks to avoid a multiplicity of international proceedings relating to the same cases. In determining whether its jurisdiction is excluded by virtue of this Convention provision the Court would have to decide whether the case before it is substantially the same as a matter that has already been submitted to a parallel set of proceedings and, if that is so, whether the simultaneous proceedings may be seen as "another procedure of international investigation or settlement" within the meaning of Article 35 § 2 (b) of the Convention. An assessment of whether cases are sufficiently similar would usually involve the comparison of the parties in the respective proceedings, the relevant legal provisions relied on by them, the scope of their claims and the types of the redress sought. As regards the analysis of the character of parallel proceedings, the Court's examination would not be limited to a formal verification but would extend, where appropriate, to ascertaining whether the nature of the supervisory body, the procedure it follows and the effect of its decisions are such that the Court's jurisdiction is excluded by Article 35 § 2 (b) (see *OAO Neftyanaya Kompaniya Yukos v. Russia*, no. 14902/04, §§ 520-22, 20 September 2011). The Court further reiterates that one of its functions in dealing with applications lodged under Article 34 is to render justice in individual cases and, if necessary, to afford just satisfaction (see *Selahattin Demirtaş v. Turkey (no. 2)* [GC], no. 14305/17, § 182, 22 December 2020).

39. The Court notes that in the present case, no objection was made by either the respondent Government or the intervening third parties to the Court's examining the present application on account of the fact that the proceedings under the UNCLOS had taken place. The Court reiterates that its competence is restricted in relation to any applications falling within the scope of Article 35 § 2 (b) and it has no jurisdiction over such cases (see *POA and Others v. the United Kingdom* (dec.), no. 59253/11, § 27, 21 May 2013). For this reason, while the Government did not make any objections under this head, it is necessary for the Court to examine the issue of its own motion. It cannot set this admissibility criterion aside merely because the Government have not made a preliminary objection based upon it (ibid.).

40. The Court notes that the arbitration proceedings were intergovernmental and concerned only Russia's breach of obligations it owed to the Netherlands as the country under whose flag the vessel had sailed under the UNCLOS. The UNCLOS arbitral tribunal did not deal with the subject matter of the present application, that is to say, the complaints of the thirty applicants in their individual capacity of breaches of their rights under Articles 5 and 10 of the Convention and it expressly stated that it did not have jurisdiction to apply directly provisions of international human rights law, such as the relevant articles of the International Covenant on Civil and Political Rights (see paragraph 29 above). Furthermore, the applicants were not a party to those proceedings and the Government of the Netherlands were not acting before the UNCLOS tribunal as a representative of the applicants,

who were not associated in the proceedings in any way (see, *a contrario*, *POA and Others v. the United Kingdom* (dec.), no. 59253/11, §§ 30-32, 21 May 2013). The Court therefore observes that not only the subject-matter and the objectives of both procedures, but also the complainants before the Court and the UNCLOS arbitral tribunal were substantially different (see, for instance, *Celniku v. Greece*, no. 21449/04, § 40, 5 July 2007; *Illiu and Others v. Belgium* (dec.), no. 14301/08, 19 May 2009; *Kavala v. Turkey*, no. 28749/18, § 94, 10 December 2019; and *Eğitim ve Bilim Emekçileri Sendikası v. Turkey*, no. 20641/05, § 38, ECHR 2012 (extracts)). In these circumstances, it can be concluded that the two matters are not "substantially the same" and the subject matter of the present individual application has not been submitted to another procedure of international investigation or settlement within the meaning of Article 35 § 2 (b) of the Convention.

2. Compliance with Articles 34 and 35 § 3 (a) (whether the applicants can no longer claim to be victims of the alleged violations)

41. The Court further notes that the applicants did receive a payment as a result of the settlement which was reached by the Governments of the Netherlands and Russia in their inter-State dispute and which, as the respondent Government submitted, was independent from the arbitration proceedings (see paragraphs 29-31 above). The Court must therefore determine whether the applicants have lost their victim status by having obtained financial redress.

42. The applicants submitted that they had not lost their victim status because they had not been a party to either the arbitral proceedings or the settlement negotiations between the Governments of the Netherlands and Russia. They pointed out that the payment made to them had not been accompanied by any acknowledgment of violations of their rights and that the amount paid had not been sufficient to constitute just satisfaction within the meaning of Article 41 of the Convention.

43. The respondent Government submitted that the agreement that they had reached with the Government of the Netherlands was an example of an amicable settlement of disputes, that its details had been made confidential and that the applicants had disclosed the amounts that they had received from Greenpeace. They further stated that the settlement agreement of 17 May 2019 reached within the framework of the inter-State case and the applicants' complaint lodged with the Court under the Convention could not be regarded as parallel proceedings and that "it [could] not be unequivocally asserted" that the applicants had lost their victim status. Nevertheless, the compensation paid to the applicants "directly affect[ed] their status as potential victims" of violations of Convention provisions, and should in any case be taken into account by the Court. They further emphasised that (i) the Russian Federation had not taken part in the arbitration proceedings under UNCLOS because the tribunal did not have jurisdiction; (ii) the tribunal's decision should not be

viewed as a settlement of the dispute; and (iii) no amounts awarded in those proceedings should be used as the basis for calculation of just satisfaction, if any, in the proceedings before the Court.

The Government of Ukraine, as a third-party intervening State, submitted that the applicants had not lost their victim notwithstanding the payment that had been received by them, "given the nature and the gravity of violations suffered and damage inflicted on them". The Governments of the Netherlands and Sweden made no specific observations on this issue.

44. The Court reiterates that it falls first to the national authorities to redress any alleged violation of the Convention. In this regard, the question whether an applicant can claim to be a victim of the violation alleged is relevant at all stages of the proceedings under the Convention (see, among many other authorities, *Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], no. 38433/09, § 80, ECHR 2012). The Court further reiterates that a decision or measure favourable to the applicant is not in principle sufficient to deprive him or her of "victim" status unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention (ibid., § 81).

45. The Court considers that even though the amount of compensation obtained by the applicants may appear appropriate and sufficient, the Government did not submit any evidence that it had acknowledged, either at the domestic or the international level, that there had been a violation of the Convention. The Court notes that the criminal proceedings against the applicants were terminated following an amnesty (see paragraph 23 above). The amnesty, being of a general nature, did not, however, relate specifically to the applicants' situation and did not acknowledge that there had been any breach of their rights (see *Albayrak v. Turkey*, no. 38406/97, § 33, 31 January 2008). In those circumstances, and in the absence of proof of any such acknowledgment, the Court considers that the applicants can still claim to be, under Article 34 of the Convention, the victims of the violations alleged, and that it has *ratione personae* jurisdiction to examine their complaint under Article 35 § 3 (a) of the Convention (see, for similar reasoning, *Centro Europa 7 S.r.l. and Di Stefano*, cited above, §§ 84 and 87).

B. Jurisdiction in respect of the respondent State

46. Lastly, the Court observes that the facts giving rise to the alleged violations of the Convention occurred prior to 16 September 2022, the date on which the Russian Federation ceased to be a Party to the Convention and that the Court therefore has jurisdiction to deal with the present application (see *Fedotova and Others v. Russia* [GC], nos. 40792/10 and 2 others, §§ 68-73, 17 January 2023).

C. Conclusion

47. In the light of the above considerations, the Court holds that it has jurisdiction to examine the admissibility and merits of the present application.

III. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

48. The applicants complained under Article 5 of the Convention that their initial arrest and detention had been arbitrary and not in accordance with the law. They further complained under Article 5 § 1 (c) of the Convention that their subsequent pre-trial detention had not been lawful or based on any reasonable suspicion of their having committed piracy. Article 5 of the Convention reads, in so far as relevant, as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> ...
>
> (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so ..."

A. Admissibility

1. Compatibility ratione materiae

49. The Court notes that the parties were in dispute as to whether the deprivation of the applicants' liberty between 18 and 24 September 2013, before they arrived in the port of Murmansk on 25 September 2013, had fallen to be examined under Article 5 of the Convention. The Court must therefore first determine whether this part of the applicants' complaint is compatible *ratione materiae* with that provision.

(a) The parties' submissions

(i) The Government's submissions

50. The Government submitted that the applicants had not been deprived of their liberty within the meaning of Article 5 of the Convention between 18 and 24 September 2013. They described the sequence of the events as follows.

51. On 17 September 2013 a group of thirty people on board the *Arctic Sunrise* vessel had arrived at the location of the *Prirazlomnaya* platform, within the exclusive economic zone of Russia. Ignoring the warnings of border guards, some of those people had set off in five boats, crossed into the

three-mile security zone around the *Prirazlomnaya* and attempted to board the platform.

52. The FSB had stopped the unlawful actions of two applicants, Ms Saarela and Mr Weber, who had started scaling the platform with the use of climbing equipment. When those two applicants had been discovered by the border service, they had been in the water near the *Prirazlomnaya*. In accordance with the 1979 Convention on Maritime Search and Rescue, the border guards had treated them as people in distress and had taken them on board the *Ladoga* to save their lives. First aid had been provided to them. On 19 September 2013 they had been transferred from the *Ladoga* to the *Arctic Sunrise*.

53. According to a crime report of 18 September 2013 drawn up by a border service investigator, the nine people in the inflatable boats had been in possession of objects resembling weapons and ammunition, their faces had been partially obscured by clothes and glasses, and their actions had been of an "obviously criminal nature". The situation had been considered to constitute an unlawful act endangering the security of the *Prirazlomnaya* platform and the safety of its staff and which could have caused an emergency incident. The applicants' actions, therefore, had included elements of the crime of piracy.

54. On 19 September 2013 the *Ladoga* captain had ordered the captain of the *Arctic Sunrise* to stop and to allow the border service to inspect the vessel. The captain of the *Arctic Sunrise* had refused to comply with that lawful order, and consequently the border guards had boarded the *Arctic Sunrise*, as permitted under Article 73 of the UNCLOS. It had been impossible to draw up an administrative-offence report at the place where the offence had been discovered, so the *Arctic Sunrise* had been asked to go to the port of Murmansk. As the *Arctic Sunrise*'s captain had refused to cooperate, the vessel had been towed. On 24 September 2013 the applicants had arrived at Murmansk.

55. The Government submitted that none of the applicants had been deprived of their liberty within the meaning of Article 5 of the Convention. The two applicants who had climbed up the *Prirazlomnaya* had been rescued from their distress and then returned to the *Arctic Sunrise*. During the towing of the *Arctic Sunrise* all its crew members had been able to move freely around the two accommodation decks, and only their access to the engine room, cargo hold, upper deck and cockpit had been limited. The captain had been allowed to stay in his cabin and could move around the vessel accompanied by border guards.

56. The Government further submitted that the applicants had not been deprived of their liberty during the towing of their vessel because no records of their arrest had been drawn up until 24 and 25 September 2013. No restraint measures had been applied to them and their stay on board the *Arctic Sunrise* while it was being towed to Murmansk had been made necessary by

the vessel's location in the open sea. Only on 24 and 25 September 2013 had the applicants been arrested as criminal suspects.

(ii) The applicants' submissions

(α) The detention of Ms Saarela and Mr Weber on 18-19 September 2013

57. The applicants submitted that Ms Saarela and Mr Weber had been "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 transfer to the *Arctic Sunrise*, where they had been reunited with the rest of the Arctic 30, who were already in Russian custody, on 19 September 2013.

58. In particular, they pointed out that (i) Ms Saarela and Mr Weber had been captured by the FSB officers after attempting to conduct a peaceful protest by climbing up the side of the *Prirazlomnaya* platform with the aim of unfurling a banner protesting against oil drilling in the Arctic; (ii) the authorities had not claimed in either the domestic or the international proceedings that the arresting officers had in fact considered those two applicants to be persons in distress; (iii) Mr S., a member of the crew of the *Ladoga*, had referred to them as "detainees" in his testimony and described how they had been brought on board after being forced to climb down and get into the inflatable boats; and (iv) Ms Saarela's and Mr Weber's continued detention on board the *Ladoga* had not been justified since the *Arctic Sunrise* had remained near the *Ladoga* and it had been ready to take them. Moreover, Ms Saarela testified that she had been searched; that her personal belongings, including medication, had been taken away from her; and that she could not move freely on the *Ladoga*, including having to be accompanied to the toilet by one of the guards.

(β) The detention of the applicants from 19 to 24 September 2013

59. The applicants further submitted that several factors indicated that they had all been deprived of their liberty within the meaning of Article 5 of the Convention between 19 and 24 September 2013. In particular, on 19 September 2013 an unmarked helicopter bearing only a red star on its underside had approached the *Arctic Sunrise*. It had hovered over the vessel while several masked armed servicemen in unmarked uniforms had descended on a rope lowered from the helicopter and had taken control of the *Arctic Sunrise*. The applicants had been searched and then confined to their cabins. Their digital equipment, including communications devices, had been seized. Furthermore, the captain, Mr Willcox, who had been kept separately on the bridge, had been requested by the servicemen to sail for Murmansk but he had refused to do so unless he could first inform Greenpeace International, the vessel's operator, which the servicemen had refused to allow him to do. The *Arctic Sunrise* had then been towed by the *Ladoga* to the port of

Murmansk, where it had arrived on 24 September 2013. For the whole duration of that trip (19-24 September 2013) the applicants had not been able to move freely around on board and had been kept under guard. The captain had been allowed to move around but he had always been accompanied. Lastly, the fact that the applicants had been "detained" (*задержан[ы]*) by the Russian border guards had been established by the Russian migration authorities, which had determined that the applicants had been brought to the territory of Russia involuntarily and therefore had not prosecuted them for crossing the border illegally or for being unlawfully present in the country.

(b) The third-party interveners' observations

60. The third-party intervening States (the Netherlands, Sweden and Ukraine) submitted that in so far as their nationals among the applicants were concerned, they had been deprived of their liberty between 19 and 24 September 2013 within the meaning of Article 5 of the Convention, having been involuntarily confined on a vessel whose course had been set by the Russian authorities.

61. MLDI and ARTICLE 19 made no specific submissions in connection with the applicants' Article 5 complaint.

(c) The Court's assessment

62. The Court reiterates that it is not bound by the legal conclusions of the domestic authorities as to whether or not there has been a deprivation of liberty, and that it undertakes an autonomous assessment of the situation. Article 5 – paragraph 1 of which proclaims the "right to liberty" – is concerned with a person's physical liberty. Its aim is to ensure that no one should be dispossessed of this liberty in an arbitrary fashion. In order to determine whether someone has been "deprived of his liberty" within the meaning of Article 5, the starting-point must be that person's practical 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. The difference between deprivation of and restriction on liberty is merely one of degree or intensity, and not one of nature or substance (see *Medvedyev and Others*, cited above, § 73, with further references, and *Khlaifia and Others v. Italy* [GC], no. 16483/12, § 64, 15 December 2016, with further references). Furthermore, the Court has held that the notion of deprivation of liberty does not only comprise the objective element of a person's confinement in a particular restricted space for a not negligible length of time. A person can only be considered to have been deprived of his or her liberty if, as an additional subjective element, he or she has not validly consented to the confinement in question (see *Stanev v. Bulgaria* [GC], no. 36760/06, § 117, ECHR 2012).

63. The Court notes that in so far as the apprehension of Ms Saarela and Mr Weber and their presence on board of the *Ladoga* on 18-19 September 2013 are concerned, the applicability of Article 5 of the Convention cannot be excluded by the fact, relied on by the Government, that the authorities' aim had been to assist the applicants and ensure their safety (see paragraph 52 above). Even measures intended for protection or taken in the perceived interests of the person concerned may be regarded as a deprivation of liberty (see *Khlaifia and Others*, cited above, § 71). In any case, the Court observes that it was not alleged by the applicants that either Ms Saarela or Mr Weber had been a person in distress or in need of being rescued, as the Government put it. As the case material indicates, after the platform employees had fired water cannons at Ms Saarela and Mr Weber forcing them to climb down from the *Prirazlomnaya*, those two applicants had been taken on board the *Ladoga* by the FSB officers against their will. Ms Saarela had been searched and they had both been detained and not allowed to move freely until they were moved to the *Arctic Sunrise* the next day (see paragraphs 11, 29 and 58 above). The Court considers that an element of coercion was without a doubt present in the measures which were applied to these two applicants on 18 and 19 September 2013 and which prevented them from returning of their own volition to the *Arctic Sunrise*, and that they were in fact deprived of their liberty within the meaning of Article 5 of the Convention (see *Foka v. Turkey*, no. 28940/95, §§ 76-79, 24 June 2008).

64. As regards the situation of all the applicants between 19 and 24 September 2013, the Court observes that it was very similar to the events described in the case of *Medvedyev and Others* (cited above). The applicants in the present case were on board their vessel when they were taken under the control of Russian forces, who directed the course of the vessel for nearly a week, towing it to Murmansk. The fact that, as the Government put it, nobody had been physically restrained does not constitute a decisive factor in establishing the existence of a deprivation of liberty (see *M.A. v. Cyprus*, no. 41872/10, § 193, ECHR 2013 (extracts)). The Court considers that in the circumstances described the applicants were deprived of their liberty between 19 and 24 September 2013 within the meaning of Article 5.

2. Exhaustion of domestic remedies

65. The parties also disagreed as to whether the applicants had exhausted available domestic remedies in respect of their complaint about their detention on 18 and 19 September 2013 (in so far as Ms Saarela and Mr Weber are concerned) and between 19 and 24 September 2013 (in so far as all applicants are concerned). In particular, the Government submitted that the applicants had not brought any domestic claims in respect of the alleged non-pecuniary damage incurred as a result of their unlawful detention. The third-party interveners made no submissions in this respect.

66. The Court observes from the case material that Ms Saarela and Mr Weber complained to the Murmansk Regional Court about their detention on board the *Ladoga* on 18 and 19 September 2013 and that all the applicants complained to that court about their detention on the *Arctic Sunrise* between 19 and 24 September 2013. That court, in ordering their pre-trial detention, entirely disregarded their arguments and ruled that their detention had started on 24 September 2013.

67. The Court reiterates that where an allegedly unlawful detention has come to an end, a compensation claim capable of leading to an acknowledgment of the alleged violation and an award of compensation is in principle an effective remedy which needs to be pursued if its effectiveness in practice has been convincingly established (see *Selahattin Demirtaş*, cited above, § 208, with further references). However, where no acknowledgment, whether implicit or explicit, was made at the domestic level that the applicant's detention was improper or unlawful, a compensation claim could not be regarded as an effective remedy (ibid., §§ 209 and 214). The Court accordingly considers that in the circumstances of the present case, where the court ordering the applicants' pre-trial detention neither acknowledged that they had been detained for five days on board the vessel nor explained their procedural status during that time, the applicants could not be expected to pursue a compensation claim and the Government's objection in that respect must therefore be dismissed.

3. Conclusion as to the admissibility of the applicants' complaint under Article 5

68. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. Submissions of the parties and the third-party interveners

69. The applicants submitted that the detention of Ms Saarela and Mr Weber on 18 and 19 September 2013 and the detention of all of them between 19 and 24 September 2013 on board the *Arctic Sunrise* had been unrecorded and therefore unlawful. They further submitted that their pre-trial detention had not been based on a reasonable suspicion of their having committed an offence of piracy because (i) Greenpeace had informed the Russian Coast Guard of the planned peaceful protest action on the *Prirazlomnaya* beforehand (see paragraph 7 above); (ii) when the applicants' pre-trial detention was ordered, the investigators and the domestic courts had ignored the well-established fact that the *Prirazlomnaya* had been classified as a marine fixture with terrestrial coordinates and not as a sea or river vessel

within the meaning of Article 227 of the Criminal Code against which an act of piracy could be committed (see paragraphs 6, 20 and 36 above); and (iii) the UNCLOS, as an international treaty ratified by the Russian Federation, prevailed over the provisions of the Russian Criminal Code and the UNCLOS arbitral tribunal had established that by arresting and detaining the applicants the Russian Federation had breached various provisions of the UNCLOS.

70. The Government submitted that (i) according to the border service investigator's report of 18 September 2013, the applicants "were carrying objects which visually resembled weapons and ammunition", "[their] faces were hidden partly by their clothes or glasses", and "the boat crews' actions were definitely of a criminal nature"; (ii) between 18 and 24 September 2013 no reports or documents had been drawn up in respect of any of the applicants; (iii) it had not been possible to draw up an administrative offence record at the place where the offence had been committed; (iv) the applicants had not had the status of suspects; (v) the applicants' forced stay on board the vessel had been due to the fact that the vessel had been in the open sea; (vi) on 24 and 25 September 2013 the applicants had been apprehended on reasonable suspicion of having committed the offence of piracy by an organised group; and (vii) the domestic courts had provided sufficient reasons for the pre-trial detention of the applicants (lack of registration or permanent residence as non-Russian nationals; the accounts of eyewitnesses (the servicemen and other persons on board the *Ladoga*) of the applicants' committing the offence; and the *Prirazlomnaya* being registered in the State Registry of Vessels).

71. The third-party intervening States (the Netherlands, Sweden and Ukraine) submitted that in so far as their nationals among the applicants were concerned, they had been deprived of their liberty between 19 and 24 September 2013 in breach of Article 5 § 1 of the Convention.

2. The Court's assessment

(a) The detention of the applicants before 24 September 2013

72. The Court notes that even though, as has been established, the applicants were detained from 18 September 2013 (Ms Saarela and Mr Weber) and from 19 September 2013 to 24 September 2013 (the other applicants) (see paragraphs 63 and 64 above), their detention was not logged or recorded in any form (see paragraph 56 above). The Court does not accept the Government's argument that, at the time the applicants were captured in the vicinity of the oil platform, "it was impossible to draw up an administrative-offence report at the place where the offence had been discovered" (see paragraph 54 above) or that the applicants were not considered suspects (see paragraph 70 (iv) above). The Government asserted that on 18 September 2013 the applicants "were carrying objects which

visually resembled weapons and ammunition", that "[their] faces were hidden partly by their clothes or glasses", and that "the boat crews' actions were definitely of a criminal nature" (see paragraph 70 (i) above). It is therefore clear from the case material that the applicants were seen as suspects by the officers on the *Ladoga*, yet their detention was not documented in any form and the Government submitted no plausible explanation as to why it had not been possible to draw up an apprehension or arrest record at that time. Moreover, the Court considers that the applicants' unacknowledged detention was further aggravated by the failure of the District Court to address that issue and to consider 18 and 19 September 2013 (for Ms Saarela and Mr Weber and for the other applicants respectively) to be the starting date of their actual detention (see paragraphs 15 and 18 above) and also by the Regional Court's ruling, without a proper examination of the circumstances of the applicants' capture, that the applicants had not been detained while they had been on board the *Arctic Sunrise*.

73. The Court reiterates that that the unacknowledged detention of an individual is a complete negation of Article 5 guarantees and a most grave violation of that provision. Having assumed control over an individual, the authorities have a duty to account for his or her whereabouts (see *El-Masri v. the former Yugoslav Republic of Macedonia* [GC], no. 39630/09, § 233, ECHR 2012, and *Belozorov v. Russia and Ukraine*, no. 43611/02, § 113, 15 October 2015). In the circumstances of the present case, where no relevant holding data (such as the date, time and location of detention, the name of the detainees, the reasons for the detention and the name of the person effecting it) were recorded and where, moreover, the boarding, seizure and detention of the *Arctic Sunrise* on 19 September 2013 was found to have been in breach of the provisions of international law by another international tribunal (see paragraph 29 above), the detention of the applicants must be seen as incompatible with the very purpose of Article 5 of the Convention. There has accordingly been a violation of Article 5 of the Convention in respect of the applicants' detention before 24 September 2013.

(b) The detention of the applicants after 24 September 2013

74. The Court notes that the crux of the matter is whether the detention of the applicants after 24 September 2013 was lawful and justified under sub-paragraph (c) of Article 5 § 1 (see paragraphs 69 (i)-(iii) and 70 (vi) and (vii) above).

75. The Court reiterates that where the lawfulness of detention is in issue, including the question whether "a procedure prescribed by law" has been followed, 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. In all cases it establishes the obligation to conform to the substantive and procedural rules of the laws concerned, but it also requires that any deprivation of liberty be compatible with the purpose

of Article 5, namely, to protect the individual from arbitrariness (see *Medvedyev and Others*, cited above, § 79, with further references, and *Creangă v. Romania* [GC], no. 29226/03, § 84, 23 February 2012). Where deprivation of liberty is concerned it is particularly important that the general principle of legal certainty be satisfied. It is therefore essential that the conditions for deprivation of liberty under domestic and/or international law be clearly defined and that the law itself be foreseeable in its application, so that it meets the standard of "lawfulness" set by the Convention, a standard which requires that all law be sufficiently precise to avoid all risk of arbitrariness and to allow a person – if need be, with appropriate advice – to foresee, to a degree that is reasonable in the circumstances of the case, the consequences which a given action may entail (see *Medvedyev and Others*, cited above, § 80). It is a fundamental principle that no detention which is arbitrary can be compatible with Article 5 § 1 and the notion of "arbitrariness" in Article 5 § 1 extends beyond lack of conformity with national law, so that a deprivation of liberty may be lawful in terms of domestic law but still arbitrary and thus contrary to the Convention (see *Creangă*, cited above, § 84).

76. The Court notes that the Investigative Committee opened a criminal case and the District Court ordered the pre-trial detention of the applicants under Article 227 of the Criminal Code ("Piracy"). One of the required elements of the crime of piracy under that provision is that it should be committed against a "vessel". The Court notes that before the events in question, three documents had defined the status of the *Prirazlomnaya* as an ice-resistant stationary platform, namely (i) the ownership certificate; (ii) the judgment of the appellate commercial court; and (iii) the Notice to Mariners (see paragraphs 6 and 36 above). The ownership certificate also referred to the platform as a "vessel".

77. The Investigative Committee in its decision to open a criminal case against the applicants called the platform a "marine vessel – marine ice-resistant stationary platform"; the District Court did not confirm or deny that it was indeed a vessel; and the Regional Court stated, in response to the applicant's specific argument, that the State Registry of Vessels, in which the ownership certificate was recorded, made no mention of "the platform" (even though the ownership certificate clearly did – see paragraph 6 above) and that in any event this issue would be resolved in the main criminal proceedings (see, respectively, paragraphs 14, 15 and 18). On 24 October 2013, a month into the pre-trial detention of the applicants, the investigator admitted that the *Prirazlomnaya* was not a vessel but a port facility, which precluded criminal liability for piracy (see paragraph 20 above). In the Court's opinion, these circumstances indicate that the positions of various domestic authorities concerning the status of the *Prirazlomnaya* were inconsistent and mutually exclusive and that this had caused confusion as to the proper interpretation of Article 227 of the Criminal Code. The Court reiterates that detention will be

"arbitrary" where despite complying with the letter of national law, there has been an element of bad faith or deception on the part of the authorities or where the domestic authorities neglected to attempt to apply the relevant legislation correctly (see *Yaroshovets and Others v. Ukraine*, nos. 74820/10 and 4 others, § 141, 3 December 2015, and *James, Wells and Lee v. the United Kingdom*, nos. 25119/09 and 2 others, §§ 191-92, 18 September 2012). Furthermore, it appears from the case material that after the criminal charges against the applicants were reclassified as hooliganism, the new legal grounds for their continuing detention were not reviewed by the domestic courts (see paragraph 21 above) and the applicants continued to be detained until their release on bail in accordance with the original order for pre-trial detention, which was based on the piracy charges that had been dropped by the investigator. In those circumstances, it is difficult to classify this detention other than arbitrary. The Court holds, accordingly, that the applicants' detention after 24 September 2013 and until their release was not lawful within the meaning of Article 5 § 1 (c) of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

78. The applicants further complained that their apprehension, detention and prosecution had interfered with their right to freedom of expression, in breach of Article 10 of the Convention, which reads as follows:

> "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
>
> 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

79. The Court notes that the applicants lodged their application with the Court and relied expressly and solely on Article 10 of the Convention. It was against that background that notice of the application was given to the respondent Government by putting questions under Article 10. The Court, as master of the characterisation to be given in law to the facts of the case (see *Yılmaz and Kılıç v. Turkey*, no. 68514/01, § 33, 17 July 2008; *Women On Waves and Others v. Portugal*, no. 31276/05, § 28, 3 February 2009; and *Taranenko v. Russia*, no. 19554/05, §§ 68-69, 15 May 2014), will therefore examine this complaint solely from the standpoint of Article 10 of the Convention.

A. Admissibility

1. *Compatibility* ratione materiae

80. The Government submitted that "the applicants' actions [had] not evidence[d] their intention to receive and disseminate information" and that "the applicants had not presented any documents in the court hearing confirming their authority as journalists". The Court will examine this objection from the standpoint of applicability of Article 10.

81. The applicants submitted that they had informed the Gazprom management and the Russian authorities of their intention to hold a non-violent direct protest action at sea (see paragraph 7 above). Referring to *Hashman and Harrup v. the United Kingdom* ([GC], no. 25594/94, § 28, ECHR 1999-VIII), they pointed out that direct protest, even if it took the form of impeding activities of which the protesters disapproved, constituted an expression of opinion protected by Article 10 of the Convention. Through their vessel tour and protest, the Arctic 30 had intended to impart information about the threat to the environment caused by the planned drilling for oil at the *Prirazlomnaya* platform and to draw global attention to this issue of public interest.

82. The intervening third parties submitted that Article 10 was applicable in the present case.

83. The Court reiterates that the protection of Article 10 is not limited to spoken or written word, for ideas and opinions are also capable of being communicated by non-verbal means of expression or through a person's conduct (see *Karuyev v. Russia*, no. 4161/13, § 18, 18 January 2022, with further references, and *Mătăsaru v. the Republic of Moldova*, nos. 69714/16 and 71685/16, § 29, 15 January 2019). The protection of Article 10 extends not only to the substance of the ideas and information expressed but also to the form in which they are conveyed (see *Pentikäinen v. Finland* [GC], no. 11882/10, § 87, ECHR 2015). In deciding whether a certain act or conduct falls within the ambit of Article 10 of the Convention, the Court must consider the nature of the act or conduct in question, in particular its expressive character as seen from an objective point of view, and also the purpose or the intention of the person performing the act or carrying out the conduct in question (see *Karuyev*, cited above, § 19).

84. The Court has previously held that protests can constitute expressions of opinion within the meaning of Article 10. Thus, protests against hunting involving physical disruption of a hunt or a protest against the extension of a motorway involving a forcible entry into the construction site and climbing into trees which were to be felled and onto machinery in order to impede construction works were found to constitute expressions of opinion protected by Article 10 (see *Steel and Others v. the United Kingdom*, 23 September 1998, § 92, *Reports of Judgments and Decisions* 1998-VII, and *Hashman and Harrup*, cited above, § 28). Students who, during an official ceremony at a

university, had shouted slogans and raised banners and placards protesting against various practices of the university administration which they considered to be anti-democratic were also found to have exercised the right to freedom of expression (see *Açık and Others v. Turkey*, no. 31451/03, § 40, 13 January 2009). The Court also found Article 10 to be applicable where the applicants were part of a group of about thirty people who had forced their way through identity and security checks into the Ministry of Health building and locked themselves in some of its offices, where they started to chant slogans and to hand leaflets out of the windows protesting against government policies (see *Yezhov and Others v. Russia*, no. 22051/05, §§ 27-28, 29 June 2021).

85. In the present case, the applicants had notified the authorities in advance of their intention to hold a peaceful protest and the clearly stated goal of the protest was to draw public attention to the environmental effects of oil drilling and exploitation. The Court finds that, notwithstanding its disruptive character, such action should be considered an expression of opinion on a matter of significant social interest.

86. In view of the above considerations, the Court concludes that the applicants' complaint is compatible *ratione materiae* with Article 10 of the Convention.

2. Exhaustion of domestic remedies

87. The Government argued that the applicants had failed to bring their complaint under Article 10 before the domestic courts.

88. The applicants, referring to *Kandzhov v. Bulgaria* (no. 68294/01, § 43, 6 November 2008), submitted that the respondent Government had failed to indicate with sufficient clarity the remedies to which the applicants had not had recourse in the circumstances of the present case and had failed to demonstrate that there were any remedies that were effective and available to the applicants both in theory and in practice. The applicants submitted that they had not had any effective domestic remedy available for their complaint under Article 10, particularly given the unacknowledged nature of their detention from 18 and 19 to 24 September 2013.

89. The intervening third parties made no specific submissions under this head.

90. The Court notes that the Russian authorities had been informed beforehand about the protest action that the applicants had planned to hold (see paragraph 7 above). Furthermore, in the proceedings before the Regional Court three of the applicants, in objecting to their pre-trial detention, indicated that they were journalists covering the group's protest against oil exploration (see paragraph 19 above). Two applicants indicated in the same proceedings that as Greenpeace members, they had only ever taken part in peaceful protest actions (ibid). The Regional Court, however, either rejected their arguments on formalistic grounds or entirely ignored them. The

Government did not explain what effective remedy would have been available to the applicants in the present case, after the forceful termination of their action and their detention, for their Article 10 complaint (see *Sabuncu and Others v. Turkey*, no. 23199/17, § 227, 10 November 2020).

91. The Court therefore concludes, in the light of the above, that the Government's objection of non-exhaustion of domestic remedies must be dismissed.

3. Conclusion as to the admissibility of Article 10 complaint

92. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

93. The applicants submitted that their arrest, detention and criminal prosecution had not been prescribed by law and not been necessary in a democratic society.

94. The Government submitted that there had been no interference with the applicants' freedom of expression in the present case and that their detention had been lawful, proportionate and substantiated.

95. In so far as their nationals were concerned, the third-party intervening Governments submitted that the interference with those individuals' Article 10 rights had neither been prescribed by law nor necessary in a democratic society. In particular, their arrest and detention had not been proportionate to the legitimate aim pursued and the reasons adduced by the national authorities had not been relevant and sufficient. Referring to examples of persecution of journalists in Russia, the third-party interveners (MLDI and ARTICLE 19) submitted that there was evidence of systematic harassment of journalists covering environmental matters in Russia, especially following the enactment of the so-called "Foreign Agents Law". They further submitted that (i) the protection guaranteed to the press under Article 10 should be extended to include a wider range of those performing journalistic functions; (ii) the Court should examine whether the arrest and detention had been prescribed by law, whether there had been relevant and sufficient reasons for the interference and whether the actions of the individuals during the protest had been adequately assessed by the national authorities as relating to the public watchdog function of the press; and (iii) there had been a general increase in the threat and use of criminal sanctions against journalists all over Europe, which had had a "chilling effect" on the work of reporters.

96. Having established that the applicants' protest at the *Prirazlomnaya* platform constituted an expression of opinion within the meaning of Article 10 (see paragraphs 85-86 above), the Court considers that the apprehension of the applicants, their detention and their criminal prosecution

constituted interference with their freedom of expression (see, for similar reasoning, *Yezhov and Others*, §§ 27-28; *Açık and Others*, § 40; and *Sabuncu and Others*, § 226, all cited above). Such an interference will breach Article 10 of the Convention unless it satisfies the requirements of the second paragraph of that Article. It therefore remains to be determined whether the interference was "prescribed by law", pursued one or more of the legitimate aims referred to in that paragraph and was "necessary in a democratic society" in order to achieve them (see *Steel and Others*, cited above, § 89).

97. In so far as the lawfulness of the interference in the present case is concerned, the Court has already found that the applicants' apprehension and detention arbitrary and not lawful for the purposes of Article 5 § 1 (c) of the Convention, and that there has therefore been a violation of their right to liberty and security under Article 5 § 1 (see paragraphs 73 and 76 above). The Court reiterates that the requirements of lawfulness under Articles 5 and 10 of the Convention are aimed, in both cases, at protecting the individual from arbitrariness (see *Sabuncu and Others*, cited above, § 230, and *Ragıp Zarakolu v. Turkey*, no. 15064/12, § 79, 15 September 2020, and contrast *Lucas v. the United Kingdom* (dec.), no. 39013/02, 18 March 2003). It follows that, where detention is not lawful and constitutes interference with one of the freedoms guaranteed by the Convention, it cannot be regarded, in principle, as a restriction of that freedom prescribed by national law (see, for similar reasoning, *Sabuncu and Others*, cited above, § 230). The Court is therefore not called upon to examine whether the interference in question had a legitimate aim and was necessary in a democratic society.

98. Accordingly, there has been a violation of Article 10 of the Convention in the present case.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

99. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

100. The applicants did not submit a claim for pecuniary damage. They claimed non-pecuniary damage but left the determination of the amount to the Court's discretion.

101. The Government submitted that no award in respect of non-pecuniary damage should be made to the applicants since no violation of their rights had taken place. They further stated that if the Court were to find

a violation, the just satisfaction claim should be granted in accordance with the Court's case-law.

102. The third-party intervening States (the Netherlands, Sweden and Ukraine) made no specific submissions concerning this issue.

103. The Court considers that the applicants suffered non-pecuniary damage as a result of the violation of their rights under Articles 5 and 10 of the Convention. However, since the applicants have already obtained financial compensation in connection with the events that served as the basis of this application (see paragraph 31 above) and having regard to equitable considerations, the Court finds that no award for non-pecuniary damage shall be afforded to the applicants.

B. Costs and expenses

104. The applicants made no submissions under this head. The Court therefore considers that no award should be made in respect of costs and expenses.

FOR THESE REASONS, THE COURT

1. *Holds,* unanimously, that the applicants were within the jurisdiction of Russia for the purposes of Article 1 of the Convention;

2. *Holds*, unanimously, that the applicants remain victims of the alleged violations within the meaning of Article 34 of the Convention and that it has jurisdiction, under Article 35 §§ 2 (b) and 3 (a) of the Convention, to deal with the applicants' complaints;

3. *Holds*, unanimously, that it has jurisdiction to deal with the applicants' complaints in so far as they relate to facts that took place before 16 September 2022;

4. *Declares*, unanimously, the application admissible;

5. *Holds*, unanimously, that there has been a violation of Article 5 § 1 of the Convention;

6. *Holds*, unanimously, that there has been a violation of Article 10 of the Convention;

7. *Holds*, by five votes to two, that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicants.

Done in English, and notified in writing on 27 June 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova Deputy Registrar	Pere Pastor Vilanova President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Serghides is annexed to this judgment.

P.P.V.
O.C.

PARTLY DISSENTING OPINION OF JUDGE SERGHIDES

1. The applicants are thirty Greenpeace activists, including two freelance journalists. Their application concerns a protest action attempted by them at the Prirazlomnay offshore oil drilling platform, located in the Pechora Sea within the exclusive economic zone ("EEZ") of the Russian Federation, and their subsequent arrest and detention. In particular they complained under Article 5 of the Convention that their initial arrest and detention had been arbitrary and not in accordance with the law and they further complained under Article 5 § 1 of the Convention that their subsequent pre-trial detention had not been lawful or based on any reasonable suspicion of their having committed piracy. Moreover, they complained that their apprehension, detention and prosecution had interfered with their right to freedom of expression guaranteed by Article 10 of the Convention. Lastly, they claimed non-pecuniary damage, but left the determination of the amount to the Court's discretion.

2. I voted in favour of all points of the operative provisions of the judgment save for point 7, which provides "that the finding of a violation constitutes in itself just satisfaction for any non-pecuniary damage sustained by the applicants". Though I would argue that it is not necessary for the Court to award the applicants any monetary amount for non-pecuniary damage, I voted against point 7, because this point includes a reason for not awarding the applicants any monetary amount for non-pecuniary damage and I do not agree with that reason.

3. The judgment in paragraph 103, under the head of Article 41 of the Convention, already gives a reason for the finding that no award for non-pecuniary damage should be made to the applicants, despite admitting that they did sustain non-pecuniary damage as a result of the violation of their rights under Articles 5 and 10 of the Convention. The reason provided in that paragraph reads as follows: "... since the applicants have already obtained financial compensation in connection with the events that served as the basis of this application (see paragraph 31 above) and having regard to equitable considerations, the Court finds that no award for non-pecuniary damage shall be afforded to the applicants". With this reason I fully agree, and I certainly take the view that, given the reason provided in paragraph 103, it is not necessary to award the applicants any monetary amount for non-pecuniary damage.

4. However, in point 7 of the operative provisions of the judgment another reason is provided for not granting the applicants any award in respect of non-pecuniary damage. This reason is not only different, but it also contradicts that given in paragraph 103 of the judgment. Under point 7 of the operative provisions it is held that the applicants have been afforded sufficient just satisfaction for any non-pecuniary damage sustained by them, simply because the Court has found a violation (in relation to their complaints under

Articles 5 and 10), while under paragraph 103 of the judgment it is held that no award for non-pecuniary damage shall be made to them because they have already obtained financial compensation in connection with the events that served as the basis of this application. And the contradiction lies in the fact that in point 7 "sufficient just satisfaction" for non-pecuniary damage is considered to be awarded by the Court in the form of a finding a violation of Articles 5 and 10 of the Convention, while in paragraph 103 of the judgment no award for non-pecuniary damage is afforded to the applicants at all.

5. In my submission, Article 41 of the Convention, as worded, cannot be interpreted as meaning that "[the] finding [of] a violation of a Convention provision" can in itself constitute sufficient "just satisfaction to the injured party". This is because "the finding of a violation" is one of the prerequisites "for affording just satisfaction" and the Court cannot treat them as being on a par.

6. To be clearer, Article 41 of the Convention sets out the following three requirements or criteria which must be satisfied cumulatively for the Court to award just satisfaction, including, of course, satisfaction for non-pecuniary damage (the numbering is mine): (a) the Court finds that there has been a violation of the Convention or the Protocols thereto; (b) the internal law of the High Contracting Party concerned allows only partial reparation to be made; and (c) the Court considers it necessary to afford just satisfaction.

7. The Court in the present case under point 7 of the operative provisions of its judgment confines itself to the first requirement of Article 41, namely, the finding of a violation, and it regrettably considers, without any justification or explanation, that the fulfilment of this requirement in itself constitutes sufficient just satisfaction for non-pecuniary damage. What the Court is engaging in here is a circular argument: the finding of a violation which is a *sine qua non* for just satisfaction becomes the just satisfaction itself. In my opinion, such an interpretation and application of Article 41 has no foundation either in the wording or in the purpose of that provision.

8. Thus, when a Convention provision, namely Article 41, asks for three requirements to be satisfied in order to afford just satisfaction, there is a logical fallacy in deciding that the existence of one of them in itself constitutes sufficient satisfaction.

9. To my regret, point 7 of the operative provisions omits to see that the purpose of Article 41, albeit related, is not the same as the purpose of the substantive provisions of the Convention securing human rights, such as Articles 5 and 10 which the judgment finds to have been violated in the present case. If their purpose was the same, then Article 41 would be rendered futile, which would lead to absurd results.

10. On the other hand, paragraph 103 of the judgment provides a good reason for not awarding non-pecuniary damage to the applicants. For me, this reason may come under the third requirement of Article 41, namely, "the Court considers it necessary to afford just satisfaction", which is not satisfied

in the present case. Consequently, since all three requirements of Article 41 must be met cumulatively, the lack of this requirement leads to the conclusion that no award should be made in respect of non-pecuniary damage.

11. To sum up, the reason given in paragraph 103 is a sound, legitimate and valid ground having a legal basis in Article 41, while the reason given in point 7 is not a legitimate and valid ground, since it has no legal basis in Article 41 and erroneously confuses the merits of the case with the just satisfaction, thus rendering Article 41 futile.

12. For the foregoing reasons, I voted against point 7 of the operative provisions of the judgment, but I agree with my eminent colleagues that no amount should be afforded to the applicants for non-pecuniary damage. In my view, point 7 of the operative provisions should simply state that "the Court holds that it does not consider it necessary to award the applicants any non-pecuniary damage", so as to be in line with what it is stated in paragraph 103 of the judgment, or merely dismiss the claim without giving a reason, as no such explanation is required in the operative provisions.

APPENDIX

No.	Applicant's surname	Applicant's first name(s)	Year of birth	Nationality	Date of decision by the Leninskiy District Court of Murmansk ordering pre-trial detention	Date of dismissal by the Murmansk Regional Court of the appeal against pre-trial detention	Date of hooliganism charges	Name of court granting bail	Date of court decision on bail	Date of release
1.	Akhan	Gizem	1988	Türkiye	26/09/2013	16/10/2013	25/10/2013	Primorskiy District Court	21/11/2013	22/11/2013
2.	Allakhverdov	Andrey	1962	Russian Federation	26/09/2013	08/10/2013	24/10/2013	Kalininskiy District Court	18/11/2013	21/11/2013
3.	Alminhana Maciel	Ana Paula	1982	Brazil	29/09/2013	24/10/2013	31/10/2013	Primorskiy District Court	19/11/2013	20/11/2013
4.	Ball	Philip Edward	1971	United Kingdom	26/09/2013	11/10/2013	28/10/2013	Kalininskiy District Court	22/11/2013	25/11/2013
5.	Beauchamp	Jonathan David	1962	New Zealand	26/09/2013	16/10/2013	31/10/2013	Kalininskiy District Court	21/11/2013	22/11/2013
6.	Bryan	Kieron John	1984	United Kingdom	26/09/2013	11/10/2013	28/10/2013	Primorskiy District Court	20/11/2013	22/11/2013
7.	D'Alessandro	Cristian	1981	Italy	26/09/2013	15/10/2013	30/10/2013	Kalininskiy District Court	19/11/2013	21/11/2013
8.	Dolgov	Roman	1969	Russian Federation	26/09/2013	09/10/2013	24/10/2013	Kalininskiy District Court	22/11/2013	22/11/2013
9.	Dziemianczuk	Tomasz	1976	Poland	26/09/2013	21/10/2013	30/10/2013	Kalininskiy District Court	19/11/2013	21/11/2013
10.	Harris	Alexandra Hazel	1986	United Kingdom	26/09/2013	18/10/2013	29/10/2013	Primorskiy District Court	20/11/2013	22/11/2013
11.	Haussmann	David John	1964	New Zealand	26/09/2013	14/10/2013	30/10/2013	Primorskiy District Court	19/11/2013	21/11/2013

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12.	Hewetson	Francis Patrick Michael	1965	United Kingdom	29/09/2013	15/10/2013	28/10/2013	Kalininskiy District Court	21/11/2013	22/11/2013
13.	Jensen	Anne Mie Roer	1987	Denmark	26/09/2013	18/10/2013	31/10/2013	Primorskiy District Court	20/11/2013	21/11/2013
14.	Litvinov	Dimitri	1962	USA and Sweden	29/09/2013	23/10/2013	29/10/2013	Kalininskiy District Court	22/11/2013	22/11/2013
15.	Oulahsen	Faiza	1987	Netherlands	29/09/2013	18/10/2013	31/20/2013	Primorskiy District Court	20/11/2013	22/11/2013
16.	Paul	Alexandre	1978	Canada	26/09/2013	18/10/2013	28/10/2013	Primorskiy District Court	21/11/2013	22/11/2013
17.	Perez Orsi	Miguel Hernan	1973	Argentina	26/09/2013	23/10/2013	28/10/2013	Kalininskiy District Court	19/11/2013	22/11/2013
18.	Perrett	Anthony Ian	1980	United Kingdom	29/09/2013	16/10/2013	29/10/2013	Kalininskiy District Court	20/11/2013	22/11/2013
19.	Pisanu	Francesco	1975	France	26/09/2013	16/10/2013	31/10/2013	Kalininskiy District Court	19/11/2013	21/11/2013
20.	Rogers	Iain	1976	United Kingdom	27/09/2013	22/10/2013	28/10/2013	Kalininskiy District Court	21/11/2013	22/11/2013
21.	Russell	Colin Keith	1954	Australia	26/09/2013	17/10/2013	30/10/2013	St Petersburg City Court	28/11/2013	29/11/2013
22.	Ruzycki	Paul Douglas	1965	Canada	26/09/2013	24/10/2013	31/10/2013	Primorskiy District Court	19/11/2013	22/11/2013
23.	Saarela	Sini Annukka	1981	Finland	29/09/2013	21/10/2013	30/10/2013	Primorskiy District Court	19/11/2013	21/11/2013
24.	Sinyakov	Denis	1977	Russian Federation	26/09/2013	08/10/2013	29/10/2013	Kalininskiy District Court	18/11/2013	21/11/2013
25.	Speziale	Camila	1992	Argentina	26/09/2013	14/10/2013	24/10/2013	Primorskiy District Court	19/11/2013	21/11/2013
26.	Ubels	Mannes	1971	Netherlands	29/09/2013	17/10/2013	30/10/2013	Primorskiy District Court	20/11/2013	22/11/2013

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27.	Weber	Marco Paolo	1985	Switzerland	26/09/2013	21/10/2013	30/10/2013	Kalininskiy District Court	20/11/2013	22/11/2013
28.	Willcox	Peter Henry	1953	USA	26/09/2013	14/10/2013	28/10/2013	Kalininskiy District Court	20/11/2013	22/11/2013
29.	Yakushev	Ruslan	1980	Ukraine	29/09/2013	24/10/2013	28/10/2013	Primorskiy District Court	21/11/2013	22/11/2013
30.	Zaspa	Yekaterina	1976	Russian Federation	26/09/2013	08/10/2013	25/10/2013	Kalininskiy District Court	18/11/2013	21/11/2013