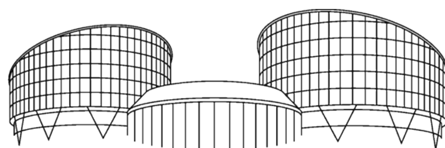

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF VASSIS AND OTHERS v. FRANCE

(Application no. 62736/09)

JUDGMENT
[Extracts]

STRASBOURG

27 June 2013

FINAL

27/09/2013

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Vassis and Others v. France,

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

Mark Villiger, *President,*
Angelika Nußberger,
Boštjan M. Zupančič,
Ann Power-Forde,
André Potocki,
Paul Lemmens,
Helena Jäderblom, *judges,*
and Claudia Westerdiek, *Section Registrar,*

Having deliberated in private on 4 June 2013,

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

PROCEDURE

1. The case originated in an application (no. 62736/09) against the French Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by two Greek nationals, Mr Sokratis Vassis and Mr Dimitrio Bardoulis, four Sierra Leonean nationals, Mr Alusine Kamara, Mr Harry Michael Taylor, Mr Samuel Silvanus Thomas and Mr Steven Nabbie, and a Guinean national, Mr Manuel Da Costa Ardiles (“the applicants”), on 29 October 2009.

2. The applicants were represented by Mr P. Spinosi, a member of the *Conseil d’État* and the Court of Cassation Bar. The French Government (“the Government”) were represented by their Agent, Mrs E. Belliard, Director of Legal Affairs at the Ministry of Foreign Affairs.

3. The applicants alleged, in particular, a violation of Article 5 §§ 1 and 3 of the Convention.

4. On 15 December 2011 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. In January 2008, investigators from the French Central Office for the Prevention of Drug-Trafficking (OCRTIS), a body attached to the Central

Police Directorate of the Ministry of the Interior, noticed that a number of Greek nationals suspected of drug-trafficking were passing through Roissy Airport on their way to West Africa, including Z., who had been convicted of similar offences in the past and was being monitored. OCRTIS was subsequently informed that Z. had chartered a vessel, the *Junior*, which was generally used for coastal shipping along the ports in the region, and that this ship had been using a sea lane identified as being that habitually followed by drug traffickers. Furthermore, the United States Drug Enforcement Agency (DEA) had been monitoring the *Junior* for several months. OCRTIS requested the assistance of the French Navy after having consulted the Maritime Analysis and Operations Centre – Narcotics.

6. At 1.30 p.m. on 7 February 2008 a French Navy vessel, the helicopter carrier *Tonnerre*, intercepted the *Junior*. A press release from the Maritime Prefect for the Atlantic seaboard, entitled "Interception of a boat transporting drugs off Africa", gave the following account of the operation:

> "On 7 February, on orders from the Maritime Prefect for the Atlantic seaboard, the projection and command vessel *Tonnerre*, which is responsible for ensuring a permanent French Navy presence along the West African coast, intercepted a ship suspected of engaging in drug-trafficking.
>
> The *Tonnerre* had been reinforced for this operation with a Navy patrol team. The operation was carried out on the basis of intelligence from and at the request of OCRTIS (the French Central Office for the Prevention of Drug-Trafficking), by agreement with the Maritime Analysis Operation Centre – Narcotics (MAOC-N).
>
> The intercepted vessel is a 47-metre-long, 480-tonne RORO cargo ship flying the Panamanian flag.
>
> Following a transfer by French Navy "marine patrol aircraft", the interception was carried out approximately 300 km to the south-west of Conakry (Guinea). During the operation the crew, made up of nine sailors of various nationalities, threw a suspect package overboard, which the *Tonnerre* boats managed to retrieve. The package contained bundles of narcotic substances to a total weight of 3.2 tonnes, subsequently identified as cocaine.
>
> The intercepted vessel is currently under the supervision of the crew of the *Tonnerre*. The operation was conducted in agreement with the Panamanian authorities. The French diplomatic services are maintaining contact with these authorities with a view to preparing judicial proceedings in this case."

7. After the intervention of the Navy team, the ship's nine crew members were mustered on deck by the French marines, who verified their identities and inspected the vessel.

8. At 1.07 a.m. on 8 February 2008 the commander of the *Tonnerre* received a telegram from the French Ministry of Foreign Affairs informing him that the Panamanian authorities had acknowledged that the *Junior* was indeed sailing under their flag and recording their agreement to its boarding and inspection. The French Navy then carried out searches and seizures.

9. On 9 February 2008 the Panamanian Ministry of External Relations sent the French Embassy a fax confirming authorisation to board and

inspect the vessel, and also agreeing to transfer jurisdiction for the case to France.

10. At 11.10 a.m. on 10 February 2008 the ship was diverted to Brest. Initially escorted by the *Tonnerre*, it sailed to a point approximately 60 km south of Dakar (Senegal) on 11 February.

11. On 14 February 2008 a security patrol discovered and seized substances which were also identified as narcotics, namely cocaine and cannabis resin. On the same day, responsibility for the whole procedure was handed over to the commander of the ship responsible for escorting the *Junior* to Brest, the *Ravi*, a French Navy supply ship. The crew of the *Junior* were placed under the guard of twelve marines from the "reinforcement task force" (*groupe d'intervention et de renfort*).

12. On 25 February 2008 the *Junior* arrived in Brest harbour. At 9.45 a.m. the commander of the *Ravi* handed over all the items seized and official reports, together with the *Junior* and the nine crew members, to the Brest public prosecutor.

13. The public prosecutor launched a preliminary inquiry, to be jointly conducted by OCRTIS and the Rennes inter-regional police department.

14. At 10.50 a.m. on the same day, the applicants were taken into police custody.

15. On 26 February 2008 the public prosecutor extended the police custody for twenty-four hours after interviewing each of the applicants.

16. On 27 February 2008 the applicants were presented individually to two judges responsible for civil liberties and detention matters (*juges des libertés et de la détention*) at the Brest *tribunal de grande instance*, who examined them and once again extended their police custody, as mentioned in a record drawn up at 9.30 a.m.

17. While under police custody, the applicants, whose state of health was deemed compatible with this measure, were questioned on several occasions by the investigators through nine interpreters. They denied that they had committed the offences, with the exception of Mr Bardoulis, who confessed on 28 February. They were able to see a lawyer at 10.50 a.m. on 28 February.

18. On 29 February 2008, the Brest public prosecutor transferred the case to the specialised inter-regional division of the Rennes *tribunal de grande instance*.

19. On the same day the applicants were placed under formal investigation.

20. On 5 December 2008, the Investigation Division of the Rennes Court of Appeal declared inadmissible the evidence exclusively relating to the applicants' detention at sea, which primarily concerned records of their living conditions during their detention and of various types of medical treatment. On the other hand, the appeal judges rejected the requests to have other procedural steps declared void, including the applicant's detention in

police custody and their subsequent placement under formal investigation. They considered that the applicants had not been detained in accordance with a procedure prescribed by law, within the meaning of Article 5 § 1 of the Convention. In their view, the relevant international and national documents were vague about the nature and form of the coercive measures for which they provided, particularly in terms of detainees' rights and supervision by a judicial authority within the meaning of Article 5 § 1. However, they considered that the applicants had been taken into police custody and placed under formal investigation on the basis of evidence which did not result from their detention at sea. Moreover, they considered that Article 5 § 3 of the Convention had not been violated, pointing out that the period of deprivation of liberty at sea had been justified by exceptional circumstances linked to the inevitable time required for the vessel to reach a French port. They added that the requirements of the investigations justified the individuals' placement in custody for forty-eight hours before being brought before a judge responsible for detention matters, given the number of persons concerned and the need for interpreters for the different acts and steps in the proceedings.

21. The applicants appealed to the Court of Cassation, alleging, *inter alia*, a violation of Article 5 §§ 1 and 3 of the Convention...

22. By a judgment of 29 April 2009 the Court of Cassation dismissed the applicants' appeals.

23. On 8 February 2012 the Rennes Special Assize Court sentenced S. Vassis, Master of the *Junior*, to sixteen years' imprisonment, and S. Thomas, First Mate, D. Bardoulis, Chief Engineer, and M. Da Costa Ardiles, to ten years' imprisonment. The other crew members were acquitted. In addition, G.G., the African representative of the Greek owner of the ship, was sentenced to fifteen years' imprisonment by the Assize Court.

...

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 § 3 OF THE CONVENTION

25. The applicants complained that they had not been promptly brought before a judge or other officer authorised to exercise judicial power within the meaning of Article 5 § 3, contending that they had been placed in police custody for forty-eight hours before being brought before the judge, having already been detained at sea for eighteen days with no supervision by such an authority, without any exceptional circumstances to justify such a long

period of detention. The relevant provisions of Article 5 § 3 of the Convention read as follows:

> "Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial."

26. The Government contested that argument.

...

B. Merits

1. The parties' submissions

36. In connection with their detention at sea, the applicants submitted first of all that the Government had failed to specify the "wholly exceptional circumstances" which they claimed had prevented them from bringing the applicants before a judge more promptly, even though it was incumbent on the Government to prove the existence of such circumstances. Apart from the geographical distance, the Government had confined themselves to abstract arguments and quotations from the *Medvedyev and Others v. France* judgment ([GC], no. 3394/03, ECHR 2010-...). This was tantamount to presupposing, in the context of combating drug-trafficking on the high seas, the compatibility with the Convention of long-term detention by State officials without any judicial supervision, whereas, on the contrary, the Court's case-law did not give the authorities a free hand in this matter.

37. Reiterating the principles set out in *McKay v. United Kingdom* ([GC], no. 543/03, ECHR 2006-X) and reaffirmed in *Medvedyev and Others* (cited above), the applicants observed that the supervision conducted had to include effective safeguards against the risk of ill-treatment, which was at its greatest in the case of detainees isolated on the high seas under the surveillance of military personnel who were not trained to guard prisoners, and outside any kind of independent supervision. They emphasised that they had been held exclusively by the Navy from 7 to 25 February, the public prosecutor only becoming involved on the latter date. They therefore referred to the analysis of the eight dissenting judges in *Medvedyev and Others* (cited above), who had held that, while it was not inconceivable that "wholly exceptional circumstances" could justify a period of detention which was in principle incompatible with Article 5 § 3 of the Convention, this was only possible on condition that circumstances qualifying not as "special" or "exceptional" but as "wholly exceptional" were clearly established.

38. The applicants then contended that the authorities would have had several different options for bringing them before a judge more promptly. The authorities could have taken the crew to Senegal, since the vessels had

sailed close to the Senegalese coast, in order either to implement the 29 March 1974 Convention on Cooperation in Judicial Matters between France and Senegal or to utilise its major military resources in that country, notably its military transport aircraft based at the French aerodrome. Furthermore, they stressed that the heaviest NATO military transport helicopters could have landed on the French Navy vessel which had conducted the operation, the *Tonnerre*. Moreover, this vessel could easily have taken a judge or prosecutor on board to question the applicants under virtually normal conditions. Otherwise, since the *Tonnerre* was equipped with a videoconferencing system, which could have been used in accordance with both the French Code of Criminal Procedure and the Convention provided such use pursued a legitimate aim (the applicants cited *Marcello Viola v. Italy*, no. 45106/04, 5 October 2006), a judge or prosecutor could have appraised the merits of the detention measure and ensured that the crew members were being properly treated.

39. The applicants submitted that there was a blatant and unjustified discrepancy between the means used for their arrest (intervention by police services under an international cooperation initiative originating in a large-scale operation organised by the French authorities, using enormous material and human resources) and the lack of any measure to ensure minimum respect for their essential rights, particularly the intervention of a judge or prosecutor in accordance with the requirements of Article 5 § 3 of the Convention. They stressed that the encounter between the *Tonnerre* and the *Junior* had not come about by chance but had been planned.

40. In connection with their police custody, the applicants pointed out that they had been placed in custody by a police officer before an initial extension by the prosecutor and another extension by the judge responsible for detention matters.

41. Contending that their detention could not be broken down into separate periods, they argued that, starting from the time of their formal placement in custody, regard should obviously be had to the fact that they had spent a total of eighteen days in detention at sea. In fact, the duration of detention depended on the circumstances of the case, and in a previous case the Court had ruled that a period of three days and twenty-three hours without judicial supervision infringed Article 5 § 3 (citing *Kandjov v. Bulgaria*, no. 68294/01, 6 November 2008).

42. The applicants were of the view that the Government had grouped all the different investigations together without explaining why they all had to be conducted without delay: the circumstances of the case had required the national authorities to establish very precisely the reasons for a further postponement of the applicants' appearance before a judge after the many days spent at sea. Furthermore, they contended that the Government had failed to justify their system of extending periods of police custody.

43. The Government considered that in the instant case the deprivation of the applicants' liberty for eighteen days at sea had been justified by wholly exceptional circumstances, within the meaning of the Court's case-law.

44. They explained that the *Junior*, which had been intercepted over 4,000 km from the French coast, was a vessel built in Norway in 1978 in order to provide shipping services for the islands and villages located along the fjords, not to serve as an ocean-going ship sailing such long distances.

45. The Government also argued that the applicants had merely argued that no wholly exceptional circumstances were present, without substantiating their argument or claiming that they could have been handed over to the authorities of a country nearer than France, where they could have been brought promptly before a judicial authority (the Government cited *Medvedyev and Others*, cited above, § 131).

46. As to the idea of transferring the crew of the *Junior* to a French naval vessel to make the journey faster, the Government pointed out that the Grand Chamber of the Court had previously ruled that it was not for the Court to assess the feasibility of such an operation.

47. They considered the circumstances similar to those assessed in the cases of *Rigopoulos v. Spain* ((dec.) no. 37388/97, ECHR 1999-II) and *Medvedyev and Others* (cited above), in which the Court had accepted that the travel time of sixteen and thirteen days respectively had not been incompatible with the concept of "brought promptly before a judge" set forth in Article 5 § 3 of the Convention. In the instant case, it had been materially impossible to "physically" bring the applicants before the judicial authority any more promptly.

48. In connection with their placement in police custody on arrival in Brest, each applicant had been brought within forty-eight hours before a judge responsible for detention matters, who had then extended the custody period.

49. While the promptness of this review had to be assessed in the light of the circumstances of the case, consideration should also be given to the fact that regardless of any "wholly exceptional circumstances" justifying the detention at sea, the Court generally accepted a maximum of three to four days, in other words a longer period than the forty-eight hours in the instant case.

50. The Government above all contended that the applicants' placement in police custody and the duration of that period were justified by the requirements of the investigation. They mentioned the need to provide interpreters and the fact that advantage had been taken of the time-lapse to carry out a wide range of procedural steps requiring the participation, if not the presence, of the persons in question, in addition to the medical examinations to check their state of health.

51. The Government concluded by stressing that the examinations and concomitant investigations conducted during the applicants' period in police

custody had, precisely, been intended to collect the substantial and consistent evidence required for the applicants to be placed under formal investigation by the investigating judge, especially as all but one of them had denied the offence.

2. The Court's assessment

52. The Court reiterates that in its *Medvedyev and Others* judgment (cited above), the Grand Chamber stated:

> "117. The Court reiterates that Article 5 of the Convention is in the first rank of the fundamental rights that protect the physical security of an individual, and that three strands in particular may be identified as running through the Court's case-law: the exhaustive nature of the exceptions, which must be interpreted strictly and which do not allow for the broad range of justifications under other provisions (Articles 8 to 11 of the Convention in particular); the repeated emphasis on the lawfulness of the detention, procedurally and substantively, requiring scrupulous adherence to the rule of law; and the importance of the promptness or speediness of the requisite judicial controls under Article 5 §§ 3 and 4 (see *McKay*, cited above, § 30).
>
> 118. The Court also notes the importance of the guarantees afforded by Article 5 § 3 to an arrested person. The purpose of this provision is to ensure that arrested persons are physically brought before a judicial officer promptly. Such automatic expedited judicial scrutiny provides an important measure of protection against arbitrary behaviour, incommunicado detention and ill-treatment (see, among other authorities, *Brogan and Others*, cited above, § 58; *Brannigan and McBride v. the United Kingdom*, 26 May 1993, §§ 62-63, Series A no. 258-B; *Aquilina v. Malta* [GC], no. 25642/94, § 49, ECHR 1999-III; *Dikme v. Turkey*, no. 20869/92, § 66, ECHR 2000-VIII; and *Öcalan*, cited above, § 103).
>
> 119. Article 5 § 3, as part of this framework of guarantees, is structurally concerned with two separate matters: the early stages following an arrest, when an individual is taken into the power of the authorities, and the period pending any trial before a criminal court, during which the suspect may be detained or released with or without conditions. These two limbs confer distinct rights and are not on their face logically or temporally linked (see *T.W. v. Malta* [GC], no. 25644/94, § 49, 29 April 1999).
>
> 120. Taking the initial stage under the first limb, which is the only one at issue here, the Court's case-law establishes that there must be protection, through judicial control, of an individual arrested or detained on suspicion of having committed a criminal offence. Such control serves to provide effective safeguards against the risk of ill-treatment, which is at its greatest in this early stage of detention, and against the abuse of powers bestowed on law enforcement officers or other authorities for what should be narrowly restricted purposes and exercisable strictly in accordance with prescribed procedures. The judicial control must satisfy the following requirements (see *McKay*, cited above, § 32):
>
> **(a) Promptness**
>
> 121. The judicial control on the first appearance of an arrested individual must above all be prompt, to allow detection of any ill-treatment and to keep to a minimum any unjustified interference with individual liberty. The strict time constraint imposed by this requirement leaves little flexibility in interpretation, otherwise there would be a serious weakening of a procedural guarantee to the detriment of the individual and

the risk of impairing the very essence of the right protected by this provision (see *Brogan and Others*, cited above, § 62, where periods of four days and six hours in detention without appearance before a judge were held to be in violation of Article 5 § 3, even in the special context of terrorist investigations).

(b) Automatic nature of the review

122. The review must be automatic and not depend on the application of the detained person; in this respect it must be distinguished from Article 5 § 4, which gives a detained person the right to apply for release. The automatic nature of the review is necessary to fulfil the purpose of that paragraph, as a person subjected to ill-treatment might be incapable of lodging an application asking for a judge to review their detention; the same might also be true of other vulnerable categories of arrested person, such as the mentally frail or those ignorant of the language of the judicial officer (see *Aquilina*, cited above).

(c) The characteristics and powers of the judicial officer

123. Since Article 5 § 1 (c) forms a whole with Article 5 § 3, 'competent legal authority' in paragraph 1 (c) is a synonym, of abbreviated form, for 'judge or other officer authorised by law to exercise judicial power' in paragraph 3 (see, among other authorities, *Lawless v. Ireland (no. 3)*, 1 July 1961, Series A no. 3, and *Schiesser*, cited above, § 29).

124. The judicial officer must offer the requisite guarantees of independence from the executive and the parties, which precludes his subsequent intervention in criminal proceedings on behalf of the prosecuting authority, and he or she must have the power to order release, after hearing the individual and reviewing the lawfulness of, and justification for, the arrest and detention (see, among many other authorities, *Assenov and Others v. Bulgaria*, 28 October 1998, §§ 146 and 149, *Reports* 1998-VIII). As regards the scope of that review, the formulation which has been at the basis of the Court's long-established case-law dates back to the early *Schiesser* case (cited above, § 31):

> 'In addition, under Article 5 para. 3 (art. 5-3), there is both a procedural and a substantive requirement. The procedural requirement places the 'officer' under the obligation of hearing himself the individual brought before him (see, *mutatis mutandis*, the above-mentioned *Winterwerp* judgment, p. 24, para. 60); the substantive requirement imposes on him the obligations of reviewing the circumstances militating for or against detention, of deciding, by reference to legal criteria, whether there are reasons to justify detention and of ordering release if there are no such reasons (above-mentioned *Ireland v. the United Kingdom* judgment, p. 76, para. 199).'

Or, in other words, 'Article 5 § 3 requires the judicial officer to consider the merits of the detention' (see *T.W. v. Malta*, and *Aquilina*, both cited above, § 41 and § 47 respectively).

125. The initial automatic review of arrest and detention accordingly must be capable of examining lawfulness issues and whether or not there is a reasonable suspicion that the arrested person has committed an offence; in other words, whether detention falls within the permitted exceptions set out in Article 5 § 1 (c). When the detention does not, or is unlawful, the judicial officer must then have the power to release (see *McKay*, cited above, § 40)."

53. The Court notes at the outset that the present case does not require a decision on whether a public prosecutor qualifies as a "judge or other officer authorised by law to exercise judicial power" according to the autonomous meaning of the provisions of Article 5 § 3 of the Convention, as it has already settled this point in its judgment in *Moulin v. France* (no. 37104/06, 23 November 2010). On the other hand, it does require a review of whether the domestic authorities complied with the promptness requirement embodied in the words "brought promptly before a judge" in Article 5 § 3. In this connection the Court specifies that, contrary to the applicants' contentions, the intervention of a public prosecutor at the beginning and in the course of a period of police custody does not in itself raise any difficulty, provided the person held in custody is subsequently brought before a "judge or other officer authorised by law to exercise judicial power" within a time-frame that meets the requirements of Article 5 § 3.

54. The Court reiterates that in its *Rigopoulos* decision (cited above) and in *Medvedyev and Others* (cited above) it has already accepted that the detention of a crew during their transfer to a port in the respondent State, for sixteen and thirteen days respectively, was not incompatible with the "brought promptly before a judge" concept set out in Article 5 § 3 of the Convention in view of the existence of "wholly exceptional circumstances" which justified such a lapse of time.

55. In the instant case the Court notes that at the time of its interception, the *Junior* also was on the high seas off the coast of West Africa, thousands of kilometres from the French coast. Moreover, there is nothing to suggest that its diversion to France took any longer than necessary, given that the *Junior* is a vessel originally designed for coastal rather than long-distance sailing. Furthermore, the applicants merely mentioned the proximity of the Senegalese coast on 11 February 2008 and the existence of a judicial cooperation agreement between France and Senegal, without backing up these statements with any further arguments. As for the other possible scenarios, it is not for the Court to assess their feasibility in the specific circumstances of the case (see *Medvedyev and Others*, cited above, § 131).

56. Nevertheless, while the Court has previously held that a delay of two or three days before a person is brought before "a judge or other officer authorised by law to exercise judicial power" meets the promptness requirement embodied in the words "brought promptly before", this concerned cases in which the beginning of a period of police custody had coincided with that of the deprivation of liberty (see, *inter alia*, *Aquilina v. Malta* [GC], no. 25642/94, § 51, ECHR 1999-III; *Ayaz and Others v. Turkey* (dec.), no. 11804/02, 27 May 2004; and *İkincisoy v. Turkey*, no. 26144/95, § 103, 27 July 2004). Moreover, the Court reiterates that each individual case must be examined in the light of its specific features (see, among other authorities, *De Jong, Baljet and Van den Brink v. Netherlands*, 22 May 1984, § 52, Series A no. 77).

57. The Court further emphasises that in *Rigopoulos* (cited above), the applicant's deprivation of liberty, including his immediate placement in police custody and his pre-trial detention after expiry of the statutory maximum period of police custody, occurred under the supervision of the Madrid central investigating court, an independent specialist investigatory body answerable to the executive, which did in fact conduct a judicial review of the applicant's deprivation of liberty. The crew of the *Winner* (see *Medvedyev and Others*, cited above) were brought before the investigating judges responsible for the proceedings shortly after reaching the shore, that is to say eight or nine hours after being taken into police custody in France.

58. In the present case, the police custody followed on from a period of eighteen days of deprivation of liberty within the meaning of Article 5 of the Convention (see *Medvedyev and Others*, §§ 73-75). Even though this was a long period of time, the applicants did not actually appear for the first time before a "judge or other officer", within the autonomous meaning of Article 5 § 3 of the Convention, in this case a judge responsible for civil liberties and detention matters, until after an additional period of some forty-eight hours, the commander of the *Ravi* having managed to hand over all the items seized and the official reports, together with the *Junior* and the nine crew members, to the Brest public prosecutor on 25 February 2008 at 9.45 a.m. (see paragraph 12 above). This obviously necessitated their prior arrival in Brest harbour; the applicants were then placed in custody at 10.50 a.m. (see paragraph 14 above) and their appearance before the judge responsible for detention matters was entered in a record drawn up on 27 February 2008 at 9.30 a.m. (see paragraph 16 above).

59. In the Court's view, there is no justification for such an additional delay of some forty-eight hours under the circumstances of the case.

60. First of all, not only had the interception operation evidently been planned in advance, but also the *Junior*, under suspicion of being involved in international narcotics trafficking, had been closely monitored since January 2008, by the DEA and later by OCRTIS. Although there may have been some uncertainty as to the time of the interception and its outcome, the Court has no doubt that the eighteen days required for the applicants' transfer allowed their arrival in France to be prepared with foresight. In view of the length of that period, without judicial supervision, there was no justification for subsequently placing the applicants in police custody for the initial forty-eight hours; moreover, the specific circumstances of the case meant that the promptness requirement of Article 5 § 3 of the Convention was even stricter than in a situation where the beginning of police custody coincided with the initial deprivation of liberty. Therefore, as soon as the applicants arrived in France they should have been brought, without delay, before a "judge or other officer authorised to exercise judicial power".

61. In particular, the Court points out that its findings in previous cases that periods of two or three days before the initial appearance before a judge

do not breach the promptness requirement are not designed to afford the authorities the opportunity to intensify their investigations and to collect the substantial and consistent evidence required for the applicants to be placed under formal investigation by the investigating judge, for example because they have contested the charges. Consequently, this case-law cannot be interpreted as being in any way intended to grant the national authorities a period of time which they are at liberty to use to complete the prosecution case file: the purpose of Article 5 § 3 of the Convention is to facilitate the detection of any ill-treatment and to minimise any unjustified interference with individual liberty, in order to protect the individual, by means of an automatic initial review, within a strict time-frame leaving little room for flexible interpretation (see *Medvedyev and Others*, cited above, § 121).

62. As that did not happen in the present case following the applicants' arrival in France, there has been a violation of Article 5 § 3 of the Convention.

...

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

66. 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

67. The applicants claimed 10,000 euros (EUR) each in respect of non-pecuniary damage.

68. The Government submitted that the claim was excessive and that a sum of EUR 1,500 should be granted to each or the applicants.

69. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicants EUR 5,000 each in respect of non-pecuniary damage.

...

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

...

2. *Declares* ... the application admissible as regards the complaint under Article 5 § 3 and the remainder of the application inadmissible;

3. *Holds* that there has been a violation of Article 5 § 3 of the Convention;

4. *Holds*
(a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
(i) EUR 5,000 (five thousand euros) each to Mr Vassis, Mr Bardoulis, Mr Kamara, Mr Taylor and Mr Thomas, plus any tax that may be chargeable, in respect of non-pecuniary damage;

Done in French, and notified in writing on 27 June 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek Mark Villiger
Registrar President