



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

FIRST SECTION

CASE OF FRIEDRICH AND OTHERS v. POLAND

(Applications nos. 25344/20 and 17 others – see appended list)

JUDGMENT

Art 5 §§ 1 and 2 • Deprivation of liberty of activists affiliated with Greenpeace and journalists after the interruption of a protest held at sea and media coverage thereof and the immobilisation of their vessels in Polish internal waters • Art 5 applicable having regard to the nature and duration of the restrictions imposed on the applicants on board their vessels, the Boarder Guards' vessel and/or premises • Lack of sufficient legal basis for all the applicants' detention • Absence of reasonable suspicion in relation to the detention of two of the applicants • Failure to provide information on reasons for arrest or provide such information promptly

Art 10 • Freedom of expression • Unlawful nature of detention impacting on lawfulness of interference

Art 5 § 4 • No issue as to the review of lawfulness of detention • Due to short duration of deprivations of liberty no time for applicants to "take proceedings" for their release • Manifestly ill-founded

Prepared by the Registry. Does not bind the Court.

STRASBOURG

20 June 2024

FINAL

20/09/2024

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

In the case of Friedrich and Others v. Poland,

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

Marko Bošnjak, *President*,

Alena Poláčková,

Krzysztof Wojtyczek,

Lətif Hüseynov,

Ivana Jelić,

Erik Wennerström,

Raffaele Sabato, *judges*,

and Ilse Freiwirth, *Section Registrar*,

Having regard to:

the applications (nos. 25344/20, and seventeen other applications against the Republic of Poland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by an Austrian national, Ms Miriam Friedrich, and seventeen other applicants (“the applicants”) on the various dates indicated in the appended table;

the decision to give notice to the Polish Government (“the Government”) of the complaints raised under Articles 5, 10, 11 and 13 of the Convention, and under Article 2 of Protocol No. 4 to the Convention;

the decision that the Governments of the States of the applicants’ nationality be notified of the application under Article 36 § 1 of the Convention and Rule 44 § 1 of the Rules of the Court and the absence on their part of any indication that they wished to intervene;

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

the comments submitted by the Polish Bar Council, which was granted leave to intervene by the President of the Section;

Having deliberated in private on 28 May 2024,

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

INTRODUCTION

1. The cases concern actions undertaken by the Polish Border Guard Service in respect of the applicants (sixteen activists affiliated with Greenpeace and two journalists) – namely, the interruption of a protest held at sea and media coverage thereof, the immobilisation of the applicants and their vessels, and the arrest of two applicants who were taken ashore. It mainly raises issues under Articles 5 and 10 of the Convention.

THE FACTS

2. The applicants' personal details are set out in the annex below. The applicants were represented by Ms M.J. Radziejowska, a lawyer practising in Warsaw, and by Mr A. Ploszka, of the Helsinki Foundation for Human Rights.

3. The Government were represented by their Agent, Mr J. Sobczak, of the Ministry of Foreign Affairs.

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

I. THE APPLICANTS

5. The first sixteen applicants are activists affiliated with Greenpeace. The seventeenth and eighteenth applicants are journalists. All the applicants were involved in the protest in Gdańsk that is described below.

6. The first applicant is an Austrian national. At the time of the events in question, she was the helmswoman of RHIB (rigid-hull inflatable boat) no. 4.

7. The second applicant is a Spanish national. At the time of the material events, he was the captain of the Rainbow Warrior III sailing vessel ("the Rainbow Warrior"), which was flying the flag of the Netherlands.

8. The remaining sixteen applicants are of either Polish or other nationalities (as listed in the Annex). At the time of the material events, two applicants (the seventeenth and eighteenth applicants) were on board RHIB no. 4, while fourteen applicants (the third to sixteenth applicants) were mainly on board the Rainbow Warrior.

II. GREENPEACE INTERNATIONAL CAMPAIGN

9. Greenpeace launched an international campaign, entitled the "European Energy Transition Project", to encourage national economies to rapidly phase out coal in the light of the climate emergency and to make the transition from fossil fuels to renewable energy. The campaign included a series of protests such as the one that is the subject of the present application.

III. THE PROTEST IN THE SEAPORT OF GDAŃSK

10. On an unspecified date the Rainbow Warrior entered the Polish territorial waters. On 6 September 2019 it entered the Gdańsk seaport's roadstead (an area of safe anchorage for ships waiting to enter a port), after permission was granted for the vessel to drop anchor in Anchorage No. 1 (*Kotwiczowisko nr 1*), which is located within the roadstead (located ten nautical miles – approximately 18 kilometres – from the main port), and, presumably, within the Polish internal waters.

11. Greenpeace had sought permission to anchor the ship closer to the coast in order to be able to welcome the public on board for a series of conferences and events commemorating the anniversary of Greenpeace Poland and informing the public about the climate crisis. That request was not granted, and the Gdańsk Seaport Master's office issued a ban on the vessel entering the actual seaport area.

12. On 9 September 2019 at about 5.45 p.m. the Rainbow Warrior, without the permission of the seaport authorities, raised anchor and steered a course towards the entrance to the Gdańsk North seaport.

13. The applicants submitted that the ship had been moving slowly on a steady course, without creating any danger, when boats belonging to the Border Guard had surrounded the ship, trying to force it to stop or to change its course. According to the witness testimony given (on 9 September 2019 to the Operations and Investigations division of the headquarters of the Maritime Border Guard unit and, later, to the court examining the applicants' interlocutory appeal concerning their being deprived of their liberty and their movement being restricted, see paragraphs 68-84 below), by one of the Border Guard officers patrolling the seaport area (namely, P.R.), Rainbow Warrior, having cast off four RHIBs, was moving at a speed of eleven knots.

14. While the operation was unfolding, the crew of the Rainbow Warrior broadcast a radio message to the seaport authorities and to the Border Guard, informing them that their protest was of a peaceful nature and that the activists had no intention of destroying any property or causing any danger to anyone.

15. At approximately 6.30 p.m. the Rainbow Warrior anchored at the entrance to the area of the seaport devoted to the unloading of coal, in the vicinity of pipelines and terminals designated for the reloading and transport of coal, oil and gas products. It blocked the passage of a collier ship carrying coal imported from Mozambique, preventing it from entering the seaport and unloading.

16. The RHIBs that had been cast off from the Rainbow Warrior were carrying several Greenpeace activists and journalists. They were trying to approach the collier. According to the testimony of a Border Guard officer (M.Ć.) (given on 9 September 2019 to the Operations and Investigations division of the headquarters of the Maritime Border Guard unit and, later, to the court examining the applicants' interlocutory appeal concerning their being deprived of their liberty and their movement being restricted, see paragraphs 68-84 below), Border Guard boats were actively trying to impede the Greenpeace vessels and prevent them from approaching the collier ship, which was moving towards the coal unloading area. As the unfolding situation was judged to be volatile and dangerous, the Border Guard boats withdrew.

17. One of the RHIBs (not RHIB no. 4) approached the Mozambican collier. The activists who were in it painted the slogan "Coal Stop" on the

cargo ship's hull and displayed banners reading "No Future in Coal". Having finished their protest, the occupants of the RHIB in question withdrew.

18. RHIB no. 4, commanded by the first applicant, was carrying three journalists who were to report on the protest. Among them were the seventeenth and eighteenth applicants.

19. Video recordings submitted by the applicants and various publicly available edited videos of the material events¹ feature the following elements: activists on an RHIB paint the "Coal Stop" slogan on the side of a large vessel, while a Border Guard boat and other Greenpeace RHIBs watch on, floating on the water; an RHIB carrying eight Border Guard officers with partially covered faces approaches the Mozambican ship, and then RHIB no. 4; Greenpeace activists displaying banners reading "Poland without coal, 2030" and "No Future in Coal" announce over loudhailers, in English and in Polish, that their protest is peaceful and that it is against the importation of coal into Poland.

20. The applicants did not formally forewarn the Gdańsk Seaport Master's Office of their above-described actions. An obligation to do so existed under maritime law.

21. The Government submitted that appeals to those on board the Rainbow Warrior to cease their operation and to allow an inspection team aboard had been communicated to the Rainbow Warrior by the Seaport Master's Office and by the commander of Border Guard Unit no. 112 *via radio*, flag signals, and light and horn signals. The Rainbow Warrior had disregarded those appeals. This information corresponds to the written reports (*notatka urzędowa*) drawn up on 10 September 2019 by two duty officers of the Border Guard and to a letter written on 30 September 2019 by the head of the Maritime Department of the Border Guard to a head of the Analytics Department at the Headquarters of the Border Guard.

22. The Government also submitted that appeals not to approach the coal cargo ship had been transmitted by Border Guard unit no. 213. Those appeals had been disregarded by the crew of RHIB no. 4 who, in the Government's view, had posed a serious threat to maritime traffic – specifically, by coming very close to the collier.

23. The applicants stated that no orders had been issued or communicated to them by the Seaport Master's Office, as indicated by the record stored on, what is referred to as, the "DMIS" communications database. Rather, they asserted, the Seaport Master's Office had transmitted radio messages such as "You can stick your ... [swear word] protest you know where". The applicants also submitted that the crew of RHIB no. 4 had fully complied with orders communicated to them by the Border Guard, as depicted in the video footage

¹ <https://www.euronews.com/video/2019/09/10/watch-polish-officers-smash-windows-of-greenpeace-ship-with-sledgehammers>, last accessed on 1 March 2024;
<https://www.youtube.com/watch?v=vx46RP6syBo>, last accessed on 1 March 2024.

presented to the Court (see paragraph 19 above). They also denied that RHIB no. 4 had been in the close vicinity of the cargo ship.

24. On 10 September 2019 a licensed independent expert on sailing drew up a preliminary report (*opinia wstępna*) on the events in question that was based on the submission of a Border Guard officer and video material. The expert concluded that the Rainbow Warrior's captain (the second applicant) and the respective crews of the RHIBs had violated numerous provisions concerning maritime traffic and safety, creating a risk of collision between the Rainbow Warrior and the other vessels. At a hearing at the prosecutor's office on 11 September 2019, the expert submitted that any possible collision could not be classified as a "maritime disaster" because the actions of the protesters had not endangered the life or the health of many people or threatened property on a large scale. Rather, there had been a risk of the boats colliding, of material damage to the boats or of someone falling into the water. The expert also stated that he could not be certain as to whether or not light or sound signals had been emitted by the Border Guard to the Greenpeace vessels. The applicants drew the Court's attention to the fact that the report in question had never been formally challenged, because no criminal proceedings for endangering lives of others or posing a risk of a maritime disaster (under Articles 160 and 174 of the Criminal Code – see paragraphs 99 and 100 below) had been instituted against the first and second applicants.

25. The protest was livestreamed on the Internet and quickly attracted nationwide media attention.

IV. EVENTS ON RHIB NO. 4 AND THE ARREST OF THE FIRST APPLICANT

26. As submitted by the parties and shown in a video recorded by one of the protesters, at approximately 8 p.m. RHIB no. 4 was approached by an RHIB carrying eight officers of the Border Guard unit. In the video footage, the officers are not visibly armed, and they are not pointing guns at the protesters. According to the applicants' respective submissions, the officers were armed. The officers told the applicants to cooperate; otherwise the use of handcuffs and force would be necessary. Four officers boarded RHIB no. 4 and collected the identity documents of the occupants. They then asked the three journalists, among whom were the seventeenth and the eighteenth applicants (see paragraph 18 above), to transfer to the border guards' RHIB. The seventeenth applicant was told to leave his filming equipment in RHIB no. 4; he was reassured that he would be allowed to return there after the identity check. The video does not show any signs of heightened tension, shouting or physical force.

27. Subsequently the officers, for approximately one hour, subjected the journalists to identity checks. During that time, the first applicant was told to

stay on her RHIB. Her identity was later checked on board the Border Guard's RHIB.

28. Later, the journalists (according to their own account) remained under the control of four armed officers of the Border Guard, without being told whether they were under arrest or not. No written charge or the instruction on the rights and obligations of a suspect were issued in respect of the seventeenth and eighteenth applicants.

29. At 11 p.m. the Border Guard told the journalists that they were free to go but did not allow them to return to their RHIB. As recorded in the minutes of a hearing that took place on 6 November 2019 before the Gdańsk-Południe District Court, P.R. – a Border Guard officer – stated that the inspection and identity check conducted on RHIB no. 4 had lasted eight hours (from 8 p.m. until 4.15 a.m. on 10-11 September 2019). The applicants submitted that they had not been given any water, food or blankets. The latter information was not contested by the Government.

30. At 4 a.m. on 10 September 2019, after the eighteenth applicant stated that he was suffering from a medical condition (presumably, predating the events in question), the group was moved ashore, where an ambulance was called for him. At approximately 4.15 a.m. the seventeenth and eighteenth applicants, together with the remaining journalist, were free to leave.

31. On 10 September 2019 (according to the first applicant's submission at around 5 a.m.) the first applicant was taken to the Operations and Investigations division (*Wydział Operacyjno-Śledczy*) of the headquarters of the Maritime Border Guard unit (*Komenda Morskiego Oddziału Straży Granicznej*). She was informed of the offence of which she was charged: failing to obey an order of a person authorised to control traffic (that is, in this instance a person authorised to stop a ship under Article 178b of the Criminal Code – see paragraph 101 below). She was also informed of her rights in German. She was accompanied at that point by a lawyer.

32. The arrest report recorded the time of the first applicant's arrest as 3.55 a.m. on 10 September 2019. A written note was appended to the effect that the applicant had declared that she had been arrested on the previous day at 8 p.m. The report's narrative ended at 6.45 a.m. on 10 September 2019. It is recorded in the document that, on that day at 3.50 a.m., the Gdańsk-Oliwa district prosecutor was informed of the first applicant's arrest. The document is silent as to the time of the first applicant's release.

33. The arrest report stated that the first applicant had been arrested on the basis of Article 244 § 1 of the Code of Criminal Procedure (see paragraph 87 below).

34. A printout from what is referred to as "WWIDA" records released by the Maritime Border Guard unit (a document submitted by the Government) indicates that the first applicant was arrested in connection with the offence under Article 178b of the Criminal Code (see paragraph 101 below) on 10 September 2019 at 3.55 a.m. and released on 11 September at 5.15 p.m.

35. In a letter dated 11 September 2019 the Maritime Border Guard unit informed the Embassy of Austria in Poland that the first applicant (who had been arrested on 10 September 2019 at 3.55 a.m.) “remained at the prosecutor’s disposal” (*pozostaje do dyspozycji prokuratora*).

36. According to the decision to press charges (*postanowienie o przedstawieniu zarzutów*) that was drawn up on 11 September 2019 by Officer C.M. at the Operations and Investigations division of the headquarters of the Maritime Border Guard unit, written charges that had been brought against the first applicant were presented to her on 11 September 2019 (at a time not indicated).

37. According to the record of her questioning as a suspect, the first applicant was questioned at the Operations and Investigations division of the headquarters of the Maritime Border Guard unit in the presence of her lawyer and an interpreter, from 3.45 p.m. until 5 p.m. on 11 September 2019.

38. The first applicant submitted that she had remained in custody until approximately 5 p.m. on 11 September 2019 – that is to say for over forty-five hours, calculated from the time when the officers had boarded her RHIB, and over thirty-seven hours from the time of her formal arrest.

39. In their latest submissions in respect of the applications, the Government acknowledged that the first applicant had been released after her questioning on 11 September 2019.

V. EVENTS ON THE RAINBOW WARRIOR AND THE ARREST OF THE SECOND APPLICANT

40. At approximately 11 p.m. on 9 September 2019, the armed officers of the Border Guard boarded the Rainbow Warrior. At that time, nearly twenty activists – including the second applicant and the third to sixteenth applicants – were on board the vessel.

41. The Government submitted that the ship’s captain had not responded to the order issued by the commander of the Border Guard vessel to allow the Border Guard officers aboard.

42. Reinforcements were sent from the Department of Security for the Activities of the Maritime Border Guard Division. According to the Government’s submission, when the officers boarded the ship the crew had hidden themselves away and all the doors were locked. The officers smashed a window on the bridge. According to the minutes of the hearing that took place on 6 November 2019 before the Gdańsk-Południe District Court, Officer M.Ć. estimated that between fourteen and sixteen armed officers had been engaged in the operation aboard the ship.

43. Video recordings (taken by cameras on the bridge and on the deck) submitted by the applicants and various publicly available edited videos and

copies of livestreamed video recordings of the material events² depict the following sequence of events on board the Rainbow Warrior: the ship's crew is locked (from inside) on the bridge; they have their arms raised – some of them are filming on their smartphones, while others are holding up posters; the lights inside the bridge are off and the windows are covered with semi-opaque blinds; the crew members are calm and largely silent; approximately six armed Border Guard officers, with partially covered faces, are moving around the deck, with their weapons (fitted with flashlights) raised; the officers bang on the doors and windows and shout “Open the door – Border Guard”; the officers report the situation over the radio; for about five minutes, the officers do not communicate with the crew; two guards are walking around the ship checking for an open door leading to the bridge – the others are pointing their machine guns and handguns inside the bridge through the (closed) windows; the officers have difficulty counting how many people are on the bridge; the officers receive an order to force entry; they try to open the door into the bridge; they tap on the windows and repeatedly shout out commands in Polish and in English, such as “Let us in” and “Open the door or we will break it”; one applicant begins her livestream coverage from the Rainbow Warrior to which she adds commentary; the officers take notice of the lack of any reaction from the crew; two officers break a cabin window with sledge hammers; the lights are switched on inside the bridge; the captain unlocks the door and several officers enter the bridge; they repeatedly shout out in English the command “On the ground”; the activists comply with the order; one officer shouts out in English “Show your hands” and “You will be handcuffed”; the officers are then heard deciding that the crew would be taken onto the bow without being handcuffed, as they are not resisting the orders and are on board a ship on the water; an officer tells one activist to turn her smartphone off; the livestreaming applicant is then told to put away her smartphone; she puts the device down, leaving the recording mode on; one officer then tells the others to take the crew, one by one, onto the bow, without handcuffing them, and to carry out a cursory body search and an inspection of the vessel. The livestream is then stopped. Throughout the video recordings there are no signs of heightened tension, such as physical force being exerted towards certain people or repeated shouting or screaming, either on the part of the officers or the crew.

44. The officers took complete control of the crew.

45. According to the applicants' submissions the officers pointed their unlocked guns at the activists. The Government did not contest this submission.

46. The activists were at first corralled together in the bow of the vessel. According to the applicants' submissions, they were not allowed to

² <https://www.youtube.com/watch?v=vx46RP6syBo>, last accessed on 1 March 2024; <https://tv.trojmiasto.pl/Sluzby-weszly-na-Rainbow-Warrior-przy-terminalu-weglowym-Gdansk-10-09-2019-video-35907.html>, last accessed on 1 March 2024

communicate with each other or make any movement. They were not allowed to film the scene. The Government did not contest these submissions.

47. Presumably, two hours after boarding the vessel, the officers started to check the identities of the activists, one by one. The ship inspection report (*protokół z kontroli statku*), which was drawn up between 11.40 p.m. on 9 September 2019 and 6 a.m. on 10 September 2019, indicated that ten crew members and eight passengers were on board. Two printed documents, entitled “IMO Crew List”, were attached to the report. They listed the names of thirty-one people (including those of all the applicants) and their identity details (including their passport numbers), and listed each person’s rank on the ship. Handmade markings (ticks and crosses), made in what appears to be the handwriting of the person drawing up the inspection report, feature on these documents.

48. The Border Guard officers also inspected the vessel and the vessel’s documentation. According to the search report (*protokół przeszukania*) drawn up on 10 September 2019 (between 2.10 a.m. and 3 a.m.) by the officers, the vessel was searched for objects that were illicit or dangerous or that could serve as evidence in the case. During the search, no obstacles or difficulties were encountered, and the officers did not break anything. According to a prosecutor’s decision dated 17 September 2019 validating the search in question, the search led to the seizure of two smartphones and one video camera.

49. The Government submitted that the crew had not raised any objections to the inspection.

50. The applicants submitted that having completed the check, the officers had moved the activists to the wardroom. Going to the toilet had been possible only with an officer’s permission and under escort, and the toilet door had had to be kept open. The Government did not contest this submission.

51. The Government submitted that the captain of the Rainbow Warrior (the second applicant) had been informed that by moving from the anchorage without the consent of the Port Master’s Office and by dropping anchor in a prohibited location, he had committed an offence liable to be punished with an administrative penalty.

52. The third to sixteenth applicants submitted that they had at no point been informed of their status or been presented with any written charge or been briefed on the rights and obligations of a suspect. According to the record of the hearing that took place on 6 November 2019 before the Gdańsk-Południe District Court, Officer M.Ć. stated that the activists had not had any status, as they had only been subjected to a search and identity check. The applicants had not been allowed to contact or be contacted by their lawyers.

53. The activists’ lawyers, who were trying to reach the Border Guard, could not obtain any information about the situation unfolding. The lawyers’ written requests for information went unacknowledged and unanswered. The

Government did not contest this information. One such request that did reach the Border Guard was refused, and no reasoning for that refusal was provided.

54. On 10 September 2019 at approximately at 5.30 a.m. the Rainbow Warrior was towed out of the seaport.

55. The Border Guard officers left the ship at 6 a.m.

56. At 3.31 a.m. on 10 September, the Border Guard took the second applicant (presumably) and the eighth applicant, ashore. They were taken to the Operations and Investigations division of the headquarters of the Maritime Border Guard unit.

57. From 5.30 a.m. until 6.25 a.m. on 10 September 2019, the eighth applicant was heard as a witness and then, presumably allowed to go.

58. The second applicant was formally arrested and charged with failure to obey an order issued by a person authorised to control traffic (Article 178b of the Criminal Code – see paragraph 101 below) – or in the instant case, authorised to order a ship to stop.

59. At that point in the proceedings the second applicant was accompanied by a lawyer. He was informed in English of the charge and of his rights.

60. The arrest report recorded the date of the second applicant's arrest as 10 September 2019 at 3.31 a.m. The applicant's lawyer submitted a written declaration that his client's detention had begun on 9 September 2019 at 11 p.m. The report was concluded at 6.05 a.m. on 10 September 2019. It is recorded in the document that, on that day at 3.50 a.m., the Gdańsk-Oliwa district prosecutor was informed of the first applicant's arrest. The document is silent as to the time of the second applicant's release.

61. The arrest report states that the second applicant was arrested on the basis of Article 244 § 1 of the Code of Criminal Procedure (see paragraph 87 below).

62. A print-out of the WWIDA records released by the Maritime Border Guard unit indicates that the second applicant was arrested in connection with the offence provided by Article 178b of the Criminal Code (see paragraph 101 below) on 10 September 2019 at 3.31 a.m. and released on 11 September at 5.30 p.m.

63. A letter dated 11 September 2019 from the Maritime Border Guard unit informed the Consulate of Spain in Gdańsk that the second applicant, who had been arrested on 10 September 2019 at 3.31 a.m., "remained at the prosecutor's disposal".

64. According to a document drawn up on 11 September 2019 by Officer C.M. at the Operations and Investigations division of the headquarters of the Maritime Border Guard unit, written charges that had been brought against the second applicant were presented to him on 11 September 2019 (the hour was not indicated).

65. According to the record of his questioning, the second applicant was questioned at the Operations and Investigations division of the Maritime

Border Guard unit, in the presence of his lawyer and an interpreter, from 3.45 p.m. until 5.10. p.m. on 11 September 2019.

66. The second applicant submitted that he had remained in custody until 11 September 2019 at 5.10 p.m. – that is to say, for approximately forty-two hours, counting from the time when the officers had boarded the Rainbow Warrior, and over thirty-seven hours from the time of his formal arrest.

67. In their latest submissions in respect of the applications, the Government acknowledged that the second applicant had been released on 11 September 2019 after his questioning.

VI. THE COURT PROCEEDINGS IN RESPECT OF THE BORDER GUARDS' ACTIONS

A. Applicants' interlocutory appeal concerning their being deprived of their liberty and their movement being restricted

68. On 16 September 2019 a lawyer lodged an interlocutory appeal on behalf of all the applicants, objecting to their “arrest in its entirety”. The appeal was based, *inter alia*, on Article 246 § 1 of the Code of Criminal Procedure (see paragraph 93 below). It was argued that the applicants' being deprived of their liberty and their movement being restricted had been unlawful and unjustified and, as such, in breach of Polish law and of Article 5 of the Convention.

69. In respect of the first and second applicants, the lawyer argued, *inter alia*, that: (i) the measure had been unnecessary in the absence of a reasonable suspicion that they had committed a criminal offence, or of any risk that they would flee; (ii) the applicants had only been informed at approximately 5 a.m. on 10 September of the reasons for their arrest, their rights and the possibility to have an interpreter present, whereas they had already been deprived of their liberty on 9 September at 8 p.m. (the first applicant) and at 11 p.m. (the second applicant); (iii) the applicants' respective arrests had been without legal basis in so far as no record had been made of the fact that they had been deprived of their liberty from 9 September at 8 p.m. (the first applicant) and at 11 p.m. (the second applicant) until approximately 5 a.m. on 10 September 2019.

70. In respect of the remaining applicants, the lawyer argued, *inter alia*, that: (i) the measure had not been called for, in the absence of a reasonable suspicion that they had committed a criminal offence, or of a risk that they would flee or tamper with evidence; (ii) the applicants had not been informed of the reasons for their arrest or of their rights immediately after their respective arrests on 9 September at 8 p.m. (the seventeenth and eighteenth applicants) and at 11 p.m. (the third to sixteenth applicants); (iii) no reports had been made of the applicants' respective arrests; (iv) depriving the applicants of their liberty within the context of their social and public interest

activity had constituted a form of repression and restriction of the applicants' "fundamental rights".

71. In respect of all the applicants, the lawyer argued that contact between the applicants and their lawyers had been impeded until 10 September at 5 a.m.

72. The applicants' interlocutory appeal also stated that at 5 a.m. on 10 September 2019 the first and second applicants had been transferred to the premises of the Border Guard, where they had formally been arrested.

73. On 24 October 2019 the lawyers extended the above-mentioned appeal by arguing that all the applicants had been subjected to unlawful and unjustified restriction on their movement, in violation of Article 2 of Protocol No. 4 to the Convention. In this document, the lawyers submitted that the first and second applicants had been restricted in their movements without any legal basis until approximately 5 a.m. on 10 September 2019.

B. Domestic court's rulings

1. In respect of the first and second applicants

74. On 6 November 2020 the Gdańsk-Południe District Court ruled in respect of the arrests of the first and second applicants (case files nos. X Kp 1088/19 and X Kp 1089/19) under, *inter alia*, Article 246 § 1 of the Code of Criminal Procedure (see paragraph 93 below).

75. The domestic court dismissed their appeal on the grounds that the arrest, as recorded in the respective arrest reports, was lawful and justified, because the applicants had disregarded the Border Guard's orders and had been suspected of committing a criminal offence under Article 178b of the Criminal Code (see paragraph 101 below). Moreover, a lawyer had been present when the respective arrest reports had been drawn up, and the applicants had been informed of their rights in English, a language which they spoke.

76. The domestic court also considered that the measure in question had been justified, because the authorities had had to question the applicants, check their respective places of residence and decide whether to remand them in custody.

77. The domestic court considered that what had preceded the respective arrests had constituted the limitation of the applicants' movement for the purposes of conducting an identity check and an inspection of the vessels – it had not constituted deprivation of liberty. The fact that during the above-mentioned activities the applicants had not been free to walk away without the officers' authorisation had been an inherent feature of the operation.

78. The domestic court did not examine the applicants' arguments about their movement having been restricted in breach of Article 2 of Protocol no. 4 to the Convention.

79. On 13 November 2019 that decision was served on the applicants' lawyer.

2. In respect of the third to eighteenth applicants

80. On 6 November 2019 the Gdańsk-Południe District Court issued a decision to leave unexamined the appeal in respect of the remaining sixteen applicants – that is, the third to sixteenth applicants (who had been on board the Rainbow Warrior) and the seventeenth and eighteenth applicants (who had been on RHIB 4) – on the grounds that it was inadmissible in law (see paragraph 97 below).

81. The court found that the applicants in question had not been deprived of their liberty, but had been compelled to participate only in the identity checks and the inspection of the vessel. The court relied on the general principle, arising from domestic case-law, that the lack of freedom to walk away while a procedure was underway did not automatically constitute a deprivation of liberty. The crucial element to be assessed was whether the persons concerned had been able to leave once the procedure had been completed. Under the circumstances of the case, even though the applicants had not been free to move around or walk away while the officers had been carrying out their checks and inspections, once that procedure had been completed, the applicants had been free to leave.

82. The domestic court also observed that, in view of the above, the officers had not had a duty to draw up an arrest report or to inform the applicants of their rights.

83. Lastly, the court observed that subjecting the applicants to the control by the Border Guard had been justified because the Rainbow Warrior and RHIB no. 4 had disregarded the signals issued by the Border Guard and had, in the officers' judgment, posed a serious threat to maritime traffic – especially by coming very close to a large cargo vessel. The court found irrelevant the arguments concerning the peaceful nature of the protest.

84. On 5 December 2019 the Gdańsk-Południe District Court upheld that decision after a further appeal lodged by the applicants.

VII. THE COURT PROCEEDINGS IN RESPECT OF THE APPLICANTS' ACTIONS

A. Criminal proceedings against the first and second applicants

85. The criminal proceedings (based on the indictment of 10 December 2019) against the first and second applicants for failure to comply with a lawful order given by an officer authorised to enforce the law were discontinued. On 4 March 2021 the Gdańsk-Południe District Court – and (after an appeal lodged by the prosecutor) on 28 April 2021 – the Gdańsk Regional Court ruled that the conduct of the first and second applicants had

not met the criteria of a prohibited act (as specified by Article 178b of the Criminal Code) because, according to well-established case-law, that provision only applied to road, and not maritime, traffic.

86. An extraordinary cassation appeal, lodged by the Prosecutor General, is pending examination by the Supreme Court (no. V KK 182/22).

B. Administrative proceedings against the second applicant

87. It appears that on 13 September 2019 the head of the Gdynia Maritime Office (*Urząd Morski*) fined the second applicant, in his capacity as captain of the Rainbow Warrior, 91,700 Polish zlotys (PLN – approximately 21,300 euros (EUR)) for a series of maritime offences. These offences comprised the following acts: raising anchor and, without informing or obtaining authorisation from the Seaport Master's Office – and in spite of orders issued by the duty officer at the Seaport Master's Office – dropping anchor in a place not designated for that purpose; engaging in activities exceeding the usual use of the seaport; and blocking efforts by the officers of the Seaport Master's Office and Border Guard to board the Rainbow Warrior. On 31 January 2020 the relevant Minister quashed that decision and remitted the case to a lower-instance authority. On 5 October 2021 the head of the Gdynia Maritime Office re-imposed a fine in the same amount on the second applicant. On 29 April 2021 that decision was upheld by the relevant government minister.

88. It appears that the proceedings are currently pending appeal before the Warsaw Regional Administrative Court.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. IDENTITY CHECK, ARREST AND DETENTION

A. Substantive provisions

89. The Border Guard Act of 12 October 1990 (*Ustawa o Straży Granicznej*) authorises the Border Guard to undertake activities for operational, reconnaissance and public-order purposes (section 9(1)), and to run identity checks (section 11(1)(4)). They may also carry out arrests, as further regulated by the Code of Criminal Procedure of 6 June 1997 (*Kodeks postępowania karnego*) (section 11(1)(5) of the Border Guard Act and Article 312 § 1 of the Code of Criminal Procedure).

90. Article 244 § 1 of the Code of Criminal Procedure authorises the Border Guard to make an arrest where there are justified grounds to suspect that the person in question has committed an offence and it is feared that he/she might escape, go into hiding, conceal traces of that offence or his/her identity cannot be established.

91. An arrested person shall immediately be informed of the reasons for his or her arrest and of his or her rights – including the right to a lawyer and, if necessary, an interpreter (Article 244 § 2 of the Code of Criminal Procedure).

92. An arrested person shall immediately be released where the reasons for his or her arrest cease to exist. In any event, such a person shall be released within forty-eight hours of his or her arrest unless he or she is brought before a judge in connection with an application for his or her pre-trial detention (Article 248 of the Code of Criminal Procedure).

B. Remedies in respect of arrest, detention, identity checks and searches carried out by the Border Guard

93. According to Article 246 § 1 of the Code of Criminal Procedure, an arrested person may lodge an interlocutory appeal with a court seeking that the legitimacy, legality and propriety of the arrest in question be examined.

94. Under Article 552 § 4 of the Code of Criminal Procedure a person who has been wrongfully arrested is entitled to compensation from the State Treasury for damage or harm suffered. Any such claim does not have to be preceded by an interlocutory appeal against that arrest (see Supreme Court resolution I KZP 5/06, OSNKW 2006/6, paragraph 55 of 23 May 2006; Katowice Court of Appeal judgment II AKa 162/10, LEX No. 686852 of 30 September 2010; Commentary on Article 552 of the Code of Criminal Procedure, D. Świecki et al., Volume II, paragraph 16, LEX/el., 2023; and J. Matras, Commentary on Article 552 of the Code of Criminal Procedure, K. Dudek (ed.), Warszawa 2020). Where such an interlocutory appeal has been lodged and examined, the court examining the compensation claim is not bound by the outcome of any judicial review (see Warsaw Court of Appeal judgment II AKa 349/21, LEX nr 3568664 of 18 May 2023, and Warsaw Court of Appeal judgment II AKa 51/22, LEX nr 3519528 of 22 March 2023). Any such claim becomes statute-barred one year after the day of release (Article 555 of the Code of Criminal Procedure).

95. The above-mentioned judicial-review and compensation remedies are available irrespective of whether or not an arrest report or a detention decision has been drawn up in respect of the claimant (see the decisions issued, following an interlocutory appeal lodged under Article 246 § 1 of the Code of Criminal Procedure by the Warszawa-Śródmieście District Court, on: 16 February 2018 (case no. II Kp 3058/17); 15 February 2018 (cases nos. II Kp 3052/17 and II Kp 3065/17); 13 February 2018 (cases nos. II Kp3069/17 and II Kp 3056/17); 6 February 2018 (case no. II Kp 3057/17); 11 January 2018 (case no. II Kp 3053/17); and 15 January 2018 (case no. II Kp 3050/17). In the light of the domestic courts' case-law, an identity check carried out by the police is considered to constitute deprivation of liberty where: an identity check is not performed on the spot; the person

concerned is deprived of the ability to act as he or she pleases; the person concerned has, for some time, limited freedom of movement or no freedom to leave the place where he or she has been forcibly placed; or the person concerned remains under the supervision of officers who control his or her ability to leave the place to which he or she has been brought (see Warszawa-Śródmieście District Court's decisions of: 16 February 2018 (case no. II Kp 3058/17) 15 February 2018 (cases nos. II Kp 3052/17 and II Kp 3065/17); 13 February 2018 (cases nos. II Kp 3069/17, II Kp 3056/17, and II Kp 3067/17); 6 February 2018 (cases nos. II Kp 3057/17 and II Kp 3070/17); and 11 January 2018 (case no. II Kp 3053/17).

96. Under section 15(7) of the Police Act (*Ustawa o policji*) of 6 April 1990, identity checks and searches carried out by police officers may be the subject of an interlocutory appeal lodged with a prosecutor. This provision was enacted in 2018 as a result of the judgment of the Constitutional Court of 14 December 2017 (case no. K 17/14), which declared that section 15 of the Police Act contravened the Polish Constitution – namely, Article 45 of the Constitution (right of access to a court) and Article 77 (right to compensation for an unlawful action on the part of a public authority) – in so far as it had originally not prescribed the remedy in question. The Border Guard Act does not contain any similar provision. Consequently, identity checks or searches carried out by Border Guard officers cannot be reviewed by any higher authority.

97. An appellate court shall leave unexamined (*pozostawienie bez rozpoznania*) any interlocutory appeal that has been admitted for examination in the event that that appeal is inadmissible under statutory law (*niedopuszczalny z mocy ustawy*) – namely, Articles 430 § 1 and 429 § 1 of the Code of Criminal procedure). A further appeal against any such decision may be lodged with another bench of the appellate court in question (Article 430 § 2 of the Code of Criminal Procedure).

II. CONDUCT OF THE BORDER GUARD

98. Under Article 14 § 1 of the Border Guard Act, when a vessel drops an anchor at a location not designated for such purpose or poses threat to maritime traffic, the commanders of Border Guard vessels in internal sea waters and in Polish territorial sea shall have the right to, *inter alia*, (i) call on a ship to stop for inspection and to follow the approved course of passage of that ship; (ii) detain a ship, check the documentation relating to that ship and its cargo, identify the ship's crew and passengers, examine the ship's cargo and search the ship's premises, and detain any person on board who is suspected of committing a crime; and (iii) force the ship to sail to a seaport specified by the Border Guard.

III. CRIMINAL AND MARITIME LAW OFFENCES

99. Under Article 174 of the Criminal Code of 6 June 1997 (*Kodeks Karny*), anyone who causes an immediate danger of a disaster on land or water is liable to imprisonment for between six months and eight years. If the offender acts unintentionally, he or she is liable to imprisonment for up to three years.

100. Article 160 of the Criminal Code provides that anyone who exposes a person to an immediate danger of losing his or her life, or to grievous bodily injury or serious impairment to health, is liable to imprisonment for up to three years.

101. Article 178b of the Criminal Code is worded as follows:

“[A person] who, despite the issuance, by a person authorised to control road traffic moving in a vehicle or on a ship or in an aircraft ... of the command to stop a motor vehicle, does not immediately stop the vehicle and continues driving, shall be liable to punishment by imprisonment from three months to five years.”

102. The relevant parts of sections 48 and 56 of the Law on maritime areas of the Republic of Poland and maritime administration of 21 March 1991 (*Ustawa o obszarach morskich Rzeczypospolitej i administracji morskiej*) read as follows:

“Section 48

To the extent not regulated in [other] provisions, if it is necessary to protect life, health or property, [to maintain] the defence and security of the State, ... [to protect] the marine environment at sea, in the seaport, harbour and repair centre, [or] for the protection of navigation and seaports, the director of the maritime office [in question] may ... set out prohibitions of or orders for specific conduct ...”

“Section 56

A person who:

(1) Stops or anchors a ship outside of the location designated therefor;

(2) Navigates a ship outside of navigation routes or fails to follow the course designated by the relevant authority;

...

(9) Violates a regulation issued on the basis of section ... 48;

...

– shall be subject to a fine not exceeding twenty times the average monthly remuneration in State-owned industry for the preceding year, as announced by the chairman of the Central Statistical Office.”

103. The status of a suspect in criminal law is regulated by Article 71 of the Code of Criminal Procedure. Specifically, a suspect is a person against whom a written decision to press charges has been issued or a person who, in the absence of a written decision to press charges, was informed of the

charges within the context of his or her questioning in the capacity of a suspect.

IV. FREEDOM OF EXPRESSION AND FREEDOM OF ASSEMBLY

104. Article 14 of the Constitution provides as follows:

“The Republic of Poland shall ensure the freedom of the press and other means of social communication.”

105. Article 54 § 1 of the Constitution guarantees freedom of expression and provides, in its relevant part:

“Everyone shall be guaranteed freedom to express opinions and to acquire and to disseminate information.”

106. Article 57 of the Constitution provides as follows:

“The freedom of peaceful assembly and participation in such assemblies shall be ensured to everyone. Limitations upon such freedoms may be imposed by statute.”

107. Article 31 § 3 of the Constitution, which lays down a general prohibition on disproportionate limitations on constitutional rights and freedoms (the principle of proportionality), provides:

“Any limitation upon the exercise of constitutional freedoms and rights may be imposed only by statute, and only when necessary in a democratic State for the protection of its security or public order, or to protect the natural environment, health or public morals, or the freedoms and rights of other persons. Such limitations shall not violate the essence of freedoms and rights.”

V. STATE’S LIABILITY IN TORT

108. Article 23 of the Civil Code (*Kodeks Cywilny*), which entered into force in 1964, contains a non-exhaustive list of so-called “personal rights” (*dobra osobiste*). This provision states:

“The personal rights of an individual, in particular [the rights to] health, liberty, honour, freedom of conscience, name or pseudonym, image, secrecy of correspondence, the inviolability of the home, scientific or artistic work, [as well as to] inventions and improvements, shall be protected by the civil law, regardless of the protection laid down in other legal provisions.”

109. Article 24 paragraph 1 of the Civil Code provides:

“A person whose personal rights are at risk [of infringement] by a third party may seek an injunction, unless the activity [complained of] is not unlawful. In the event of an infringement, [the person concerned] may also require the party responsible for the infringement to take the necessary steps to remove [the infringement’s] consequences ... In compliance with the principles of this Code, [the person concerned] may also seek pecuniary compensation or may ask the court to award an adequate sum for the benefit of a specific public interest.”

110. Under Article 448 of the Civil Code, a person whose personal rights have been infringed may seek compensation. The relevant part of that provision reads:

“The court may award an adequate sum in pecuniary compensation for non-pecuniary damage (*krzywda*) suffered by anyone whose personal rights have been infringed. Alternatively, the person concerned, regardless of [whether he or she is] seeking any other relief that may be necessary in order to remove the consequences of the infringement sustained, may ask the court to award an adequate sum for the benefit of a specific public interest ...”

111. Furthermore, Article 77 § 1 of the 1997 Polish Constitution (which entered into force on 17 October 1997) and Article 417 of the Polish Civil Code provide that the State may be held liable in tort. The latter provision reads as follows:

“The State Treasury or, [as the case may be], a local-government entity or other legal person responsible for exercising public authority, shall be held liable for any damage (*szkoda*) caused by an unlawful act or omission connected to the exercise of public authority.”

THE LAW

I. JOINDER OF THE APPLICATIONS

112. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment (Rule 42 § 1 of the Rules of Court).

II. ARTICLE 1 OF THE CONVENTION

113. The parties did not object that, at the time when the events complained about by the applicants had taken place, the applicants had been within the territorial jurisdiction of Poland – the coastal and port State – for the purposes of Article 1 of the Convention. The Court does not see any issue in this respect.

III. PRELIMINARY OBJECTIONS REGARDING THE APPLICATIONS AS A WHOLE

A. The parties’ submissions

1. *The Government*

114. In their two sets of observations on the admissibility and the merits of the applications, submitted on 14 January and on 29 April 2022, the Government argued that the applications were inadmissible for abuse of the right of application because the applicants had failed to disclose that

provoking the intervention of the Border Guard had constituted a planned element of their protest, which Greenpeace had calculated would bring more publicity to the action. The Government further argued that the applicants' recourse to the Court had had a similar aim.

115. The Government also argued that the applications were inadmissible because the applicants had not suffered a significant disadvantage. The restriction on the applicants' freedom of movement – or (in respect of the first and second applicants) their being deprived of their liberty – had not lasted long. The applicants had realised their goals in that they had drawn public attention to their campaign. The subject matter of the applications did not give rise to an important matter of principle, as the issue of deprivation of liberty was subject to the well-established case-law of the Court. The question of whether the applicants' human rights had been respected did not therefore require examination in respect of this case.

116. Lastly, the Government argued that the applications lodged by the first and the second applicants were premature because criminal proceedings were pending against them following the lodging of an extraordinary cassation appeal (see paragraph 86 above). The Government formulated this objection, for the first time, in their observations of 21 April 2023 which were requested by the Court in order to specifically address the issue of the first and second applicants' detention from the morning of 10 September onwards.

2. The applicants

117. The applicants argued that the Government's objections were groundless.

118. As to the first objection, the applicants submitted that the sole goal of their actions had been to raise awareness of the importation of coal into Poland and the need to stop the use of fossil fuels in order to mitigate the effects of climate change. The applicants explained that the decision to invite journalists to cover the protest had been prompted by three considerations. Firstly, it had guaranteed direct and wide coverage of the Greenpeace campaign. Secondly, it had indirectly ensured the safety of the activists; in this regard, in the applicants' view, while the excessive use of coercive measures to interrupt peaceful protests was a systemic problem in Poland, it was less likely that the authorities would have recourse to such measures in respect of the Rainbow Warrior protest if the event were to be filmed and livestreamed. Thirdly, media coverage would prove the peaceful nature of the protest and would demonstrate that the applicants had nothing to hide from the public. The applicants also submitted that they had lodged their applications with the Court in order to vindicate their individual Convention rights and to have the Court formulate, in its ensuing ruling, general standards that should be observed in respect of the protection of environmental activists. It followed that the applicants had not abused their right of individual application.

119. As to the second objection, the applicants stressed that their case was not only about the right to liberty, but also about freedom of expression and assembly. The applicants submitted that the authorities' actions had concerned both those two applicants who had been formally recognised to have been deprived of liberty, and the group of applicants who had not obtained such formal recognition. The detention of the first two applicants had lasted for a very long time, while the latter group comprised two journalists. The authorities' actions had therefore more widely affected (i) the media by impeding them from spreading information of public interest and by creating a chilling effect, and (ii) society as a whole, given that it had been prevented from receiving such information. The applicants stressed that the measures used by the Border Guard had been excessive in that a disproportionately large number of officers had been deployed and in that they had been visibly armed – thus creating an atmosphere of fear and heightened tension. Moreover, those measures had been imposed on the activists for an unreasonably long time – thus effectively depriving them of the possibility of continuing their peaceful protest. Overall, the applicants argued that the circumstances surrounding the cases at hand satisfied the first and the second requirements of the *Giusti* test in respect of an assessment of the degree of the disadvantage suffered by applicants (see *Giusti v. Italy*, no. 13175/03, §§ 22-36 18 October 2011). Lastly, the applicants argued that the cases at hand revealed a systemic problem in Poland. The Court's ruling would therefore have not only an individual, but also a wide general impact on peaceful protests in Poland.

120. As to the third objection, the applicants challenged the Government's objection that the application was premature, stressing that the subject matter of the present application was completely different from the subject matter of the pending cassation appeal.

B. The Court's assessment

1. Abuse of the right of application

121. Article 35 § 3 (a) of the Convention allows the Court to declare inadmissible any individual application that it considers to constitute "an abuse of the right of individual application". The implementation of this provision amounts to an "exceptional procedural measure", and the concept of "abuse" refers to its ordinary meaning – namely, the harmful exercise of a right by its holder in a manner that is inconsistent with the purpose for which such right is granted (see *Miroļubovs and Others v. Latvia*, no. 798/05, § 62, 15 September 2009, and *Zambrano v. France* (dec.), no. 41994/21, § 33, 21 September 2021). The direct responsibility of the person concerned must always be established with sufficient certainty, a mere suspicion not being sufficient to declare the request abusive within the meaning of Article 35 § 3 of the Convention (see *Gross v. Switzerland* [GC], no. 67810/10, § 28, ECHR

2014 and the cases cited therein; *Miroľubovs*, cited above, §§ 63-66; and *Zambrano*, cited above, § 33).

122. In principle, any conduct on the part of an applicant that is manifestly contrary to the purpose of the right of individual application as provided for in the Convention and which impedes the proper functioning of the Court or the proper conduct of the proceedings before it can be considered as an abuse of the right of application (see *Chim and Przywieczerski v. Poland*, no. 36661/07, § 189, 12 April 2018, and *Miroľubovs*, cited above, § 65).

123. Turning to the applications at hand, the Court notes that they concern Articles 10 and 11 of the Convention, and Article 5 of the Convention (contrast *Zambrano*, cited above, § 35). The assessment of the aim, the context and the course of the applicants' protest at sea lie at the core of the Court's examination of the merits of the case. Moreover, there is no evidence capable of leading the Court to consider that the applicants' recourse to the Court was aimed, as the Government argued, to bring publicity to the applicants' campaign. In any event, the Court has already considered that an application motivated by publicity or propaganda does not, by that very fact alone, constitute an abuse of the right of application (see *McFeeley and Others v. the United Kingdom*, no. 8317/78, Commission decision of 15 May 1980, DR 20, p. 70 and 71, and *Miroľubovs and Others*, cited above, § 65). More importantly, nothing indicates that the applicants have had an irresponsible and frivolous attitude towards the proceedings that are pending before the Court (contrast *Miroľubovs and Others*, cited above, § 66), or that they have deliberately aimed to undermine the machinery of the Convention and the functioning of the Court (contrast *Zambrano*, cited above, § 38).

124. In view of the foregoing, this objection under Article 35 § 3 (a) of the Convention must be dismissed.

2. Significant disadvantage

125. The Court reiterates that in assessing the severity of a violation, both the applicant's subjective perceptions and what is objectively at stake in a particular case should be taken into account (see *Gagliano Giorgi v. Italy*, no. 23563/07, § 55, ECHR 2012 (extracts)). The Court takes into account the fact that the present case concerns a matter of principle for the applicants – in particular, their right under Article 5 § 1 of the Convention not to be deprived of their liberty and under Article 10 of the Convention to freedom of expression. Given the circumstances, the applicants suffered a disadvantage that cannot be considered insignificant for the purposes of Article 35 § 3 (b) of the Convention. The same considerations amount to grounds for finding that respect for human rights (as defined in the Convention) in any event requires an examination of the complaint on the merits (see, *mutatis mutandis*, *Dmitrijevs v. Latvia*, no. 49037/09, § 36, 16 December 2014; *Čamans and Timofejeva v. Latvia*, no. 42906/12, §§78-82, 28 April 2016;

Handzhiyski v. Bulgaria, no. 10783/14, §§ 36-38, 6 April 2021; also contrast *Sylka v. Poland* (dec), no. 19219/07, § 34, 26 June 2014).

126. Accordingly, the Court dismisses the Government's objection.

3. *Premature nature of the application*

127. The Court observes that, in accordance with Rule 55 of the Rules of Court, any plea of inadmissibility must, in so far as its character and the circumstances permit, be raised by the respondent Contracting Party in its written or oral observations on the admissibility of the application in question. Where an objection is raised out of time for the purposes of Rule 55, an estoppel arises and the objection must accordingly be dismissed, unless the Government were not in a position to comply with the time-limit set forth in Rule 55 (see *Fedotova and Others v. Russia* [GC], nos. 40792/10 and 2 others, § 87, 17 January 2023, and the cases cited therein).

128. In the present cases, however, the Court sees no need to examine whether the Government are estopped from lodging the above-mentioned objection (see paragraph 116 above), because the ongoing criminal proceedings against the first and second applicants do not constitute an adequate remedy by which to address any of their complaints regarding the alleged violation of their rights to liberty, freedom of movement, freedom of expression or freedom of assembly.

129. The Court therefore dismisses the Government's objection as to the premature nature of the applications lodged by the first and second applicants.

IV. ALLEGED VIOLATION OF ARTICLES 5 §§ 1 AND 2 OF THE CONVENTION

130. The third to sixteenth applicants complained that corralling them on the bow of the Rainbow Warrior and preventing them from moving freely on board that vessel had constituted a *de facto* deprivation of liberty. The measure had been unlawful, arbitrary and unjustified. The same complaint was raised by the seventeenth and eighteenth applicants, who had been on board RHIB 4.

131. The first and second applicants complained that, contrary to what had been formally recorded as the time of their respective arrests, the period during which they had been deprived of their liberty had lasted from the moment when the Border Guard had boarded their respective vessels (RHIB no. 4 in respect of the first applicant and Rainbow Warrior in respect of the second applicant) and had taken control of them. The first applicant thus argued that the period during which she had been deprived of her liberty (from 8 p.m. on 9 September until 3.55 a.m. on 10 September) had been unlawful; furthermore, she argued that the entire period during which she had been deprived of her liberty (that is to say from 8 p.m. on 9 September until 5 p.m. on 11 September) had been arbitrary and unjustified. Similarly,

the second applicant argued that the initial period during which he had been deprived of his liberty (from 11 p.m. on 9 September until 6.05 a.m. on 10 September) had been unlawful) and that the entire period during which he had been deprived of his liberty (that is to say from 8 p.m. on 9 September until 5.10 p.m. on 11 September) had been arbitrary and unjustified.

132. All the applicants relied on Article 5 §§ 1 and 2 of the Convention, which read, 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:

...

(b) the lawful arrest or detention of a person ... in order to secure the fulfilment of any obligation 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;

...

2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

....”

A. Admissibility

1. Applicability of Article 5

133. The Court notes that the parties are in dispute as to whether the situation of (i) the third to sixteenth applicants, (ii) the seventeenth and eighteenth applicants, and (iii) the first and second applicants – in respect of the events from the evening of 9 September until the early morning of 10 September 2019 – falls to be examined under Article 5 of the Convention. The Court must therefore first determine whether this part of the applications is compatible *ratione materiae* with that provision.

(a) Submissions of the parties and the third-party intervener

(i) The Government

134. The Government argued that Article 5 of the Convention was inapplicable in respect of the situation of those applicants who had been on board the Rainbow Warrior (namely, the third to sixteenth applicants). Those applicants had, in the Government’s view, merely been subjected to an identity check and a vessel inspection. Those procedures had been legal as they had been carried out by staff of the authorised national body, in accordance with the applicable law. They had also been justified by the fact

that the vessel had engaged in unauthorised and dangerous manoeuvres, in breach of a series of maritime rules.

135. According to the Government, the inspection of the Rainbow Warrior had lasted the minimum time that had been necessary given the large scope of activities undertaken by the Border Guard officers who had searched the vessel. In this regard, the Government stated that the crew had resisted the officers' instructions until direct coercion had been used – that is to say the window in the room adjacent to the vessel's wheelhouse had been smashed, and two officers of the Department of Security for the Activities of the Maritime Border Guard Division had thereby gained entrance. Only then had the crew unlocked the door to the bridge and started cooperating with the officers. Subsequently, the officers had searched the vessel and inspected the paperwork of the vessel and the identity documents of the persons aboard.

136. The Government also argued that, according to the test relied on by the domestic court, the third to sixteenth applicants had not been deprived of their liberty because as soon as the above-mentioned procedures had been completed, they had been free to go.

137. The Government did not make any comments specifically in respect of the seventeenth and eighteenth applicants, who had been in RHIB no. 4.

138. In respect of the first and second applicants, the Government essentially argued that the period during which they had been deprived of their liberty had started at the moment of their formal arrest, on 10 September. Prior to that, the two applicants had merely been restricted in their movement for the purpose of the above-mentioned identity checks, the inspection of their respective vessels and the gathering of the elements necessary to decide whether there had been a reasonable suspicion that they had committed criminal offences.

(ii) The applicants

139. The applicants argued that Article 5 of the Convention was applicable to the situation of all the applicants throughout the events of 9 and 10 September – and in respect of the first and second applicants, also the events of 11 September 2019.

140. The third to sixteenth applicants (who had been on board the Rainbow Warrior), the seventeenth and eighteenth applicants (the two journalists who had boarded RHIB no. 4) and the first and second applicants (the helmswoman of RHIB no. 4 and the captain of the Rainbow Warrior, respectively) had therefore all been deprived of their liberty within the meaning of that provision and according to the criteria set out in *Engel and Others v. the Netherlands* (8 June 1976, §§ 58-59, Series A no. 22) and the subsequently developed case-law.

141. As to the nature of the conduct, the applicants submitted that the officers of the Border Guard had boarded the two vessels in question and had taken complete control of them. The applicants had not been free to do

anything without the officers' consent – for example, go to the toilet, talk to one another, or adjust their clothes. The first, seventeenth and eighteenth applicants had been forced to abandon their RHIB and to board a Border Guard vessel. The seventeenth and eighteenth applicants had been ordered to stop filming and to leave their equipment in their RHIB. At that stage, none of the applicants had been allowed to contact or to receive messages from their lawyers. In the applicants' view, the fact that identity checks and the inspections of the vessels had been carried out by the officers during that time, had had no bearing on the classification of their situation as deprivation of liberty.

142. In this regard the applicants also observed that the definition of deprivation of liberty by the domestic court did not comply with the Convention standard. This had especially been the case in so far as the domestic court had based its assessment on whether an arrest report had been drawn up, which was a factor that had lain entirely within the discretion of the authorities involved in the situation examined.

143. As to the duration of the situation at hand, the applicants submitted that the third to sixteenth applicants (aboard the Rainbow Warrior) had been under the authorities' control for seven hours, while the seventeenth and eighteenth applicants (in RHIB no. 4) for over eight hours. The seventeenth and eighteenth applicants submitted that their identity checks had been concluded within one hour and that throughout the remaining time no action had been taken by the authorities. The applicants thus stressed that the duration of the identity checks and the inspections of the vessels had been excessive – especially in respect of RHIB no. 4, a small vessel that only had room for four people.

144. As to the manner of the execution of the Border Guard's intervention, the applicants submitted that it had been invasive and disproportionate. The intervention had lasted long into the night, and the applicants had been intimidated as the officers had been armed and had forbidden them any contact with their lawyers.

145. In addition, the first and second applicants submitted that the period during which they had been deprived of their liberty had lasted from the moment at which the officers had established control over them on board their respective vessels (on 9 September) until their respective rounds of questioning had ended on 11 September 2019.

(iii) Third-party intervener

146. The Polish Bar Association (*Naczelna Rada Adwokacka*) made the following submissions, in so far as relevant to the present cases.

147. Citing the website of the Metropolitan Police Authority, the third party submitted that the difference between an identity check (under section 15(1)(1) of the Police Act) and arrest (under section 15(1)(2)-(3) of the Police Act) was that a person whose identity was being established

continued to enjoy freedom of movement and could contact other persons, and the activity did not violate the person's dignity or human rights and freedoms. In the absence of those elements, a measure could be considered to amount to deprivation of liberty.

148. In the experience of Polish advocates, as supported by the relevant legal literature, abuse of authority by officers was a systemic problem in Poland, given the fact that, in the absence of a formal arrest report or detention decision, routine activities aimed at restoring law and order could lead to the arbitrary use of coercive measures and unnecessary interference with human rights. The existing legal framework allowed for a practice whereby actually depriving a person of his or her liberty in order to allow identity checks to be carried out on that person by police, the Border Guard or the Forest Guard was not accompanied by the safeguards or temporal limitations that otherwise applied to detention. Such activities frequently bore signs of harassment.

(b) The Court's assessment

(i) General principles

149. The Court reiterates that Article 5 § 1 protects the physical liberty of the person. It is not concerned with mere restrictions upon liberty of movement, which are addressed by Article 2 of Protocol no. 4. The difference between deprivation of and restrictions upon liberty is one of degree or intensity, and not of nature or substance (see *Austin and Others v. the United Kingdom* [GC], nos. 39692/09 and 2 others, § 57, ECHR 2012; *Khlaifia and Others v. Italy* [GC], no. 16483/12, § 64, 15 December 2016; and *De Tommaso v. Italy* [GC], no. 43395/09, § 80, ECHR 2017 (extracts) and the cases cited therein).

150. The Court also reiterates that deprivation of liberty may take various forms (see *Guzzardi v. Italy*, 6 November 1980, § 95, Series A no. 39). The Court does not consider itself bound by the legal conclusions of the domestic authorities as to whether or not there has been a deprivation of liberty, and undertakes an autonomous assessment of the situation (see *Khlaifia and Others*, cited above § 71; *Creangă v. Romania* [GC], no. 29226/03, § 92, 23 February 2012; *Valerian Dragomir v. Romania*, no. 51012/11, § 67, 16 September 2014; *Čamans and Timofejeva*, cited above, § 108; and *Bryan and Others v. Russia*, no. 22515/14, § 62, 27 June 2023).

151. In order to determine whether a person has been deprived of his or her liberty, the starting point must be his or her specific situation, and account must be taken of a whole range of criteria, such as the type, duration and effects of the measure in question and the manner in which it was implemented (see *Engel and Others* cited above, §§ 58-59, and *Khlaifia and Others*, cited above, § 64). The Court attaches importance to factors such as whether there is a possibility to leave the restricted area, the degree of supervision and control over the movements of the person concerned, the

extent of that person's isolation and the possibility of contact with the outside world (see *Guzzardi*, cited above § 95, and *H.M. v. Switzerland*, no. 39187/98, § 45, ECHR 2002-II).

152. Where the facts indicate a deprivation of liberty within the meaning of Article 5 § 1, the relatively short duration of the measure does not affect this conclusion (see, for example, *Shimovolos v. Russia*, no. 30194/09, §§ 44 and 50, 21 June 2011, in which the applicant spent forty-five minutes at a police station; *Gillan and Quinton v. the United Kingdom*, no. 4158/05, § 57, ECHR 2010 (extracts), where the applicants were stopped and subjected to a thirty-minute search; *Novotka v. Slovakia* (dec.), no. 47244/99, 4 November 2003, where transportation to the police station, the search of the applicant and his confinement in a cell did not exceed one hour; *Zelčs v. Latvia*, no. 65367/16, §§ 36 and 40-41, 20 February 2020, where the applicant spent less than two hours in "administrative detention" with a view to drawing up an administrative-offence report; and *Rantsev v. Cyprus and Russia*, no. 25965/04, §§ 317-18, ECHR 2010 (extracts), where the alleged detention of the applicant's daughter lasted about two hours).

153. Furthermore, the Court reiterates that even measures intended for protection or taken in the interests of the person concerned may be regarded as constituting deprivation of liberty (see the above-cited cases of *Khlaifia and Others*, § 71, and *Bryan and Others*, cited above, § 63). The purpose of measures taken by the authorities in order to deprive individuals of their liberty is no longer decisive for an assessment of whether there has in fact been a deprivation of liberty. The Court takes this into account only at a later stage of its analysis, when examining the compatibility of the measures with Article 5 § 1 (see *Khlaifia and Others*, cited above, § 71; *Creangă*, cited above, § 93; and *Rozhkov v. Russia* (no. 2), no. 38898/04, § 74, 31 January 2017; also contrast *Ilias and Ahmed v. Hungary* [GC], no. 47287/15, §§ 224-30, 21 November 2019).

154. The Court has examined the merits of Article 5 complaints in a variety of circumstances that are comparable to those of the applicants in the present case – including where persons have been held on ships (see *Medvedyev and Others v. France* [GC], no. 3394/03, ECHR 2010, and *Khlaifia and Others*, cited above), permanently surveying migrants in an airport zone (see *Shamsa v. Poland*, nos. 45355/99 and 45357/99, 27 November 2003), compelling an employee to remain present during an inspection of his work place (see *Čamans and Timofejeva*, cited above, §§ 110-115), and subjecting persons in the street to identity checks and searches (see *Gillan and Quinton*, cited above).

155. In these and in other cases that raised the issue of the applicability of Article 5 of the Convention, the Court has considered that what is indicative of deprivation of liberty is an element of coercion in the exercise of police powers in terms of the applicant's inability to leave (see, for example, *Čamans and Timofejeva*, cited above, § 112; *Gillan and Quinton*, cited above,

§ 57; and *Khalikova v. Azerbaijan*, no. 42883/11, § 102, 22 October 2015). It also had regard to the effect of a measure on the applicant in terms of physical discomfort and inability to leave (compare *Austin and Others*, cited above, § 64). As to the element of coercion, the Court has held that the absence of handcuffing or other measures of physical restraint does not constitute a decisive factor in establishing the existence of a deprivation of liberty (see *M.A. v. Cyprus*, no. 41872/10, § 193 *in fine*, ECHR 2013 (extracts) and the cases cited therein; also compare *Čamans and Timofejeva*, cited above, § 113).

156. In the case of *Bryan and Others* (cited above), the Court categorised the situation as deprivation of liberty owing to the following elements of the case: two applicants had been forced against their will to board a Russian Coast Guard vessel and had not been allowed to move about freely until they had been transferred to the main Greenpeace vessel the next day (see *Bryan and Others*, cited above, §§ 11 and 63); all the applicants had been held on board the main Greenpeace vessel, which Russian forces had taken control of and towed for five days to port; during that time the applicants had not been physically restrained; and no records of their arrest had been drawn up (see *Bryan and Others*, cited above, §§ 12, 13 and 64).

157. The Court may also draw on its case-law concerning situations where persons had been ordered (or invited) to be present during a search or an inspection at their home or workplace (see *Čamans and Timofejeva* (cited above); *Miķelsons v. Latvia*, no. 46413/10, 3 November 2015; *Stănculeanu v. Romania*, no. 26990/15, 9 January 2018; and, for illustrative purposes, *Saar v. Estonia* (dec.) [Committee], no. 40797/17, 12 November 2019). In considering that a situation did not amount to a “deprivation of liberty”, the Court gives weight, *inter alia*, to the following factors: (i) the applicant, although able to make remarks, did not make any note of having been deprived of his or her liberty or raise any other objections when signing the search report (see *Stănculeanu*, cited above, § 44; *Čamans and Timofejeva*, cited above, §§ 116 and 119; and *Miķelsons*, cited above, § 59); (ii) the applicant – who was told to stay onsite and not to use a telephone or a computer – did not state that he had asked to be allowed to leave the premises during the search or that such a request had been denied, and nor did he argue that he had been unable to attend any other meetings or events or had had to forego any family engagements owing to having had to be present during the search in question (see *Saar*, cited above, § 43; also compare and contrast *Creangă*, cited above, §§ 98-99, where the applicant – a policeman – had been considered to be under an obligation to comply with his superior’s order that he stay at the headquarters of the prosecution service); (iii) the applicant did not claim to have been guarded by the investigators (see *Miķelsons*, cited above, § 61; also compare and contrast *Iustin Robertino Micu v. Romania*, no. 41040/11, § 89, 13 January 2015, where the applicant – a policeman – had remained in an office of the investigating body and had been continuously

guarded by police officers); (iv) the search had been conducted efficiently, and the applicants' freedom of movement had not been restricted to a greater extent or for a longer period than necessary (see *Saar*, cited above, § 43).

(ii) *Application of these principles to the present cases*

158. Turning to the present cases, the Court considers that, in the light of the material at hand, the following sequence of events has been established.

(α) In respect of the third to sixteenth applicants

159. The third to sixteenth applicants were on board the Rainbow Warrior (see paragraphs 8, 18 and 40 above).

160. At least six officers of the Border Guard boarded the Rainbow Warrior at approximately 11 p.m. on 9 September 2019 (see paragraphs 40 and 43 above). The Border Guard officers were joined by reinforcements from the Department of Security for the Activities of the Maritime Border Guard Division (see paragraphs 42 and 135 above). Fourteen to sixteen armed officers were engaged in the operation aboard the ship (see paragraph 42 *in fine*). As the crew had hidden themselves away and all the doors were locked, the officers smashed a window (see paragraphs 42 and 43 above). After being let onto the bridge by the applicants, the officers took complete control of the crew and the ship (see paragraphs 43 and 44 above). At least in the initial phase of the intervention, the officers pointed their guns at the applicants and threatened them with the use of handcuffs (see paragraphs 43 and 45 above). The applicants were subsequently corralled together on the bow of the vessel (see paragraph 46 above). For approximately two hours the officers searched the vessel and inspected the vessel's documentation (see paragraphs 47 and 48 above). They then proceeded to conduct an identity check on all the persons on board (see paragraph 47 above). When the checks were completed, the applicants were moved to the wardroom (see paragraph 50 above). Throughout all this time, the applicants were not allowed to communicate with one another or with the lawyers who were trying to reach them (see paragraphs 46 and 52 *in fine* and 53 above). They were not allowed to use their telephones or to make any movement (see paragraphs 43 and 46 above). They had to ask permission to use the toilet and they could only use it under escort (see paragraph 50 above). The third to sixteenth applicants were at no point informed of their status (see paragraph 52 above). An enquiry made by a lawyer went unanswered (see paragraph 53 above).

161. In the early morning hours of 10 September (see paragraphs 56 and 57 above), the eighth applicant was taken ashore.

162. At approximately 5.30 a.m. on 10 September 2019, the Rainbow Warrior, with the crew, was towed out of the seaport (see paragraph 54 above). The Border Guard officers left the ship at approximately 6 a.m.

(see paragraph 55 above). At this point, the applicants remaining on board were free to leave.

163. The eight applicant was free to leave the premises of the Maritime Border Guard unit presumably after 6.25 a.m. (see paragraph 57 above).

164. No arrest report was produced in respect of the third to sixteenth applicants (see paragraph 82 above), and the domestic court held that those applicants had not been deprived of liberty within the meaning of the domestic law (see paragraphs 74-84 above).

165. In the light of the above-noted elements, the Court concludes that the third to sixteenth applicants were effectively under the control of the officers who had also taken complete control of the ship. With the exception of the eighth applicant, that situation lasted approximately seven hours. The eight applicant was on board of the ship for four and a half hours, before being taken to a different location (see paragraph 56 above). The Court also observes that an element of coercion in the exercise of officers' powers was present, given the fact that the applicants were guarded by over a dozen armed officers (who threatened to handcuff them and who, at least initially, pointed their guns at the applicants), the applicants' inability to move around or to leave the bow and later the wardroom, and the applicants' inability to contact or to hear from their lawyers (see, *mutatis mutandis*, the above-cited cases of *Bryan and Others*, §§ 62 and 64, and *Iustin Robertino Micu*, § 89; also contrast *Mīkelsons*, cited above, § 61).

166. The Government have not demonstrated that the time during which the applicants were under the control of the Border Guard officers was justified for the purposes of undertaking the above-mentioned identity checks, search and inspection. The Court notes that, as can be seen from the case file, a printed list of the members of the ship's crew, together with their identity details, was made available to the officers (see paragraph 47 above); there were only eighteen people to be subjected to a search and identity checks (see paragraph 47 above), and the applicants, once the Border Guards had smashed the window, started to abide by the orders given to them during the operation (see paragraphs 43 *in fine*, 48 and 49 above).

167. The Court concludes that, although the applicants were not handcuffed or otherwise physically restrained, and although they did not object to the inspection (see paragraph 49 above), other elements noted above rendered their situation completely distinguishable from that of the voluntary presence of persons whose home or workplace was being subjected to an inspection (contrast the above-cited cases of *Stănculeanu*, § 44; *Čamans and Timofejeva*, §§ 112, 116 and 119; and *Mīkelsons*, § 59).

168. The Court therefore concludes that applicants three to sixteen were deprived of their liberty within the meaning of Article 5 § 1.

(β) In respect of the seventeenth and eighteenth applicants

169. The seventeenth and eighteenth applicants were among the three journalists in RHIB no. 4, which was operated by the first applicant (see paragraphs 5, 8 and 18 above). Four officers of the Border Guard boarded that boat on 9 September 2019 at approximately 8 p.m., while the other four remained in the Border Guard vessel (see paragraphs 19 and 26 above). The officers ordered the applicant journalists to stop filming and to move to the Border Guard's boat under the threat of being handcuffed and force being used (see paragraphs 26 and 27 above). For approximately one hour, the officers ran identity checks on these applicants (see paragraph 27 above). The two applicants subsequently remained under the control of the Border Guard – without, it would appear, being clearly informed of their status (see paragraph 28 above). At 11 p.m. the Border Guard told the two applicants that they were free to go, but did not allow them to return to their RHIB. The Border Guard's boat then drifted in the area, with the two applicants still on board (see paragraph 29 above). At 4 a.m. on 10 September 2019, the group was moved ashore after the eighteenth applicant had notified the officers of the fact that he had a medical condition (see paragraph 30 above). It appears that the seventeenth and eighteenth applicants were, at that point, effectively free to leave. No arrest report was produced in respect of those applicants (see paragraph 30 above) and the domestic court held that the two applicants had not been deprived of liberty within the meaning of the domestic law (see paragraphs 74-84 above).

170. In the light of the above-noted elements, the Court concludes that the seventeenth and eighteenth applicants were effectively under the control of the Border Guard officers for approximately eight hours. It is unknown whether those applicants would have been taken ashore once the identity checks and inspection had been completed at 11 p.m. if they had expressly asked to be. It is clear, however, that they were not allowed to go back to their RHIB. The Court therefore observes that the element of coercion in the exercise of officers' powers was present given (i) the fact that the seventeenth and eighteenth applicants were guarded by the Border Guard officers who considerably outnumbered the RHIB's crew and who had threatened to employ force (namely use handcuffs – see paragraph 26 above) (see *Iustin Robertino Micu*, cited above, § 89; also contrast *Mikelsons*, cited above, § 61), (ii) the applicants' inability to leave or to carry out their journalistic duties, and (iii) the fact that the two applicants were unable to contact or to hear from their lawyers.

171. It is moreover clear that the applicants were under the officers' control for a period that was much longer than would normally be necessary for an individual identity check to be conducted in respect of each applicant – or even an identity check conducted in respect of four people taken as a group (the seventeenth and eighteenth applicants, the accompanying journalist and the first applicant), who complied with all orders given

(see paragraphs 26 *in fine*, 27-29 above; contrast, *mutatis mutandis*, *Saar*, cited above, § 43).

172. Lastly, the Court observes that, according to its well-established case-law, the present analysis would not be altered even if the two applicants had been placed under the Border Guard's control for their own protection from the possible effects of the dangerous manoeuvres in which their RHIB had engaged (see paragraphs 24 and 153 above and paragraph 210 below).

173. The Court therefore concludes that the seventeenth and the eighteenth applicants were deprived of their liberty within the meaning of Article 5 § 1.

(γ) In respect of the first applicant

174. The sequence of events described in paragraph 169 above is similar in so far as the first applicant is concerned. One difference is that the first applicant remained in RHIB no. 4 during the identity checks of the journalists and that she had her identity checked on board the Border Guard's boat approximately one hour later (see paragraph 27 above). Another crucial difference is that, when taken ashore with the others, the first applicant was formally arrested at 3.55 a.m. (see paragraph 31 above) and held in custody until 5.15 p.m. of the following day, 11 September 2019 (see paragraphs 34 and 39 above).

175. In the light of the above-noted elements, the Court considers that the first applicant was effectively under the control of the officers for approximately eight hours prior to being formally arrested. The element of coercion in the exercise of officers' powers was present in the light of: (i) the fact that the first applicant was guarded by several officers who had threatened to use force (see *Iustin Robertino Micu*, cited above, § 89; also contrast *Mikēlsons*, cited above, § 61), and (ii) the first applicant's inability to leave.

176. It is moreover clear that the first applicant was under the officers' control for a period much longer than would normally be necessary for an identity check (see paragraphs 27-29 above; also contrast, *mutatis mutandis*, *Saar*, cited above, § 43).

177. Lastly, the Court observes that, according to its well-established case-law, the present analysis would not be altered even if the first applicant had been taken under the Border Guard's control for her own protection from the possible effects of the dangerous manoeuvres that she had undertaken in her RHIB (see paragraph 153 above and paragraph 210 below).

178. Although the first applicant was not handcuffed or otherwise physically restrained, other elements mentioned above – as well as the fact that she clearly asserted that she had been arrested on the previous day at 8 p.m. (see paragraph 32 above) – render her situation distinguishable from the voluntary presence of persons participating in home searches or

workplace inspections (contrast the above-cited cases of *Stănculeanu*, § 44; *Čamans and Timofejeva*, §§ 112, 116 and 119; and *Miķelsons*, § 59).

179. Subsequently the first applicant was held for over thirty-seven hours at the Operations and Investigations division of the Maritime Border Guard unit (see paragraph 38 above). During that period, she was charged and questioned in relation to the criminal proceedings against her, in the presence of her lawyer and an interpreter (see paragraph 31 above). In this connection, the Court notes that the Government failed to demonstrate that the first applicant could have left the Border Guard premises of her own free will (compare *I.I. v. Bulgaria*, no. 44082/98, § 87, 9 June 2005; *Osypenko v. Ukraine*, no. 4634/04, § 49, 9 November 2010; *Salayev v. Azerbaijan*, no. 40900/05, §§ 42-43, 9 November 2010; and *Creangă*, cited above, § 99).

180. The Court therefore concludes that the first applicant was deprived of her liberty for a little over forty-five hours, counting from the time when the officers immobilised her RHIB on 9 September 2019 until 5.15 p.m. on 11 September 2019.

(δ) In respect of the second applicant

181. The sequence of events described in paragraph 159 above is similar in respect of the second applicant. One crucial difference is that this applicant was taken ashore by Border Guard officers. He was formally arrested at 3.31 a.m. on 10 September 2019 (see paragraphs 56 and 60 above) and held in custody until 5.30 p.m. on the following day, 11 September 2019 (see paragraphs 62 and 67 above).

182. In the light of the above-noted elements, the Court finds that the second applicant was effectively under the control of the officers for well over four hours prior to being formally arrested. The Court also observes that the element of coercion in the exercise of officers' powers was present in respect of (i) the fact that the second applicant was guarded by armed Border Guard officers, who had initially pointed their guns at him and his crew (see *Iustin Robertino Micu*, cited above, § 89; also contrast *Miķelsons*, cited above, § 61), and (ii) his inability to move around or to leave.

183. The Government have not demonstrated that the period during which the second applicant was under the officers' control was justified for the purposes of an identity check, search and inspection (see paragraph 165 above).

184. Although the applicant was not physically restrained, and although he did not object to the ship's inspection while it was ongoing (see paragraph 49 above), other elements mentioned above – including the threat of being handcuffed (see paragraph 43 above), and the fact that the applicant later claimed to have been under arrest (see paragraph 60 above) – render his situation distinguishable from the voluntary presence of persons participating in home searches or workplace inspections (contrast the above-

cited cases of *Stănculeanu*, § 44; *Čamans and Timofejeva*, §§ 112, 116 and 119; and *Mikelsons*, § 59).

185. Subsequently the second applicant was held for over thirty-seven hours at the Operations and Investigations division of the Maritime Border Guard unit (see paragraph 66 above). During that period, written charges that had been brought against the second applicant were presented to him and he was questioned in relation to the criminal proceedings against him, in the presence of his lawyer and an interpreter (see paragraph 65 above). The Court notes that the Government failed to demonstrate that the second applicant could have left the Border Guard premises of his own free will (compare the above-cited cases of *I.I. v. Bulgaria*, § 87; *Osypenko*, § 49; *Salayev*, §§ 42-43; and *Creangă*, § 99).

186. The Court therefore concludes that the second applicant was deprived of his liberty for over forty-two hours, counting from the time when the officers immobilised the Rainbow Warrior (at 11 p.m. on 9 September) until 5.30 p.m. on 11 September 2019.

(iii) The Court's conclusion on the applicability of Article 5

187. Having regard to the nature and the duration of the restrictions imposed on the applicants by the authorities, the Court finds that all the applicants were deprived of their liberty, within the meaning of Article 5. That provision is therefore applicable – including in respect of the time spent by the applicants under arrest that was not recorded in any formal arrest report.

188. It follows that the Court has jurisdiction *ratione materiae* to examine the applicants' complaints under Article 5.

2. Non-exhaustion of domestic remedies

(a) The parties' submissions

(i) The Government

189. The Government argued that the applications were inadmissible for non-exhaustion of domestic remedies.

190. In respect of the applications lodged by the third to eighteenth applicants, the Government argued that those applicants' domestic complaints concerning wrongful arrest did not amount to an adequate remedy in the circumstances, because those sixteen applicants had not in fact been deprived of their liberty. The applicants should instead have brought a civil action based on the provisions of Articles 23, 24, 417 and 448 of the Civil Code (paragraphs 108-110 above).

191. In their additional observations (dated 21 April 2023) – which were requested by the Court in order to specifically address the issue of the first and second applicants' detention from the morning of 10 September onwards – the Government made the following objection. In so far as the first and

second applicants had remained in custody until the evening hours of 11 September 2019, their complaint under Article 5 of the Convention was inadmissible for non-exhaustion of domestic remedies. In that regard, the Government argued that that phase of the detention in question had not been a subject of the applicants' interlocutory appeal (see paragraphs 68-73 above).

(ii) *The applicants*

192. Replying to the Government's objection, the third to eighteenth applicants reiterated that in so far as they argued that they had been effectively deprived of liberty and that their detention had been unlawful and unjustified, the domestic remedy of which they had availed themselves was an adequate and effective one. The fact that the domestic courts had declared those applicants' interlocutory appeal inadmissible (based on the argument that they had not been detained) proved, in the applicants' view, that the national legal framework was not compliant with the Convention. The applicants' situation could not have been the subject of judicial review even though, under the Convention, it had constituted deprivation of liberty. Having availed themselves of one remedy, the applicants had considered themselves absolved of the obligation to pursue any alternative remedy. Moreover, the applicants argued that any civil action, the success of which would have depended on the authorities having been found to have acted unlawfully, would have been bound to fail because in their 2019 decisions the domestic court had not found that the applicants had been deprived of liberty in an unlawful manner.

193. In their comments on the *amicus curiae* submissions (see paragraph 148 below), the applicants clarified that, even in the absence of a formal arrest report or detention decision, situations involving the actual deprivation of liberty could still be submitted for judicial review. In such cases, however, the decision as to whether or not to proceed with an examination of the merits of such complaints was at the discretion of a judge.

194. In their additional observations (requested by the Court in order to enable it to specifically address the issue of the first and second applicants' detention from the morning of 10 September onwards) the applicants argued that their "entire" detention had been the subject of their interlocutory appeal (see paragraphs 68-73 above) and of the subsequent judicial review. To start with, the interlocutory appeal of 16 September 2019 had clearly stated that the first and second applicants had been moved to the Border Guard's premises at 5 a.m. on 10 September (see paragraph 72 above), and a detention review decision of 6 November 2019 had noted that the authorities had had to carry out a series of actions with respect to the two applicants before deciding whether to remand them in custody (see paragraph 76 above). Moreover, in the applicants' view, the point at which their respective periods of detention had ended had been so unequivocal that it had not been necessary

(either for their lawyers or for the reviewing court) to explicitly state that the applicants' detention had ended on 11 September. Furthermore, the applicants explained that where, in their appeals, they had referred to the detention as having lasted from the evening of 9 September until the morning of 10 September, they had only done so in order to specifically complain of the unlawfulness of the measure. Other grounds for appeal had been raised in respect of the detention in its "entirety" (see paragraph 69 above). Lastly, the applicants submitted that it was not the domestic courts' practice to explicitly state the respective times of the start and end of a period of detention, unless necessary.

(b) The Court's assessment

(i) In respect of the third to eighteenth applicants

195. The Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention obliges applicants to use first the remedies that are normally available and sufficient in the domestic legal system to enable them to obtain redress for the breaches alleged. The existence of the remedies must be sufficiently certain, in practice as well as in theory, failing which they will lack the requisite accessibility and effectiveness (see *Aksoy v. Turkey*, 18 December 1996, §§ 51-52, *Reports of Judgments and Decisions* 1996-VI).

196. Having found that the applicants were deprived of their liberty within the meaning of Article 5 of the Convention (see paragraph 187 above), the Court considers that by lodging their interlocutory appeal of 16 September 2019 they availed themselves of the specific remedy provided under Article 246 of the Code of Criminal Procedure – namely, to have the lawfulness and reasonableness of their detention examined by a court. According to the domestic courts' practice (see paragraph 95 above), the remedy in question was available to the applicants despite the fact that no arrest reports had been drawn up in respect of their situation between the evening of 9 September 2019 and the early hours of 10 September 2019. The Court also notes that the third to eighteenth applicants, whose interlocutory appeal had been left unexamined, pursuant to Article 430 § 1 of the Code of Criminal Procedure, availed themselves of a follow-up remedy available to them under paragraph 2 of that provision (see paragraphs 84 and 97 above).

197. Regarding situations in which different avenues of redress are available, the Court reiterates that an applicant who has made use of a remedy that is apparently effective and sufficient cannot also be required to have tried others that were available but were probably no more likely to be successful (see *Aquilina v. Malta* [GC], no. 25642/94, § 39, ECHR 1999-III).

198. Consequently, the Court dismisses the Government's objection of non-exhaustion of domestic remedies in respect of the third to eighteenth applicants' complaint under Article 5 of the Convention.

(ii) In respect of the first and second applicants

199. The Court reiterates that Article 35 § 1 requires that complaints intended to be lodged subsequently with the Strasbourg Court should have first been lodged with the appropriate domestic body “at least in substance” (see, among other authorities, *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, § 72, 25 March 2014, and the cases cited therein). It is not sufficient that a violation of the Convention is “evident” from the facts of the case or the applicant’s submissions. Rather, he or she must actually complain (expressly or in substance) of it in a manner that leaves no doubt that the same complaint that was subsequently submitted to the Court had indeed been raised at the domestic level (see *Merot d.o.o. and Storitve Tir d.o.o. v. Croatia* (dec.), nos. 29426/08 and 29737/08, 10 December 2013).

200. In their interlocutory appeals, the applicants complained firstly that the measure had been unjustified and that it had, moreover, been unlawful – specifically until the moment at which they had been taken to dry land and formally arrested. While the detention’s endpoint was not explicitly stated – the core of the lawyers’ argument and the court’s reasoning focused on the start point (that is, on the question of whether the period of arrest started when the guards boarded the vessels or eight hours later, when the two applicants were taken ashore); it does appear that the measure was reviewed by the domestic court in respect of its entire duration. The text of the interlocutory appeal and the court’s reasoning indeed support the arguments made in the applicants’ additional observations (see paragraphs 68, 72 and 76 above) and lead the Court to conclude that the applicants sufficiently described the relevant factual elements of their Article 5 complaint before the domestic courts, and have therefore exhausted the domestic remedies.

201. The Court therefore dismisses the Government’s objection as to the non-exhaustion of domestic remedies in respect of the first and second applicants’ complaint under Article 5 of the Convention.

3. *Conclusion regarding the admissibility of the applicants’ complaints under Article 5*

202. The Court notes that the applicants’ complaints under Article 5 of the Convention are neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. They must therefore be declared admissible.

B. Merits*1. The parties' submissions***(a) The applicants**

203. The third to eighteenth applicants argued that their being deprived of their liberty had been unlawful, because the measure had not been recorded as an arrest. The first and second applicants made a similar argument in respect of the initial period between the evening of 9 September until the early morning of 10 September 2019. All the applicants submitted that identity checks, vessels' inspection or even, the alleged lack of cooperation with the Border Guard and breach of maritime rules, had not constituted statutory grounds for their detention.

204. In addition, the first and second applicants argued that there had been no justified suspicion that they had committed the above-mentioned offence under Article 178b of the Criminal Code, because that provision clearly only applied to road traffic and not to maritime traffic. The fact that the authorities had cited Article 178b in order to justify putting an end to the first and second applicants' actions and holding them under arrest until 11 September 2019 had constituted, in the applicants' view, instrumental abuse of the law.

205. All the applicants argued that their being deprived of their liberty had also been arbitrary and unjustified. In their view, the measure had reflected the systemic practice of the Polish authorities and had been aimed at humiliating the applicants and deterring them from participating in peaceful protests.

206. All the applicants argued that the conditions set out by Article 244 § 1 of the Code of Criminal Procedure had not been fulfilled, because the authorities had not addressed the risk that the applicants might escape, go into hiding, or hinder the investigation. The applicants stressed that they had cooperated with the Border Guard officers in that they had been correctly identified and their vessels had been inspected. If the authorities had wished to pursue a case against them, simply summoning the applicants would have been a viable and less intrusive alternative.

207. In addition, the first and second applicants argued that depriving them of their liberty for over forty hours, in total, had been disproportionate.

208. Lastly, the seventeenth and eighteenth applicants complained that the authorities had not given any consideration to their status as journalists.

209. Overall, the applicants argued that there had been a breach of Article 5 §§ 1 and 2 of the Convention.

(b) The Government

210. The Government submitted that the applicants had given the authorities reasons to intervene, as they had breached maritime regulations, caused a threat to the safety of the vessels and persons involved in the event

and disregarded the Border Guard's orders, in violation of Article 178b of the Criminal Code. In this regard, the Government submitted that the Greenpeace vessels had posed real risks to the security units that had participated in the action as well as to the other persons located in the RHIBs (for example, a risk that a raft would overturn, that someone would fall overboard or that damage would be caused to vessels). They stressed that the Greenpeace manoeuvres had taken place in the vicinity of a fuel base in the Gdańsk North seaport. The procedures undertaken by the authorities had therefore been lawful and fully justified.

211. In respect of the first applicant, the Government argued that her failure to comply with the orders, together with the escape of the three other RHIBs, indicated that there had been a real risk that she might escape, which had also justified her arrest.

212. In respect of the third to sixteenth applicants, the Government argued that they had not been deprived of their liberty, but had merely been subjected to inspection and identity checks that had been lawful and justified, given the applicants' breach of maritime rules and non-compliance with the authorities' orders.

213. The Government did not distinguish between the situation of the third to sixteenth applicants (on board the Rainbow Warrior) and that of the seventeenth and eighteenth applicants (on board RHIB no. 4). They did not make any comments in respect of the latter group.

214. In respect of the first and second applicants, the Government submitted that they had been promptly and adequately informed of the respective reasons for their arrest.

215. Overall, the Government argued that there had been no violation of Article 5 §§ 1 and 2 of the Convention, because the Border Guard actions had been conducted in accordance with a procedure prescribed by law, and had been properly recorded and justified.

2. *The Court's assessment*

(a) *The general principles*

216. The main relevant principles regarding Article 5 § 1 (b) and (c) of the Convention are recapitulated in the judgment of *S., V. and A. v. Denmark* [GC], nos. 35553/12 and 2 others, §§ 73-75, 77 and 79-83, 22 October 2018, and in the judgment of *Ostendorf v. Germany*, no. 15598/08, §§ 63-73, 7 March 2013.

217. The Court further reiterates that Article 5 § 1 of the Convention requires that any deprivation of liberty be "lawful", which includes the condition that it must be effected "in accordance with a procedure prescribed by law" (*ibid.*, § 74). Where the lawfulness of detention is in issue, the Convention refers essentially to national law but also, where appropriate, to other applicable legal standards – including those that 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 the above-cited cases of *Medvedyev and Others*, § 79 and the cases cited therein, and *Creangă*, § 84).

218. The Court further refers to the general principles set out in the Grand Chamber judgment in the case of *Selahattin Demirtaş v. Turkey (no. 2)* ([GC], no. 14305/17, §§ 314-19, 22 December 2020) concerning the requirement, under the first limb of Article 5 § 1 (c) of the Convention, that an arrest in the context of criminal proceedings must be based on reasonable suspicion of having committed an offence (*ibid*, §§ 314 et seq.).

(b) The application of these principles to the present cases

(i) Regarding Article 5 § 1 of the Convention

- (α) Regarding the detention of all the applicants from the evening of 9 September 2019 until the morning of 10 September 2019

219. The Court is ready to accept the Government’s argument that the vessels’ captains failed to comply with the orders given by the Border Guards and might have posed a danger to the maritime traffic at the entrance to the Gdańsk harbour. Therefore, the circumstances of the case may fall under Article 5 § 1 (b). However, the Government failed to show that the whole set of coercive measures taken in respect of the applicants and leading to their deprivation of liberty as found above (paragraph 187 above), had a sufficient legal basis in domestic law. Moreover, they failed to demonstrate that the entire period of effective detention was necessary for the purpose of carrying out the identity checks and the inspection of the vessels.

220. There has accordingly been a violation of Article 5 § 1 of the Convention in respect of the detention of all the applicants from the evening of 9 September 2019 until the early morning of 10 September 2019.

- (β) The detention of the first and the second applicants from the early morning of 10 September 2019 until 11 September 2019

221. The Court observes that the crux of the matter is whether the detention of the first and the second applicants, from the moment that they were formally arrested, was lawful under sub-paragraph (c) of Article 5 § 1 of the Convention. In particular, the Court’s task is to assess whether the facts relied on by the authorities can be reasonably considered to fall under one of the sections of the law dealing with criminal behaviour. The Court reiterates that if the acts or facts held against a detained person did not constitute a crime at the time when they occurred, there could clearly not be a “reasonable suspicion” of the criminal offence (see *Selahattin Demirtaş*, cited above, § 317, with further references).

222. To start with, the Court notes that the two applicants were formally arrested in relation to – and charged with – the offence of failing to obey an order of a person authorised to control traffic under Article 178b of the Criminal Code (see paragraphs 31, 61 and 64 above), which explicitly regulates road traffic only (see paragraph 101 above). As concluded by the domestic courts in the course of proceedings whose normal course had been completed and which were currently pending an extraordinary cassation appeal (see paragraphs 85 and 86 above), it is well-established in domestic case-law that the provision in question was not applicable to maritime traffic and, hence, to the two applicants (see paragraph 85 above). The Court finds that the measures and the charges against the first and the second applicants were essentially based on facts that cannot be reasonably considered as behaviour criminalised under domestic law.

223. In view of the above considerations, the Court holds that there has been a violation of Article 5 § 1 of the Convention on account of the lack of reasonable suspicion that the first and the second applicants had committed an offence, and the unlawful nature of their detention from the morning of 10 September 2019 until their release on 11 September 2019.

(ii) *Regarding Article 5 § 2 of the Convention*

224. The Court reiterates that Article 5 § 2 of the Convention provides the elementary safeguard that any person arrested should know why he is being deprived of his liberty. By virtue of this provision any person arrested must be told, in simple, non-technical language that he can understand, the essential legal and factual grounds for his arrest, so as to be able, if he sees fit, to apply to a court to challenge its lawfulness (see *Fox, Campbell and Hartley v. the United Kingdom*, 30 August 1990, § 40, Series A no. 182, and *Lazoroski v. the former Yugoslav Republic of Macedonia*, no. 4922/04, § 52, 8 October 2009).

225. It has not been contested that the third to eighteenth applicants were not informed of the legal reasons the measures which entailed the deprivation of their liberty, while the first and second applicants only received such information several hours after their actual arrest. In view of these elements and the fact that the Court has found that the applicants' detention was unlawful, the Court concludes that the authorities did not comply with the requirements of Article 5 § 2 of the Convention (see, *mutatis mutandis*, *Mătășaru v. the Republic of Moldova*, no. 20253/09, § 47, 1 February 2022).

226. There has accordingly been a breach of that provision in respect of all the applicants.

V. ALLEGED VIOLATION OF ARTICLE 5 § 4

227. The applicants complained, under Article 5 § 4 of the Convention, that the remedy provided in domestic law to challenge their deprivation of

liberty was ineffective, owing to a systemic pattern whereby Polish courts disregarded any *de facto* detention that had not been recorded as such and took a restrictively narrow approach to the notion of deprivation of liberty. Article 5 § 4 reads as follows:

“Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.”

228. The Court observes that in the present case the applicants were detained between some eight hours and a little more than forty-five hours and were released on 10 and 11 September 2019, respectively, before they could take any proceedings by which the lawfulness of their detention could be reviewed. In fact, they lodged an interlocutory appeal on 16 September 2019 (paragraph 67 above) when they had already been released. It is not for the Court to determine *in abstracto* whether, had this not been so, the scope of the remedies available in Poland would have satisfied the requirements of Article 5 § 4 of the Convention. The Court observes in this context that Article 5 § 4 deals only with those remedies which must be made available during a person’s detention with a view to that person obtaining speedy judicial review of the lawfulness of the detention capable of leading, where appropriate, to his or her release. The provision does not deal with other remedies which may serve to review the lawfulness of a period of detention which has already ended, including, in particular, a short-term detention such as in the present cases (see, *mutatis mutandis*, *Slivenko v. Latvia* [GC], no. 48321/99, § 158, ECHR 2003-X).

229. Given the short duration of the deprivations of liberty, the applicants did not have time to “take proceedings” by which his release could be ordered. Thus, no issue arises in the circumstances under Article 5 § 4 of the Convention (see *Rozhkov*, cited above, § 65).

230. Accordingly, this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

VI. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

231. All the applicants complained under Articles 10 and 11 of the Convention that the intervention of the Border Guard had constituted a disproportionate limitation of their right to freedom of expression and freedom of assembly.

232. The provisions in question read, in so far as relevant, as follows:

Article 10

“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. ...

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.”

Article 11

“1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others....

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.”

A. Admissibility

233. The Court notes that the applicants’ complaints are 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 third-party intervener

(a) The applicants

234. All the applicants argued that they had been participating in a peaceful protest and addressing an important social issue (climate protection and the transition to renewable energy), and that the deployment of armed officers and their lengthy detention had, firstly, interrupted their protest, and secondly, been aimed at intimidating them and discouraging them from protesting in the future.

235. The applicants claimed that the restrictions on their protest had reflected the Government’s policy and systematic practice, which had started in 2016, of limiting the role of civil society. To this end, they submitted a report drawn up by the Helsinki Foundation for Human Rights on the situation of civil-society organisations in Poland. That report concludes that members of non-governmental organisations working in the field of fundamental rights in Poland have been under attack (both physical and through smear campaigns), have encountered increasing difficulties in obtaining public funds, and have experienced the shrinking of the possibility for dialogue with the authorities.

236. In addition, the seventeenth and eighteenth applicants, who at the time in question were journalists trying to obtain footage and to report on the protest, argued that the unduly long time that it had taken the authorities to check their identities and to inspect their RHIB had constituted abuse of the law for the sole purpose of depriving them of the right to report on the anti-coal protest. In their view, the authorities (who had been informed of the applicants' profession and their reporting role in respect of the protest) should not have stopped them performing their journalistic duties and should not have arrested them, as they had not posed any threat to public order or safety. Their detention for eight hours had prevented them from disseminating information to the public and had had a chilling effect on other journalists – especially given that the measure had been unrecorded.

(b) The Government

237. The Government argued that the actions taken by the Border Guard officers had not constituted an interference with the applicants' right to express their views. The Government argued that the applicants had in fact achieved their goal of protesting against the coal economy in Poland by painting and displaying their message and by recording and livestreaming the protest on the Internet.

238. The Government also argued that the intervention of the State authorities had been intentionally provoked and had been an intended part of the protest. It was difficult to imagine any subsequent course that the protest could have taken, given that the blocking of the coal cargo ship would inevitably have had to come to an end, sooner or later. The Government stressed that the main purpose of the applicants' protest – which had been to draw attention of the public to the need to abandon coal-based energy – had been achieved through the initial blocking of the unloading of the coal and the painting of the above-mentioned slogan on the cargo ship.

239. In respect of Article 11, the Government also argued that the demonstration organised by the applicants had not constituted an assembly, because firstly, the seaport had not been a publicly accessible area and secondly, the crew and the passengers of a ship could not, by nature, be defined as an "assembly" within the meaning of Article 11 of the Convention.

240. The Government also argued that the authorities' intervention had been lawful and that it had pursued a legitimate aim and had been proportionate. They stressed that the protest had been disruptive in that the Rainbow Warrior had prevented all ships from entering or exiting the seaport – including those carrying coal. The applicants' manoeuvres had also endangered the safety of vessels and installations in the seaport. In the Government's view, the disruption of maritime traffic had not constituted a collateral effect of the applicants' protest, but rather an intentional action taken to pressurise the Government into accepting the applicants' demands for the use of coal to be abandoned.

(c) Third-party intervener

241. The National Bar Association submitted that there was a pattern in Poland of abuse of authority, as well as of the unnecessary and disproportionate use of coercive measures towards people participating in peaceful demonstrations. Protests had increasingly been brutally crushed, and protesters had been arrested and detained. The interveners referred to a report entitled “Freedom of Assembly in Poland, 2016-2018” produced by the Polish Ombudsman that had recorded many breaches of the right to freedom of assembly throughout the country.

2. The Court’s assessment**(a) Legal classification of the applicants’ complaints**

242. The Court notes that the applicants’ complaints under Articles 10 and 11 of the Convention are, to a great extent, based on the same facts and allegations – namely that the protest at sea which they either organised or in which they participated, was first disturbed and ultimately interrupted by the actions taken by the authorities. The situation of the seventeen and eighteen applicants must, however, be distinguished in so far as these applicants were at the protest site as journalists, rather than as Greenpeace activists.

243. The issues of freedom of expression and freedom of peaceful assembly are thus closely linked in the present cases. Indeed, the protection of personal opinions, secured by Article 10 of the Convention, is one of the objectives of freedom of peaceful assembly as enshrined in Article 11 of the Convention (see *Palomo Sánchez and Others v. Spain* [GC], nos. 28955/06, 28957/06, 28959/06 and 28964/06, § 52, ECHR 2011, and *Taranenko v. Russia*, no. 19554/05, § 68, 15 May 2014 and the cases cited therein).

244. The Court therefore finds that there is no need to examine separately the complaint under Article 11 of the Convention (see, *mutatis mutandis*, *Women On Waves and Others*, no. 31276/05, § 28, 3 February 2009).

(b) General principles

245. The Court reiterates that freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and each individual’s self-fulfilment. Subject to paragraph 2 of Article 10, it is applicable not only to “information” or “ideas” that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Such are the demands of pluralism, tolerance and broadmindedness, without which there is no “democratic society” (see *Handyside v. the United Kingdom*, 7 December 1976, § 49, Series A no. 24; *Jersild v. Denmark*, 23 September 1994, § 37, Series A no. 298; and *Bumbeş v. Romania*, no. 18079/15, § 62, 3 May 2022).

246. The Court reiterates that the protection of Article 10 is not limited to the 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 *Mätäsarv*, cited above, § 29, and *Karuyev v. Russia*, no. 4161/13, § 18, 18 January 2022 and the cases cited therein). 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).

247. The Court has previously held that environmental and other protests can constitute expressions of opinion within the meaning of Article 10. Thus, protests against hunting involving the physical disruption of a hunt or a protest against the extension of a motorway involving forcible entry to the construction site and climbing trees that were to be felled and onto machinery in order to impede construction work were found to constitute expressions of opinion protected by Article 10 (see *Steel and Others v. the United Kingdom*, 23 September 1998, § 92, Reports 1998-VII, and *Hashman and Harrup v. the United Kingdom* [GC], no. 25594/94, § 28, ECHR 1999-VIII). In another case, the Court proceeded on the assumption that Articles 10 and 11 of the Convention could be relied on by Greenpeace activists who had manoeuvred dinghies in such a manner as to obstruct whaling and force the whalers to abandon their lawful activity (see *Drieman and Others v. Norway* (dec.), no. 33678/96, 4 May 2000). More recently, the Court found that Article 10 was applicable to a Greenpeace sea protest against oil drilling and exploitation. In that case, the applicants' actions involved entering a danger zone and scaling an offshore oil production platform with the intention of erecting a banner and a survival capsule in which the activists would stay until the platform's owner dropped its plans to drill for oil in the Arctic (see *Bryan and Others*, cited above, §§ 7-11, 85 and 86).

(c) Application of these principles to the present cases

248. The Court notes that the applicants clearly stated that their operation had been a peaceful protest aimed at drawing public attention to the environmental effects of coal burning and the need for a transition from fossil fuels to renewable energy (see paragraphs 9, 14 and 19 above). It further notes that the applicants' action was broadcast on the Internet. Notwithstanding its disruptive and unauthorised character and the fact that it might have posed a real threat to the maritime traffic (see paragraphs 12, 16 and 20 above), such an action can be considered to constitute an expression of opinion on a matter of social interest (see the above-cited cases of *Taranenko*, §§ 71 and 79, and *Bryan and Others*, § 85).

(i) Existence of an interference

249. The Court notes that the parties disagreed as to whether the measure taken against the applicants had constituted an interference with their right to

freedom of expression owing to the fact that, as the Government argued, the protest had effectively been completed (see paragraphs 237 and 238 above).

250. The Court reiterates that an “interference” with the exercise of these rights does not need to amount to an outright ban (legal or *de facto*), but can consist of various other measures taken by the authorities (see *Navalnyy v. Russia* [GC], nos. 29580/12 and 4 others, § 103, 15 November 2018). The terms “formalities, conditions, restrictions [and] penalties” in Article 10 § 2 must be interpreted as including, for instance, measures taken before or during an assembly and those, such as punitive measures, taken afterwards (see *Novikova and Others v. Russia*, nos. 25501/07 and 4 others, § 106, 26 April 2016).

251. Turning to the present cases, the Court finds it irrelevant whether or not the disturbance of the protest by the Border Guard boats was, as the Government claims, part of the activists’ plan (see paragraph 238 above). What is important is that the end result was that the protest was interrupted effectively and stopped. The applicants who were carrying out the action were immobilised, for long periods, in their vessels. In addition, the first and second applicants were subsequently detained and prosecuted in the framework of long-lasting criminal proceedings (see paragraphs 85 and 86 above).

252. The Court also notes that the seventeenth and eighteenth applicants, who had identified themselves as journalists, were impeded from recording and reporting on the protest.

253. In the light of the above-mentioned considerations, the Court concludes that there has been an interference with the right of all of the applicants to freedom of expression.

254. Such an interference will lead to the finding of a violation of Article 10 of the Convention, unless it was prescribed by law, pursued a legitimate aim and was necessary in a democratic society to achieve that aim (see the above-cited cases of *Steel and Others*, § 89; and *Bumbeş*, § 73).

(ii) *Prescribed by law*

255. In so far as the lawfulness of the interference in the present cases is concerned, the Court has already found that the applicants’ deprivation of liberty was not lawful for the purposes of Article 5 § 1 of the Convention, and that there has therefore been a violation of their right to liberty and security under that provision (see paragraphs 220 and 223 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 *Bryan and Others*, cited above, § 97 and the cases cited therein). 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 (*ibid.*).

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.

(d) The Court's conclusion

256. Accordingly, there has been a violation of Article 10 of the Convention in the present cases.

VII. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

257. The applicants also alleged that they had been subjected to a restriction on their freedom of movement, in breach of Article 2 §§ 1 and 3 of Protocol No. 4 to the Convention. The Government raised a preliminary objection as to the non-exhaustion of domestic remedies regarding this complaint.

258. Lastly, the applicants complained of a violation of Article 13, in conjunction with Article 5 of the Convention and of Article 2 of Protocol No. 4 to the Convention, on account of the statutory impossibility of having the identity checks or searches to which the Border Guard had subjected them reviewed by a court (see paragraph 96 above).

259. Having regard to the facts of the cases, the submissions of the parties and its findings concerning Article 5 §§ 1 and 2 and Article 10 of the Convention, above, the Court considers that it has examined the main legal questions raised in the present applications. It thus concludes that there is no need to pursue an examination of the applicants' remaining complaints and the Government's related objection (see *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014; see also, *mutatis mutandis*, *J.A. and Others v. Italy*, no. 21329/18, §§ 117 and 118, 30 March 2023).

VIII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

260. 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

261. The applicants did not submit any claim for pecuniary damage. In respect of non-pecuniary damage, the first and second applicants claimed EUR 4,000 each, and the third to eighteenth applicants EUR 2,000 each.

262. The Government argued that these claims were unjustified and exorbitant.

263. The Court considers that the applicants suffered non-pecuniary damage as a result of the violation of their rights under Article 5 §§ 1 and 2 and Article 10 of the Convention. The Court therefore awards the first and second applicants EUR 4,000 each, and the third to eighteenth applicants EUR 2,000 each in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

264. The applicants also claimed EUR 3,239.64 for the costs and expenses incurred before the Court. They submitted an invoice from their lawyer for the equivalent amount in national currency, namely, 15,546.71 Polish zlotys (PLN).

265. The Government argued that the above-mentioned claim was not reasonable as to quantum.

266. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the number of applicants, the cases' complexity, the documents in its possession and the above-noted criteria, the Court considers it reasonable to award the sum of EUR 3,239.64 covering the costs of the proceedings before the Court, jointly to the applicants plus any tax that may be chargeable to them.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;
2. *Declares* the complaints under Article 5 §§ 1 and 2, and under Article 10 of the Convention admissible and declares the complaint under Article 5 § 4 inadmissible;
3. *Holds* that there has been a violation of Article 5 § 1 of the Convention in respect of the detention of all the applicants from the evening of 9 September 2019 until the early morning of 10 September 2019;
4. *Holds* that there has been a violation of Article 5 § 1 of the Convention in respect of the first and the second applicants on account of the lack of reasonable suspicion that they had committed an offence and their detention from the early morning of 10 September 2019 until their release on 11 September 2019;
5. *Holds* that there has been a violation of Articles 5 § 2 of the Convention, in respect of all applicants;

6. *Holds* that there has been a violation of Article 10 of the Convention, in respect of all applicants;
7. *Holds* that there is no need to examine the admissibility and merits of the complaints under Articles 11 and 13 of the Convention or under Article 2 of Protocol No. 4 to the Convention;
8. *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, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
 - (i) in respect of the first and second applicants, EUR 4,000 (four thousand euros) each, plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) in respect of the third to eighteenth applicants, EUR 2,000 (two thousand euros) each, plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (iii) EUR 3,239.64 (three thousand two hundred thirty-nine euros and sixty four cents) jointly to the applicants, plus any tax that may be chargeable to them, in respect of costs and expenses;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above-stated amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period, plus three percentage points.

Done in English, and notified in writing on 20 June 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Ilse Freiwirth
Registrar

Marko Bošnjak
President

APPENDIX

List of cases:

No.	Application no.	Case name	Lodged on	Applicant Year of Birth Nationality	Represented by
1.	25344/20	Friedrich v. Poland	16/06/2020	Miriam FRIEDRICH 1991 Austrian	Adam PLOSZKA
2.	25623/20	Romo Martin v. Poland	16/06/2020	Fernando ROMO MARTIN 1971 Spanish	
3.	27369/20	Bojarowska v. Poland	26/06/2020	Natalia BOJAROWSKA 1992 Polish	
4.	27378/20	Wojczal v. Poland	26/06/2020	Rafal WOJCZAL Polish	
5.	27381/20	Bogeljić v. Poland	26/06/2020	Mihaela BOGELJIĆ 1978 Croatian	
6.	27388/20	Waqanisau v. Poland	26/06/2020	Api WAQANISAU 1986 Fijian	
7.	27390/20	Brewster v. Poland	25/06/2020	Neil BREWSTER 1964 Australian	
8.	27401/20	Figura v. Poland	26/06/2020	Magdalena FIGURA 1976 Polish	
9.	27437/20	Muñoz-Alcaide v. Poland	26/06/2020	Alonso MUÑOZ-ALCAIDE 1966 Spanish	

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No.	Application no.	Case name	Lodged on	Applicant Year of Birth Nationality	Represented by
10.	27831/20	Cibor v. Poland	26/06/2020	Krzysztof CIBOR 1975 Polish	
11.	27912/20	Simeonov v. Poland	26/06/2020	Krasimir SIMEONOV 1972 Bulgarian	
12.	27938/20	Scholz v. Poland	26/06/2020	Sinja SCHOLZ 1980 German	
13.	28028/20	Sasinowska v. Poland	25/06/2020	Agata SASINOWSKA 1992 Polish	
14.	28185/20	Tripoli v. Poland	26/06/2020	Francesco TRIPOLI 1980 Italian	
15.	28400/20	Deutschmann v. Poland	26/06/2020	Ocke DEUTSCHMANN 1982 German	
16.	28623/20	Radkiewicz- Malinowska v. Poland	26/06/2020	Edyta RADKIEWICZ- MALINOWSKA 1983 Polish	
17.	29665/20	Zieliński v. Poland	30/06/2020	Maksymilian ZIELIŃSKI 1991 Polish	
18.	29786/20	Staszewski v. Poland	30/06/2020	Bartosz STASZEWSKI 1990 Polish	