



Violation of Greenpeace Arctic activists' rights after protest at Russian offshore oil-drilling platform

In today's **Chamber judgment**¹ in the case of [Bryan and Others v. Russia](#) (application no. 22515/14) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 5 § 1 (right to liberty and security) of the European Convention on Human Rights, and

a violation of Article 10 (freedom of expression).

The case concerned a protest in 2013 by 30 Greenpeace activists at the Russian offshore oil-drilling platform *Prirazlomnaya*.

The protest had involved two of the activists climbing the *Prirazlomnaya* platform after launching dinghies from a vessel called the *Arctic Sunrise*, which had been sailing under the flag of the Netherlands. The Russian coastguard had subsequently intercepted the vessel and towed it to the port of Murmansk, with the activists on board. On arriving at Murmansk the activists had been arrested and their detention ordered on charges of piracy. The charges had later been reclassified to hooliganism, and the proceedings against them discontinued under an amnesty.

Firstly, the Court examined various aspects related to jurisdiction and decided that it could deal with the case. In particular, despite the compensation the activists had received as a result of a settlement agreement reached by the Netherlands and Russia over the incident – after arbitration proceedings under the United Nations Convention on the Law of the Sea – there had been no acknowledgment by Russia of a breach of the activists' rights and they could therefore still claim to be victims of a violation of the European Convention.

Next the Court found that the period during which the *Arctic Sunrise* had been under Russian control and up until its arrival in Murmansk had amounted to a deprivation of the activists' liberty. That period of detention had been completely unrecorded and had therefore amounted to a grave violation of their Article 5 rights.

Although the activists' detention after that and up until their release two months later had been officially recorded, it had been arbitrary as there had been confusion over what charges to bring against them and the reasons for their detention.

Lastly, the Court found that their detention had amounted to an interference with their freedom to express their opinion on a matter of significant environmental interest which had not been prescribed by national law.

Principal facts

The 30 applicants in the case are Argentinian, Australian, Brazilian, British, Canadian, Danish, Dutch, Finnish, French, Italian, New Zealand, Polish, Russian, Swedish, Swiss, Turkish, Ukrainian, and United

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

States of America nationals. They are all Greenpeace activists, and include a Greenpeace press officer and two freelance journalists.

Greenpeace has staged a number of peaceful protests at sea since 2010 to campaign against offshore oil-drilling.

In September 2013, the applicants travelled to the Pechora Sea (within the exclusive economic zone of Russia) on board the *Arctic Sunrise*, which was sailing under the flag of the Netherlands, in the vicinity of the Russian *Prirazlomnaya* offshore oil-drilling platform. The applicants informed the platform's management, Gazprom, and the Russian coastguard that they intended to scale the *Prirazlomnaya* and set up a survival capsule where they would stay until Gazprom dropped its plans to drill for oil in the Arctic.

In the event, following the launching of dinghies from the *Arctic Sunrise*, two of the activists climbed the platform on 18 September 2013 but were forced back down by water cannon. They were picked up by the Russian coastguard and taken to its vessel, the *Ladoga*, while the remaining activists returned to the *Arctic Sunrise* by dinghy.

The next day armed agents of the Russian Federal Security Service boarded the *Arctic Sunrise* from a helicopter and took control of the vessel and its crew. Later that day the two activists caught scaling the *Prirazlomnaya* were transferred from the *Ladoga* to the *Arctic Sunrise*.

The *Arctic Sunrise* was then towed to the port of Murmansk (Russia) by the Russian coastguard, between 20 and 24 September 2013. On arrival at Murmansk, the applicants were officially arrested, and the district court authorised their detention for two months pending criminal proceedings against them for piracy. Furthermore, it ruled that the start of the applicants' pre-trial detention was 24 September 2013.

The regional court upheld that finding on appeal. It also upheld the applicants' detention orders, dismissing their arguments that there were no grounds for bringing piracy charges since the *Prirazlomnaya* was clearly not a vessel.

A month later, however, the investigating authorities amended the charges to hooliganism as they found that the *Prirazlomnaya* was not a vessel but a port facility, thus ruling out criminal liability for piracy.

The applicants were released on bail on various dates between 20 and 29 November 2013. Shortly after that the criminal proceedings against them were discontinued under an amnesty.

In the meantime, there had been arbitration proceedings under the United Nations Convention on the Law of the Sea (UNCLOS) between the Government of the Netherlands, as the country of the *Arctic Sunrise's* flag, and the Russian Federation, which refused to participate in those proceedings, citing lack of jurisdiction of the arbitral tribunal over it. The Netherlands was awarded 5.4 million euros (EUR), including compensation for the applicants, which Russia refused to pay.

Eventually, however, the two States reached a confidential settlement agreement, and EUR 2,7 million was transferred by the Netherlands to Greenpeace of which the applicants received EUR 605,000 (about EUR 20,000 each).

Complaints, procedure and composition of the Court

Relying on Article 5 (right to liberty and security) and Article 10 (freedom of expression), the applicants complained that their arrest and pre-trial detention had been arbitrary and illegal and that the Russian authorities had unlawfully interfered with their freedom of expression.

The application was lodged with the European Court of Human Rights on 17 March 2014.

The Governments of the Netherlands, Sweden and Ukraine, as well as two non-governmental organisations, the Media Legal Defence Initiative and ARTICLE 19, were granted leave to intervene in the written procedure and submitted comments. The Governments of Denmark, Finland, France, Italy, Poland, Switzerland, Türkiye and the United Kingdom, whose nationals were among the applicants, were informed of their right to intervene in the proceedings before the Court but they did not submit any comments as to the admissibility and merits of the application.

The Court's procedure for processing of applications against Russia can be found [here](#).

Judgment was given by a Chamber of seven judges, composed as follows:

Pere **Pastor Vilanova** (Andorra), *President*,
Jolien **Schukking** (the Netherlands),
Yonko **Grozev** (Bulgaria),
Georgios A. **Serghides** (Cyprus),
Peeter **Roosma** (Estonia),
Ioannis **Ktistakis** (Greece),
Andreas **Zünd** (Switzerland),

and also Olga **Chernishova**, *Deputy Section Registrar*.

Decision of the Court

The Court decided on various aspects related to jurisdiction in the applicants' case.

Firstly, the Russian authorities had had full and exclusive control over the *Arctic Sunrise* and its crew from the moment the vessel had been intercepted until it had arrived at Murmansk; the applicants had therefore been effectively within Russia's jurisdiction for the purposes of Article 1 (obligation to respect human rights).

Secondly, the Court held that it had jurisdiction to examine the admissibility and merits of the applicants' case despite the arbitration proceedings and the compensation the applicants had received.

In particular, the arbitration proceedings had dealt with Russia's breach of its obligations under the UNCLOS, while the applicants' case before the European Court concerned allegations of breaches of the right to liberty and security and freedom of expression. The applicants had not been a party to the arbitration proceedings, which were between the Netherlands and Russia, so in fact the complainants had also been different in each set of proceedings. The Court therefore found that the arbitration and Strasbourg proceedings, although parallel, had not had the same subject matter and it was not therefore precluded from dealing with the case (Article 35 § 2 (b)).

Moreover, the Court considered that the applicants could still claim to be victims of a violation of the Convention (Article 35 § 3 (a)) even though they had received compensation, because there had never been any acknowledgement of a breach of their rights.

Lastly, although Russia had ceased to be a Party to the European Convention, the Court found that it still had jurisdiction to deal with the case, as the facts giving rise to the alleged violations of the Convention had taken place before 16 September 2022 (the date on which Russia ceased to be a Party to the European Convention).

Article 5

The Court considered that the period from 19 to 24 September 2013, when the *Arctic Sunrise* had been under the control of the Russian forces and towed for a nearly a week with all the applicants on board, had amounted to a deprivation of their liberty. That period had started earlier for the two applicant activists who had scaled the *Prirazlomnaya* as they had been taken aboard the *Ladoga*

against their will on 18 September 2013 and prevented from returning to the *Arctic Sunrise* until the following day.

That detention had not, however, been recorded in any form. There had been no plausible explanation on the part of the Government for that failing. It had moreover been aggravated by the courts ruling that the start of the applicants' detention had been on 24 September 2013, meaning that the period when the *Arctic Sunrise* was being towed had been discounted as detention.

Unacknowledged detention was a most grave violation of Article 5 and the Court therefore held that there had been a violation of that provision.

The Court then went on to examine the applicants' detention after 24 September 2013, which had been recorded, but it found that it had been arbitrary. It noted in particular that the courts' and the investigators' positions regarding the status of the *Prirazlomnaya*, with one considering it to be a vessel and the other a port facility, had been inconsistent and confusing for interpreting the relevant legislation. Indeed, even though the criminal charges against the applicants had been reclassified as hooliganism, the applicants had continued to be detained until their release on bail in accordance with the original order for pre-trial detention, which had been based on piracy charges.

The Court therefore held that that the applicants' detention after 24 September 2013 and until their release had not been lawful within the meaning of Article 5 § 1 (c) of the Convention.

Article 10

The applicants' arrest, detention and criminal prosecution had constituted an interference with their freedom to express an opinion on a matter of significant social interest, that is the environmental effects of oil drilling and exploitation.

Given the findings under Article 5 with regard to the arbitrariness and unlawfulness of the applicants' detention, it followed that the restriction on their freedom of expression had not been prescribed by national law either. There had therefore been a violation of Article 10.

Article 41 (just satisfaction)

The Court held, by five votes to two, that the finding of a violation constituted in itself sufficient just satisfaction for any non-pecuniary damage sustained by the applicants.

Separate opinion

Judge Serghides expressed a partly dissenting opinion, which is annexed to the judgment.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.