FIFTH SECTION

CASE OF MEDVEDYEV AND OTHERS v. FRANCE

(Application no. 3394/03)

JUDGMENT

STRASBOURG

10 July 2008

Referral to the Grand Chamber

01/12/2008

In the case of Medvedyev and Others v. France,

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

Peer Lorenzen, President,
Jean-Paul Costa,
Karel Jungwiert,
Renate Jaeger,
Mark Villiger,
Isabelle Berro-Lefèvre,
Mirjana Lazarova Trajkovska, judges,

and Claudia Westerdiek, Section Registrar,

Having deliberated in private on 13 May and 17 June 2008,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 3394/03) against the French Republic lodged with the Court on 19 December 2002 under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by two Ukrainian nationals, Mr Oleksandr Medvedyev and Mr Borys Bilenikin, four Romanian nationals, Mr Nicolae Balaban, Mr Puiu Dodica, Mr Nicu Stelian Manolache and Mr Viorel Petcu, a Greek national, Mr Georgios Boreas, and two Chilean nationals, Mr Sergio Cabrera Leon and Mr Guillermo Luis Eduar Sage Martínez, ("the applicants").

2. The applicants were represented by Mr Patrice Spinosi, a member of the Conseil d'Etat and the Court of Cassation Bar. The French Government ("the Government") were represented by Mrs Edwige Belliard, Director of Legal Affairs, Ministry of Foreign Affairs.

3. On 11 January 2006 the Court decided to communicate the application to the Government. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the application at the same time.

4. The Greek, Romanian and Ukrainian Governments were invited to submit written comments, in accordance with Article 36 § 1 of the Convention, but declined to do so.

5. A hearing took place in public in the Human Rights Building, Strasbourg, on 13 May 2008 (Rule 54 § 3 of the Rules of Court).

There appeared before the Court:

(a) – for the Government
Mrs Anne-Françoise Tissier, Deputy Head of Human Rights, Legal Affairs Department, Ministry of Foreign Affairs, Agent,
Mr Mostafa Mihraje, Foreign Affairs Adviser, Human Rights Section, Legal Affairs Department, Ministry of Foreign and European Affairs, Counsel,
Mr François Martineau, Head of the Maritime Law Office, Naval Commission Central Directorate,
Mr Elie Renard, magistrat, Department of Criminal Affairs and Pardons, Ministry of Justice,
Mr Serge Segura, Deputy Director of Maritime Law, Fisheries and the Antarctic, Legal Affairs Department, Ministry of Foreign and European Affairs, Advisers.

(b) – for the applicants
Mr Patrice Spinosi, counsel.

The Court heard addresses by Mr Spinosi and Mrs Tissier and their replies to questions put to them by its members.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicants were crew members on a merchant ship named the Winner, flying the Cambodian flag.

7. As part of the international effort to combat drug trafficking, the French authorities were informed that the ship might be carrying large quantities of drugs.

8. By diplomatic telegram dated 7 June 2002, the French embassy in Phnom Penh informed the Ministry of Defence in Paris that, in response to a request from the Central Office for the Repression of Drug Trafficking (“OCRTIS”) for authorisation to intercept the Winner, and at the embassy's request, the Cambodian Minister of Foreign Affairs had personally given his Government's agreement.

The Government produced a diplomatic note dated 7 June 2002, addressed by the Cambodian Ministry of Foreign Affairs to the French Embassy in Phnom Penh, stating:

> “The Ministry of Foreign Affairs and International Cooperation (...), referring to its note no. 507/2002 dated 7 June 2002, has the honour formally to confirm that the Royal Government of Cambodia authorises

> the French authorities to intercept, inspect and take legal action against the ship Winner, flying the Cambodian flag (...) belonging (...) to the Marshall islands. (...) »

9. The commander of the frigate Lieutenant de Vaisseau Le Henaff was instructed by the French naval authorities to intercept the Winner.

10. On 13 June 2002, at 6 a.m., the frigate spotted a merchant ship travelling at slow speed through the waters off Cape Verde. It was not flying a flag, but was identified as the Winner. Its nationality was verified in accordance with international law and, as a security measure, a speedboat was lowered into the water. The merchant ship suddenly changed course, in an attempt to evade the frigate. When attempts were made to contact it on the international radio frequency, it remained silent. At the same time, the crew jettisoned packages over the stern into the sea. The frigate then identified itself and asked the Winner to stop, while signalling the international code SQ (“stop or I shall open fire”) ; no answer came and the ship was still not flying a flag, so a warning shot was fired, followed by further shots to stop it. At the same time the speedboat was ordered to recover the parcels that had been jettisoned. It only managed to recover one. Upon subsequent verification it was found to contain 80 to 100 kg of a narcotic substance resembling cocaine.

11. Three more parcels were thrown overboard. As the freighter had still not stopped and was manoeuvring to prevent the speedboat from pulling alongside, France's Maritime Prefect for the Atlantic ordered the frigate to fire directly at the Winner's bow. This caused the Winner to stop, and an armed commando team boarded it and took control of it by armed force. One of the crew members, who sustained a bullet wound, was evacuated onto the frigate, where he was treated by the ship's doctor before being transferred to Brest hospital, where he died a week later. The rest of the crew were confined to their quarters on board the Winner under military guard. A tug was sent out from Brest, under orders from the Maritime Prefect and at the request of the public prosecutor in Brest, to tow the Winner into Brest harbour, escorted by the frigate Commandant Bouan.

12. On 13 June 2002, at 11 a.m., the Brest public prosecutor referred the case to OCRTIS for examination under the flagrante delicto procedure. It emerged that the Greek coastguard had had the Winner under observation in connection with international drug trafficking in which Greek nationals were involved.

13. On 24 June 2002, the Brest prosecutor's office opened an investigation into charges, against persons unknown, of leading a group with the aim of producing, making, importing, exporting, transporting, holding, supplying, selling, acquiring or illegally using drugs and conspiring to import and export drugs illegally. Two investigating judges were appointed.

14. On 26 June 2002, at 8.45 a.m., the Winner entered Brest harbour under escort. The crew and cargo were handed over to the police, acting under instructions from one of the investigating judges, who immediately notified the persons concerned that they were being placed in police custody and informed them of their rights.

15. The Government submitted that the two investigating judges went to see each of the detainees after twenty-four hours and after forty-eight hours to inform them that their police custody was being extended.

16. On 28 June 2002, Mr Viorel Petcu, Mr Puiu Dodica, Mr Nicolae Balaban and Mr Nicu Stelian Manolache were charged and remanded in custody pending trial. On 29 June 2002 so were Mr Oleksandr Medvedyev, Mr Bory Bilenikin, Mr Georgios Boreas, Mr Sergio Cabrera Leon, Mr Guillermo Luis Eduar Sage Martínez and two other crew members (Mr Oleksandor Litetski and Mr Symeon Theophanous).

17. The above eleven persons applied to the Investigation Division of the Rennes Court of Appeal to have the evidence disallowed; relying in particular on Article 5 of the Convention, they complained that the Winner had been arrested illegally and that their detention on board for thirteen days had also been illegal. In a judgment of 3 October 2002, the court dismissed their appeal and held that there were no grounds for disallowing the evidence.

18. In its judgment the Investigation Division pointed out that the international effort to combat drug trafficking was governed by the United Nations Single Convention on Narcotic Drugs of 30 March 1961, the United Nations Convention on the Law of the Sea, signed at Montego Bay on 10 December 1982, and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, signed in Vienna on 20 December 1988, all of which had been ratified by France. It considered that although Cambodia had not signed the Vienna Convention, Article 17.3 of which provided for derogations from the traditional principle of the “law of the flag State”, that did not prevent the French authorities from “requesting Cambodia's cooperation to obtain authorisation to intercept the Winner in order to put a stop to the drug trafficking in which all or part of its crew were suspected of engaging”, based on Article 108 of the Montego Bay Convention and “with reference” to the Convention of 30 March 1961. According to the Investigation Division, as the provisions of the Vienna Convention did not apply to Cambodia, it was for that State's authorities to ask the French authorities for the information they needed in order to determine, as they alone were entitled to do, whether the request for assistance was well founded. The court then held that the diplomatic telegram of 7 June 2002 from the French Embassy established the existence of “an agreement given without restrictions or reservations by the Government of Cambodia for the planned interception and all its consequences, and was authoritative until proven otherwise”.

19. However, the Investigation Division considered that the agreement in question did not dispense the French authorities from abiding by the rules of procedure set forth in the Vienna Convention and in Articles 12 et seq. of the Law of 15 July 1994 as amended. Nor, it pointed out, had the French authorities failed in that obligation in the circumstances. In the light of the reports drawn up by the commander of the Lieutenant de Vaisseau Le Henaff, the Investigation Division found that when the frigate had drawn within sight of the Winner the latter "was flying no flag" and its captain had "not only failed to answer the requests to identify the ship, in breach of the rules of international law, and failed to stop the ship, but [had] responded aggressively with a series of dangerous manoeuvres that jeopardised the safety of the French frigate and the lives of the sailors on the speedboat", and the crew of the Winner had thrown parcels containing large quantities of cocaine into the sea. There had therefore been "reasonable grounds", in the Investigation Division's view, to suspect the Winner of drug trafficking, so that "in using force to stop the Winner and taking appropriate measures to control and restrain the crew, who were confined to their quarters, and to take over and steer the ship", the commander of the frigate had "strictly observed" the provisions of Article 17.4 of the Vienna Convention (under which he is authorised, when a ship is boarded and searched, "If evidence of involvement in illicit traffic is found, [to] take appropriate action with respect to the vessel, persons and cargo on board") and the provisions of the Law of 15 July 1994 as amended, regulating the use of coercion measures, including, if necessary, the use of force in the event of refusal by a ship to submit to inspection (Articles 1 to 10), and providing for the implementation of the inspection and coercion measures provided for in international law in the particular case of drug trafficking (Articles 12 to 14).

20. The Investigation Division went on to dismiss the applicants' argument that Article 13 of the Law of 15 July 1994 as amended provided only for assistance measures of an administrative nature, which excluded any form of coercion in respect of people, as the Article mentioned in general terms that the competent maritime authorities had the power to carry out or have carried out "the inspection and coercion measures provided for in international law" and Article 17.4 c) of the Vienna Convention concerning drug trafficking expressly mentioned taking "appropriate action with respect to the vessel, persons and cargo on board". Although it accepted that the exact nature of that action was not specified, the Investigation Division considered that the text concerned provided "at least for the competent naval authorities to limit, if necessary, the freedom of the boarded ship's crew to come and go; otherwise the provision would be meaningless and the safety of the men taking over control of the ship would be seriously jeopardised". In respect of this last point, it considered that "it cannot be ruled out in the course of such operations against international

drug traffickers on the high seas that the crew might have weapons hidden away and might seek to regain control of the ship by force". It concluded that "the fact that the Winner's crew were confined to their quarters (...) under military guard so that the ship could be safely taken over and rerouted fell within the appropriate action provided for in Article 17.4 c) of the Vienna Convention".

21. Lastly, the Investigation Division considered that the Law of 15 July 1994 "necessarily required some departure from ordinary criminal procedure to allow for the specific needs of the effort to combat drug trafficking by ships on the high seas, in keeping with the rules of international law, and for the fact that it was impossible in practice, bearing in mind the time needed to sail to the new port of destination, to apply the ordinary rules governing detention and the right to be brought promptly before a judge". Accordingly, the restrictions placed on the movements of a boarded ship's crew, as authorised in such cases by the United Nations Convention signed in Vienna on 20 December 1988, were not at variance with Article 5 § 3 of the Convention and did not amount to unlawful detention. It also noted that in this particular case, as soon as the Winner had docked, its crew had been handed over to the police, immediately informed of their rights and placed in custody, then brought before the investigating judge.

22. An appeal on points of law lodged by the applicants (complaining in particular of a violation of Article 5 § 3 of the Convention) was dismissed in a judgment of the Criminal Division of the Court of Cassation of 15 January 2003. According to that court, "in ruling as it did, in so far as Cambodia, the flag State, [had] expressly and without restriction authorised the French authorities to stop the Winner and, in keeping with Article 17 of the Vienna Convention, only appropriate action had been taken against the persons on board, who [had been] lawfully taken into police custody as soon as they landed on French soil, the Investigation Division [had] justified its decision".

23. In a judgment of 28 May 2005 the Ille-et-Vilaine Special Assize Court found Mr Georgios Boreas, Mr Symeon Theophanous, Mr Guillermo Sage Martínez and Mr Sergio Cabrera Leon guilty of conspiracy to illegally attempt to import narcotics and sentenced them respectively to twenty years', eighteen years', ten years' and three years' imprisonment; it acquitted the other applicants of the charges against them. The parties have not said what the outcome of a subsequent appeal was.

II. RELEVANT DOMESTIC AND INTERNATIONAL LAW

24. France is party to the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances signed in Vienna on 20 December 1988, Article 17 of which reads as follows:

"ILLICIT TRAFFIC BY SEA

1. The Parties shall co-operate to the fullest extent possible to suppress illicit traffic by sea, in conformity with the international law of the sea.

2. A Party which has reasonable grounds to suspect that a vessel flying its flag or not displaying a flag or marks of registry is engaged in illicit traffic may request the assistance of other Parties in suppressing its use for that purpose. The Parties so requested shall render such assistance within the means available to them.

3. A Party which has reasonable grounds to suspect that a vessel exercising freedom of navigation in accordance with international law, and flying the flag or displaying marks of registry of another Party is engaged in illicit traffic may so notify the flag State, request confirmation of registry and, if confirmed, request authorization from the flag State to take appropriate measures in regard to that vessel.

4. In accordance with paragraph 3 or in accordance with treaties in force between them or in accordance with any agreement or arrangement otherwise reached between those Parties, the flag State may authorize the requesting State to, inter alia:

a) Board the vessel;

b) Search the vessel;

c) If evidence of involvement in illicit traffic is found, take appropriate action with respect to the vessel, persons and cargo on board.

5. Where action is taken pursuant to this article, the Parties concerned shall take due account of the need not to endanger the safety of life at sea, the security of the vessel and the cargo or to prejudice the commercial and legal interests of the flag State or any other interested State.

6. The flag State may, consistent with its obligations in paragraph 1 of this article, subject its authorization to conditions to be mutually agreed between it and the requesting Party, including conditions relating to responsibility.

7. For the purposes of paragraphs 3 and 4 of this article, a Party shall respond expeditiously to a request from another Party to determine whether a vessel that is flying its flag is entitled to do so, and to requests for authorization made pursuant to paragraph 3. At the time of becoming a Party to this Convention, each Party shall designate an authority or, when necessary, authorities to receive and respond to such

requests. Such designation shall be notified through the Secretary-General to all other Parties within one month of the designation.

8. A Party which has taken any action in accordance with this article shall promptly inform the flag State concerned of the results of that action.

9. The Parties shall consider entering into bilateral or regional agreements or arrangements to carry out, or to enhance the effectiveness of, the provisions of this article.

10. Action pursuant to paragraph 4 of this article shall be carried out only by warships or military aircraft, or other ships or aircraft clearly marked and identifiable as being on government service and authorized to that effect.

11. Any action taken in accordance with this article shall take due account of the need not to interfere with or affect the rights and obligations and the exercise of jurisdiction of coastal States in accordance with the international law of the sea."

France has not, however, signed the "Agreement on Illicit Traffic by Sea, implementing article 17 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances", signed in Strasbourg on 31 January 1995, which entered into force on 1 May 2000.

25. Inserted by Law no. 96-359 of 29 April 1996 "on drug trafficking at sea and adapting French legislation to Article 17 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances signed in Vienna on 20 December 1988", section 13 of Law no. 94-589 of 15 July 1994 "on conditions governing the exercise by the State of its powers to carry out checks at sea" reads as follows (version applicable at the material time):

"Where there exist reasonable grounds to suspect that one of the vessels referred to in section 12 and sailing outside territorial waters is engaged in illicit drug trafficking, commanders of State vessels and of aircraft responsible for surveillance at sea shall have the power – under the authority of the Maritime Prefect, who shall inform the Public Prosecutors' Office – to carry out, or have carried out the inspection and coercion measures provided for under international law and under this law."

Section 12 of the law (in the version applicable at the material time) stipulates that section 13 applies, not only to ships flying the French flag but also "to ships flying the flag of a State Party to the Vienna Convention of 20 December 1988 other than France, or lawfully registered in such a State, at the request or with the agreement of the flag State" (in the version amended by Law no. 2005-371 of 22 April 2005, Section 12 refers to "ships

flying the flag of a State which has requested intervention by France or agreed to its request for intervention") and "to ships displaying no flag or having no nationality". It adds that "the investigation and establishment of drug trafficking offences committed at sea, and prosecution and trial therefor" are to be governed by the following provisions (version applicable at the material time):

> "Chapter I. - Measures taken at the request or with the agreement of a State Party to the above-mentioned Vienna Convention of 20 December 1988
>
> Section 14
>
> I. – Where he decides to search the ship, at the request or with the agreement of a State Party to the above-mentioned Convention, the commander may have any narcotic substances found on board seized, together with any objects or documents which appear to be linked to drug trafficking.
>
> They shall be placed under seal in the presence of the captain of the ship or any person found on board the ship.
>
> II. - The commander may order the ship to be rerouted to an appropriate position or port when more thorough inspection is required that cannot be carried out at sea.
>
> The ship may also be rerouted to a point located in international waters if the flag State expressly requests it, with a view to taking control of the ship.
>
> III. – A report on the measures taken in application of Article 17 of the Vienna Convention, and the products, objects or documents placed under seal, shall be handed over to the authorities of the flag State when no further judicial action is taken on French soil.
>
> Chapter II. – Powers of the French courts
>
> Section 15
>
> Persons accused of drug trafficking on the high seas and their accomplices may be prosecuted and tried by the French courts when bilateral or multilateral agreements or special arrangements have been concluded between States Parties to the Vienna Convention.
>
> Such special arrangements shall be transmitted through diplomatic channels to the French authorities, together with any information capable of giving rise to a suspicion that a ship is engaged in drug trafficking.
>
> A copy of these documents shall be forwarded by any means and without delay to the public prosecutor.

Section 16

Police officers acting in accordance with the provisions of the Code of Criminal Procedure, customs officers and, when specially so authorised under conditions laid down by a decree of the Conseil d'Etat, commanders of State vessels, naval officers on board such vessels and commanders of State aircraft responsible for patrolling the seas, shall all be empowered to establish that drug trafficking offences are being committed and bring the offenders to justice in the following manner:

I. – The relevant public prosecutor shall be given prior notification, by any means, of the operations envisaged with a view to investigating and establishing the offences.

The offences shall be placed on record and the record thus made shall be authoritative unless proven otherwise. The report drawn up shall be communicated to the public prosecutor without delay and at the latest within fifteen days following the operations. The interested party shall be given a copy.

II. – Subject to the authorisation of the public prosecutor (except in cases of extreme urgency), searches may be made and narcotic substances seized as well as objects or documents that appear to be linked to an offence under the legislation on narcotic substances, or to serve to commit such an offence. Such authorisation shall be communicated by any means.

The substances, objects or documents seized shall immediately be placed under seal.

Searches may be carried out and items seized on board the ship outside the times laid down in Article 59 of the Code of Criminal Procedure."

26. France is also party to the Single Convention on Narcotic Drugs of 30 March 1961, Article 35 of which reads as follows:

"Having due regard to their constitutional, legal and administrative systems, the Parties shall:

a) Make arrangements at the national level for co-ordination of preventive and repressive action against the illicit traffic; to this end they may usefully designate an appropriate agency responsible for such co-ordination;

b) Assist each other in the campaign against the illicit traffic in narcotic drugs;

c) Co-operate closely with each other and with the competent international organizations of which they are members with a view to maintaining a co-ordinated campaign against the illicit traffic;

d) Ensure that international co-operation between the appropriate agencies be conducted in an expeditious manner; and

e) Ensure that where legal papers are transmitted internationally for the purposes of a prosecution, the transmittal be effected in an expeditious manner to the bodies designated by the Parties; this requirement shall be without prejudice to the right of a Party to require that legal papers be sent to it through the diplomatic channel;

f) Furnish, if they deem it appropriate, to the Board and the Commission through the Secretary-General, in addition to information required by article 18, information relating to illicit drug activity within their borders, including information on illicit cultivation, production, manufacture and use of, and on illicit trafficking in, drugs; and

g) Furnish the information referred to in the preceding paragraph as far as possible in such manner, and by such dates as the Board may request; if requested by a Party, the Board may offer its advice to it in furnishing the information and in endeavouring to reduce the illicit drug activity within the borders of that Party."

27. Articles 108 and 110 of the United Nations Convention on the Law of the Sea, signed at Montego Bay on 10 December 1982, read as follows:

"Article108: Illicit traffic in narcotic drugs or psychotropic substances

1. All States shall cooperate in the suppression of illicit traffic in narcotic drugs and psychotropic substances engaged in by ships on the high seas contrary to international conventions.

2. Any State which has reasonable grounds for believing that a ship flying its flag is engaged in illicit traffic in narcotic drugs or psychotropic substances may request the cooperation of other States to suppress such traffic."

"Article 110: Right of visit

1. Except where acts of interference derive from powers conferred by treaty, a warship which encounters on the high seas a foreign ship, other than a ship entitled to complete immunity in accordance with articles 95 and 96, is not justified in boarding it unless there is reasonable ground for suspecting that:

(a) the ship is engaged in piracy;

(b) the ship is engaged in the slave trade;

(c) the ship is engaged in unauthorized broadcasting and the flag State of the warship has jurisdiction under article 109;

(d) the ship is without nationality; or

(e) though flying a foreign flag or refusing to show its flag, the ship is, in reality, of the same nationality as the warship.

2. In the cases provided for in paragraph 1, the warship may proceed to verify the ship's right to fly its flag. To this end, it may send a boat under the command of an officer to the suspected ship. If suspicion remains after the documents have been checked, it may proceed to a further examination on board the ship, which must be carried out with all possible consideration.

3. If the suspicions prove to be unfounded, and provided that the ship boarded has not committed any act justifying them, it shall be compensated for any loss or damage that may have been sustained.

4. These provisions apply mutatis mutandis to military aircraft.

5. These provisions also apply to any other duly authorized ships or aircraft clearly marked and identifiable as being on government service."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 §§ 1 AND 3 OF THE CONVENTION

28. The applicants claimed that they had been arbitrarily deprived of their liberty. First of all, they had been detained on board the Winner for thirteen days under the guard of French military forces without their detention being supervised by any judicial authority, so they had not been brought "promptly" before a judge, as required by Article 5. They also complained of the lack of clarity of the texts on which their deprivation of liberty had been based. They relied on Article 5 of the Convention, paragraphs 1 and 3 of which read as follows:

"1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

(...)

c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable

suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

(...)

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

(...)".

A. The parties' submissions

1. The Government

29. The Government emphasised the need, when examining the circumstances of the case, to take into account the imperatives of the effort to combat illicit trafficking in drugs and the collective responsibility incumbent on the States in this field. They added that it was in order to assume its share of that responsibility that France had acted in this case, mobilising two naval vessels for several days at its own expense.

30. The Government agreed, however, that on board the Winner, the applicants had been deprived of their liberty, within the meaning of Article 5 of the Convention, for thirteen days (from 13 June 2002, when the ship was intercepted, to 26 June 2002, when it docked in Brest harbour). They considered that this deprivation of liberty met the requirements of that provision, however, pointing out that it had been "in accordance with a procedure prescribed by law", as required under paragraph 1 of Article 5.

31. In that connection the Government referred to three international conventions. First of all, the Montego Bay Convention on the Law of the Sea, of 10 December 1982, Article 108 of which established the principle of cooperation between States to combat illegal drug trafficking by ships on the high seas in violation of international conventions, as it provided for a State that had serious reasons to suspect that a ship flying its flag was engaging in such trafficking to seek the cooperation of other States to put a stop to it; and Article 110 authorised the States to board a ship at sea if they had reasonable grounds to suspect that it was without nationality. Secondly, the Convention on Narcotic Drugs of 30 March 1961, which had been ratified by France and signed by Cambodia, under Article 35 of which the Parties agreed to assist each other in the campaign against the illicit traffic in narcotic drugs. And thirdly, the Vienna Convention of 20 December 1988 against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (not ratified by Cambodia), which organised and improved the cooperation

provided for in the Montego Bay Convention. In particular the Vienna Convention provided explicitly, when there were "reasonable grounds to suspect illicit traffic", for a Party to request permission to board a foreign ship from the authorities of the ship's flag State and, if permission was granted, to search the ship and, if evidence of an offence was found, to "take appropriate action with respect to the vessel, persons and cargo on board".

32. The Government admitted that Cambodia had not ratified the Vienna Convention, but there was nothing to prevent France and Cambodia from drawing inspiration from it and, based on Article 108 of the Montego Bay Convention and on the Convention of 30 March 1961, concluding an ad hoc agreement whereby the Cambodian authorities authorised France to board the Winner and take custodial measures. According to the Government, the rules of international law allowed a State temporarily to exercise its jurisdiction over a vessel that normally came under the jurisdiction of another State if the latter authorised it, even by "diplomatic note" as in the instant case. Referring to the Aegean Sea Continental Shelf judgment of the International Court of Justice (Greece v. Turkey judgment of 19 December 1978), they submitted that questions of form were not conclusive.

33. The Government also based their arguments on Law no. 94-589 of 15 July 1994 on conditions governing the exercise by the State of its powers to carry out checks at sea, under section 13 of which, where there existed reasonable grounds to suspect that a vessel flying the flag of a State Party to the Vienna Convention or – like the Winner – flying no flag, and sailing outside territorial waters, was engaged in illicit drug trafficking, commanders of State vessels responsible for surveillance at sea had the power to carry out, or have carried out, "the inspection and coercion measures provided for under international law and under this law". Lastly, the Government pointed out that Article L. 1521-5 of the Defence Code, as amended by Law no. 2005-371 of 22 April 2005, now provided, "during transit subsequent to rerouting," for ships' commanders to "take the necessary and appropriate coercion measures to ensure the safety of the ship and its cargo and of the persons on board".

34. According to the Government, by referring to "the inspection and coercion measures provided for under international law and under [the Law of 15 July 1994]" and to "appropriate measures", the applicable law was precise enough to constitute a basis for deprivation of liberty that met the requirements of Article 5 § 1 of the Convention. In any event, in engaging in illicit drug trafficking on the high seas the applicants must have realised that their ship might be intercepted by any State combating that scourge. In addition, in authorising France "to intercept, inspect and take legal action against" the Winner, the Cambodian authorities also – necessarily – authorised the French authorities to reroute the ship towards France and confine its crew members to their quarters.

35. Furthermore, referring to the Rigopoulos v. Spain decision of 12 January 1999 (no. 37388/97, Reports of Judgments and Decisions 1999-II), the Government maintained that, having regard to the exceptional circumstances of the case, it should be considered that the applicants had been "brought promptly before a judge or other officer authorised by law to exercise judicial power", as required by Article 5 § 3 of the Convention.

36. They submitted that the applicants' detention on board the Winner had lasted only as long as had been strictly necessary for the ship to be escorted to a French port. As in the Rigopoulos case, it had not been materially possible for the authorities to bring the applicants before an investigating judge any sooner in view of the distance to Brest (3,500 km) and the fact that, given the weather conditions and the poor state of repair the Winner was in, it was incapable of speeds faster than 5 knots. It was true that, unlike the position in the Rigopoulos case, it had not been possible to apply to the liberties and detention judge to authorise the applicants' placement in custody, as that could only have been done after an investigation had been opened, which was only possible after the judge had heard the interested parties. However, the Government submitted that under the French law applicable to interception at sea, firstly the deprivation of liberty concerned had taken place under the supervision of a "competent legal authority", the public prosecutor, and secondly, the applicants had had the benefit of the guarantees specific to that particular procedure. On this last point the Government mentioned that, under the procedure concerned, no questioning of suspects was possible – "in order to guarantee the hearings that would be held subsequently, in a judicial context" –, body searches were not permitted, the public prosecutor was informed in advance of the operations envisaged for the purpose of detecting and establishing the offence, and the parties concerned received copies of the reports of those operations. In the instant case, the Government emphasised, the Brest Public Prosecutor's Office had constantly been kept informed as of 7 June 2002, and had itself authorised the searches and seizures and, on 24 June 2002, opened an investigation "to make sure that all the rights of the defence were safeguarded in a clear judicial framework"; moreover, as soon as the ship was intercepted, the captain of the Winner had received a copy of the reports drawn up by the French navy and been kept informed of all the operations in real time, and the searches of the ship and crew had been conducted in his presence.

37. Lastly, the Government maintained that the Code of Criminal Procedure had been applied to the letter when the crew members arrived in Brest on 24 June 2002 and were remanded in custody as part of an investigation opened in respect of drug offences committed by persons unknown. The Government stressed that the interested parties had been handed over, upon arrival, to the police – acting on judicial instructions –, who had taken them into custody and informed them of their rights. The

two investigating judges had visited them after twenty-four and forty-eight hours to notify each of them that their detention was being extended. As to the police custody itself, considering in particular the number of applicants and the need to use the services of interpreters to question them, it had been justified throughout by the needs of the investigation.

38. In conclusion, the Government asked the Court to reject the application as "manifestly ill-founded".

2. The applicants

39. The applicants contested the Government's submission that their detention on board the Winner had been "in accordance with a procedure prescribed by law" within the meaning of Article 5 § 1.

40. Firstly, they alleged, they had been deprived of their liberty without any justification under international or domestic law.

41. They submitted that the Montego Bay Convention was not applicable in the instant case: under Article 108 a State that had serious reasons to suspect that a ship flying its flag was engaging in drug trafficking was entitled to seek the cooperation of other States to put a stop to it, but in the instant case the requesting State was France, not Cambodia. Cambodia's mere acceptance could not be likened to a request made to France for cooperation in boarding a ship flying the Cambodian flag, which was the only scenario provided for in Article 108 of the Montego Bay Convention. As to the Vienna Convention of 20 December 1988, it was not binding on Cambodia, which was not party to it, so it could not be used to justify the boarding of ships flying the Cambodian flag on the high seas.

42. On the matter of a "so-called ad hoc bilateral agreement" between France and Cambodia, it would appear, based on the Government's own submissions, that it covered only a "request for interception", and that the Cambodian authorities merely authorised a "boarding operation"; in other words, even assuming that the purported agreement did have legal force even though it was based on a mere diplomatic note – which, moreover, had not been adduced in the domestic proceedings –, it would only have justified the interception of the Winner, not the detention of its crew.

43. Law no. 94-589 of 15 July 1994 was likewise inapplicable, the applicants alleged, in so far as while ships' commanders had the power under sections 12 and 13, outside territorial waters and where there was a suspicion of drug trafficking, to carry out, or have carried out "the inspection and coercion measures provided for under international law and under this law", this applied only to ships flying the French flag or the flag of another State Party to the Vienna Convention of 20 December 1988, or lawfully registered in such a State, and to ships displaying no flag or having no nationality. According to the applicants, however, the Winner did not fit into any of these categories. They pointed out in particular that the

Government were contradicting themselves in stating, on the one hand, that prior to the interception they had requested the authorisation of Cambodia, which was considered to be the flag State, and on the other hand that the ship had been flying no flag or was without nationality. It was clear, in their opinion, that at the time of the interception the French authorities had identified the Winner and there had never been any doubt as to the identity of the ship being boarded or its nationality.

44. The applicants' case thus differed from the Rigopoulos case cited above, which concerned the interception by the Spanish authorities of a Panamanian ship and the taking of coercive measures against the crew, both Spain and Panama being Parties to the Vienna Convention and therefore bound by Article 17 thereof.

45. Secondly, in any event, the aforementioned provisions of domestic and international law were not sufficiently explicit regarding the custodial measures that could be considered to qualify as lawful within the meaning of Article 5. The applicants pointed out in this connection that section 13 of the Law of 15 July 1994 stated simply that the maritime authorities had the power to take "the inspection and coercion measures provided for under international law", and that Article 17.4 c) of the Vienna Convention provided only for the taking of "appropriate action with respect to the persons on board". Law no. 2005-371 of 22 April 2005, which henceforth explicitly empowered commanders to take coercive measures amounted, according to the applicants, to an "implicit avowal" of the inadequacy of the law in force prior to that point in time.

46. In respect of Article 5 § 3, the applicants pointed out that in the above-cited Rigopoulos case, where the Court had found a complaint similar to theirs manifestly ill-founded, the custodial measure in issue had been taken by an "officer authorised by law" within the meaning of that provision. The same could not be said in their case. Even assuming that the public prosecutor had been kept informed, throughout the journey, about the operations taking place on board the Winner, that did not make him "an "officer authorised by law to exercise judicial power" within the meaning of Article 5 § 3. On that point, referring, inter alia, to the Huber v. Switzerland judgment of 23 October 1990 (series A no. 188), the applicants pointed out, in particular, that the French public prosecutor lacked the independence in respect of the executive to qualify as such an officer, the French prosecution service being placed under the authority of the Government, via the Ministry of Justice.

47. Furthermore, the applicants submitted, in the Rigopoulos case the authorities had done their best to remain within the framework of Spanish legal procedure; in particular, the investigating judge had taken care, within the three days following the interception, to issue an order stating that upon expiry of the 72-hour legal time-limit after which a person detained should be released or brought before the appropriate judicial authority, the situation

of the crew members who had been detained should be regularised and they should be placed in detention pending trial. Nothing had prevented the French authorities from doing the same thing in their case, by contacting a judge by telephone to obtain his agreement to the crew members being kept in detention on board the Winner and informing them of their rights and of the offences of which they were suspected, and allowing them to contact their lawyers and notify their families. Moreover, the applicants submitted that upon their arrival in Brest they had been placed in custody for between forty-eight and seventy-two hours, as if they had just been arrested, whereas they had already been detained for thirteen days on board ship. Between fifteen and sixteen days had thus passed before they were brought before an "officer authorised by law to exercise judicial power".

B. The Court's assessment

1. Admissibility

48. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds, and that it must therefore be declared admissible.

2. Merits

49. First of all, the Court points out that it shares the Government's view that it must be borne in mind that the action taken by the French authorities against the Winner and its crew was taken in the context of France's participation in the effort to combat international trafficking in drugs. As it has repeatedly stated, in view of the ravages caused by drugs, the Court understands that the authorities of the Contracting Parties should treat those who contribute to the propagation of this scourge with great firmness. However, legitimate as it may be, the end does not justify the use of no matter what means: the States must secure to everyone within their jurisdiction the rights and freedoms defined in the Convention and the additional Protocols they have ratified, in all circumstances and with only those restrictions provided for in those same texts. In view of the "paramount importance" attached to Article 5 of the Convention (see McKay v. the United Kingdom [GC], judgment of 3 October 2006, no. 543/03, ECHR 2006-X, § 30), they must be particularly vigilant in this respect when, as in the instant case, a deprivation of liberty within the meaning of that provision is in issue.

50. Having made that clear, the Court notes, on the one hand, that it is not disputed that between 13 June 2002 (the date on which the Winner was intercepted) and 26 June 2002 (when it arrived in Brest harbour) the Winner and its crew were under the control of French military forces, so that even

though they were outside French territory, they were within the jurisdiction of France for the purposes of Article 1 of the Convention. It further notes that the parties agree that throughout that period on board the Winner – and the subsequent police custody – the applicants were deprived of their liberty within the meaning of Article 5 of the Convention, "for the purpose of bringing them before the competent legal authority" (Article 5 § 1 (c)).

51. That is also the opinion of the Court, which also refers to the Rigopoulos decision cited above.

52. The parties disagree, on the other hand, as to whether the applicants' detention on board the Winner was "in accordance with a procedure prescribed by law" as required by Article 5 § 1 of the Convention, and whether, in conformity with paragraph 3 of that Article, they had been "brought promptly before a judge or other officer authorised by law to exercise judicial power".

a. Article 5 § 1

53. The Court reiterates that Article 5 § 1 primarily requires any arrest or detention to have a legal basis in domestic law. However, these words do not simply refer back to domestic law; they also relate to the quality of the "law", requiring it to be compatible with the rule of law, a concept inherent in all the Articles of the Convention. In order to ascertain whether a deprivation of liberty has complied with the "principle of compatibility with domestic law", it falls to the Court to assess not only the legislation in force in the field under consideration, but also the quality of the other legal rules applicable to the persons concerned, including, where applicable, those with their origin in international law. Quality in this sense implies that where a national law authorises deprivation of liberty, it must be sufficiently accessible and precise, in order to avoid all risk of arbitrariness. In any event it must afford adequate legal protection and the legal certainty necessary to prevent arbitrary interferences by public authorities with the rights guaranteed by the Convention (see Amuur v. France, judgment of 25 June 1996, Reports of Judgments and Decisions 1996-III, §§ 50 and 53).

54. The Court notes that international law establishes the principle of freedom of navigation on the high seas, subject to the powers of inspection and coercion of ships by those of their flag State. The ships of other States may, however, carry out such inspections, even without the prior agreement of the flag State, where there are serious reasons to suspect that a ship is engaged in the slave trade, in piracy or in unauthorised broadcasting, or is without nationality or, though flying a foreign flag or refusing to show its flag, the ship is, in reality, of the same nationality as the warship carrying out the inspection (see, inter alia, Article 110 of the Montego Bay Convention, cited above), or when specific treaties provide for it. Article 17 of the Vienna Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (cited above), on "illicit traffic by sea", provides,

for example, beyond cooperation between the Parties to suppress illicit traffic by sea (paragraph 1), for the possibility for any Party "which has reasonable grounds to suspect" that a vessel flying the flag or displaying marks of registry of another Party is engaged in illicit traffic to so notify the flag State, request confirmation of registry and, if confirmed, "request authorisation from the flag State to take appropriate measures in regard to that vessel" (paragraph 3). Under paragraph 4 of Article 17 the flag State may authorise the requesting State to board and search the vessel and, "if evidence of involvement in illicit traffic is found, take appropriate action with respect to the vessel, persons and cargo on board".

55. Next, the Law of 15 July 1994 "on conditions governing the exercise by the State of its powers to carry out checks at sea", as amended by the Law of 29 April 1996 "on drug trafficking at sea and adapting French legislation to Article 17 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances signed in Vienna on 20 December 1988" empowers the commanders of State vessels responsible for surveillance at sea, where there exist "reasonable grounds to suspect" that a vessel sailing outside territorial waters and flying a French flag or the flag of a Party to the above-mentioned Vienna Convention, or lawfully registered in such a State, is engaged in illicit drug trafficking, to carry out, or have carried out, under the authority of the Maritime Prefect, who must inform the Public Prosecutors' Office, "the inspection and coercion measures provided for under international law" and under the law of 15 July 1994. As to the measures that can be taken "at the request or with the agreement of" a Party to the above-mentioned Vienna Convention of 20 December 1988 by virtue of that law, section 14 mentions "searching the ship", "having any narcotic substances found on board seized, together with any objects or documents which appear to be linked to drug trafficking" and having them placed under seal, and "ordering the ship to be rerouted to an appropriate position or port when more thorough inspection is required that cannot be carried out at sea".

56. The Court notes that the Investigation Division of the Rennes Court of Appeal found that as Cambodia was not party to the above-mentioned Vienna Convention, the measures taken by the French authorities against the Winner and its crew at sea, notwithstanding the "traditional principle of the 'law of the flag State'", had no legal basis in the derogations from that principle provided for under Article 17 § 3 of the Vienna Convention. The Investigation Division did consider, however, that that did not prevent the French authorities from "requesting Cambodia's cooperation to obtain authorisation to intercept the Winner to put a stop to the drug trafficking in which all or part of its crew were suspected of engaging". In the Division's opinion the action taken by the French authorities was justifiable under Article 108 of the Montego Bay Convention, which calls for States to "cooperate in the suppression of illicit traffic in narcotic drugs and

psychotropic substances engaged in by ships on the high seas contrary to international conventions" and stipulates that "Any State which has reasonable grounds for believing that a ship flying its flag is engaged in [such traffic] may request the cooperation of other States to suppress [it]", and "with reference" to the Single Convention on Narcotics of 30 March 1961 (Article 35 of which lays down the principle of mutual assistance between the Parties in the campaign against the illicit traffic in narcotic drugs). According to the Investigation Division, the action taken in this case against the Winner and its crew had its legal basis in the "agreement given without restrictions or reservations" to the French authorities by the Government of Cambodia "for the planned interception and all its consequences", within the bounds, of course, of the rules of procedure set forth in the Vienna Convention and the Law of 15 July 1994 on conditions governing the exercise by the State of its powers to carry out checks at sea, "sections 12 et seq. of which define the powers of commanders of State vessels and regulate the investigation and establishment of drug trafficking offences committed at sea, and prosecution and trial therefor, by the French authorities". The Investigation Division was convinced that "in using force to stop the Winner and taking appropriate measures to control and restrain the crew, who were confined to their quarters, and take over and steer the ship", the commander of the frigate had "strictly observed" the provisions of that law and of Article 17.4 of the Vienna Convention.

57. The Court is not fully convinced by this approach. Firstly, because it refers to international conventions to which Cambodia is not party. And secondly, because it relies on legal provisions which, at the material time, provided for the French authorities to take action outside territorial waters only against French ships or "ships flying the flag of a State Party to the Vienna Convention of 20 December 1988 [which Cambodia has not ratified, as stated earlier] ... or lawfully registered in such a State, at the request or with the agreement of the flag State" and "ships displaying no flag or having no nationality". There is some doubt in this case, however, whether the Winner fitted into any of those categories. The Court also notes that the present version of the Law of 15 July 1994 (as amended by Law no. 2005-371 of 22 April 2005), refers more generally to "ships flying the flag of a State which has requested intervention by France or agreed to its request for intervention"). This change in the law seems to suggest that the law as applicable at the material time was found to be lacking in so far as it referred only to States Parties to the Vienna Convention. The Court also notes, like the applicants, that the Government's submissions concerning the applicability of, and compliance with, the said legislative provisions are based on a contradiction. The Government submitted that at the time of the interception the Winner had not been flying a flag, while at the same time asserting that the French authorities had sought confirmation from the Cambodian authorities that the ship was registered in Cambodia, and the

judgment of the Investigation Division showed that the ship had been identified as the Winner before the operations commenced.

58. It is true that the French authorities acted with the prior agreement of Cambodia, as attested by the diplomatic note of 7 June 2002, in which the Cambodian Minister of Foreign Affairs formally confirmed that his Government "authorised the French authorities to intercept, inspect and take legal action against the Winner". The Court is willing in this connection to follow the reasoning of the Investigation Division in so far as it considers that, having regard to Article 108 of the Montego Bay Convention, the interception and boarding of the Winner by the French authorities had a legal basis in that agreement. However, considering the wording of the diplomatic note, it has strong doubts whether it can be deduced from it, as the Investigation Division did, that the agreement covered not only the "planned interception" but also "all its consequences", including the thirteen days' detention imposed on the crew members on board the ship.

59. In other words, the Court considers that it cannot be deduced from the agreement that the detention in issue had a legal basis for the purposes of Article 5 § 1 of the Convention.

60. It must be said, furthermore, that the law of 15 July 1994 makes no more specific provision for deprivation of liberty of the type and duration of that to which the applicants were subjected. Sections 12 to 14 of the law refer to the taking of "the inspection and coercion measures provided for under international law and under this law" (section 13). As stated earlier, however, the measures provided for by the law itself are limited to identifying and boarding the ship, seizing any narcotic substances found on board and placing them under seal, and possibly rerouting the ship to an appropriate position or port when more thorough inspection is required that cannot be carried out at sea (or to a point located in international waters if the flag State expressly requests it, with a view to taking control of the ship).

As to international law, first of all Article 17 of the Vienna Convention – to which the Investigation Division refers in this connection – merely provides, in paragraph 3, for the intervening State to "take appropriate measures" in regard to the vessel concerned and, in paragraph 4, for the boarding and searching of the vessel and "if evidence of involvement in illicit traffic is found", the taking of "appropriate action with respect to the vessel, persons and cargo on board" (Article 17 § 4.c.). And secondly, the Government mention no provision of international law that is more specific on this question.

61. Furthermore, the Court considers that the above-mentioned legal provisions do not afford sufficient protection against arbitrary violations of the right to liberty. None of those provisions refers specifically to depriving the crew of the intercepted ship of their liberty. It follows, therefore, that they do not regulate the conditions of deprivation of liberty on board ship,

and in particular the possibility for the persons concerned to contact a lawyer or a family member. Nor do they place the detention under the supervision of a judicial authority (see, mutatis mutandis, the Amuur judgment, cited above, § 53). It is true, as the Government pointed out, that measures taken under the Law of 15 July 1994 are taken under the supervision of the public prosecutor, who is informed by the Maritime Prefect (section 13 of the law) and "given prior notification, by any means, of the operations envisaged with a view to investigating and establishing the offences" (section 16 of the law); in addition, the interested parties receive copies of the records establishing the offences (ibid.) and, according to the Government, no questioning of suspects was possible on board ship and body searches were not permitted. It must be acknowledged, however, that the public prosecutor is not a "competent legal authority" within the meaning the Court's case-law gives to that notion: as the applicants pointed out, he lacks the independence in respect of the executive to qualify as such (see Schiesser v. Switzerland, judgment of 4 December 1979, series A no. 34, §§ 29-30).

62. Accordingly, and having regard in particular to the "scrupulous adherence to the rule of law" required by Article 5 of the Convention (see McKay, cited above, same references), it cannot be said that the applicants were deprived of their liberty "in accordance with a procedure prescribed by law", within the meaning of paragraph 1 of that provision.

63. That being so, there has been a violation of Article 5 § 1 of the Convention.

b. Article 5 § 3

64. The Court must also examine the question the duration of the deprivation of liberty suffered by the applicants raises in respect of Article 5 § 3 of the Convention: thirteen days on board the Winner plus two or three days – depending on the case – of police custody in Brest. On this last point the Government submitted, it is true, that the two investigating judges went to see each of the detainees after twenty-four hours and after forty-eight hours to inform them that their police custody was being extended. However, that assertion, in support of which the Government have adduced no evidence, is corroborated neither by the statement of facts made in the judgment of the Investigation Division of the Rennes Court of Appeal of 3 October 2002, nor by any other documentary evidence. Be that as it may, it must be noted that the applicants were not brought before "a judge or other officer authorised by law to exercise judicial power" within the meaning of Article 5 § 3 until they were brought before the liberties and detention judge to be placed in detention pending trial (on 28 June 2002 for some and 29 June for others), that is, after fifteen or sixteen days' deprivation of liberty.

65. As the Court pointed out in the Rigopoulos decision cited above, such a lapse of time is in principle not compatible with the concept of

"brought promptly" laid down in Article 5 § 3 of the Convention. Only "wholly exceptional circumstances" could justify such a period, it being understood that nothing could dispense the Contracting Parties of the obligation to secure in all circumstances to all persons within their jurisdiction proper safeguards against arbitrary deprivations of liberty.

66. The Rigopoulos case concerned the interception at sea by Spanish customs officers of a ship flying the Panamanian flag and transporting cocaine, and the detention of its crew – including the applicant, the ship's captain – for sixteen days, the time it took to escort the ship to a Spanish port. The Court found the complaint under Article 5 § 3 manifestly ill-founded, holding that "having regard to the wholly exceptional circumstances of the ... case, the time which elapsed between placing the applicant in detention and bringing him before the investigating judge cannot be said to have breached the requirement of promptness in paragraph 3 of [Article 5]". The circumstances taken into consideration included the fact that the distance to be covered was "considerable" (the ship was more than 5,500 km from Spanish territory when it was intercepted) and that a delay of forty-three hours caused by the resistance put up by certain members of the crew "[could] not ... be attributed to the Spanish authorities". The Court accordingly considered "that it was therefore materially impossible to bring the applicant physically before the investigating judge any sooner". It further noted that once he had arrived on Spanish soil, the applicant had immediately been transferred to Madrid by air and that he had been brought before the judicial authority on the following day. Lastly, it considered unrealistic the applicant's suggestion that, rather than Spain, the ship could have been diverted to a British island, Ascension Island, located approximately 1,600 km from where the vessel was boarded.

67. When the Winner was boarded, it too was at sea, a long way from the French coast, at a distance comparable to that in the Rigopoulos case, and there was no evidence that getting it to France had taken any longer than necessary. Moreover, the applicants have not suggested that it would have been possible to hand them over to the authorities of a country closer than France, where they might have been brought promptly before a competent legal authority. The instant case thus has a lot in common with the Rigopoulos case: here too, it was materially impossible to bring the applicant "physically" before such an authority any sooner.

68. While it is true that the instant case differs in that upon their arrival in Brest, after thirteen days' detention at sea, the applicants were placed in police custody for two days in some cases and three days in others, before they were brought before "a judge or other officer authorised by law to exercise judicial power" within the meaning of Article 5 § 3 of the Convention, the total duration of the deprivation of liberty they thus endured remained comparable to that complained of by Mr Rigopoulos.

Furthermore, the Court considers reasonable the Government's argument that the police custody and its duration were justified by the needs of the investigation, considering the number of applicants and the need to use the services of interpreters to question them. The fact remains that the detention imposed on the applicants on board the Winner was not under the supervision of a "competent legal authority" within the meaning of Article 5 (the public prosecutor did not qualify as such; see paragraph 61 above), while Mr Rigopoulos had been detained "on the orders and under the strict supervision" of the Madrid Central Investigating Court; unlike him, the applicants in the instant case did not enjoy the protection against arbitrariness that such supervision affords. However, that consideration, which the Court duly examined with reference to paragraph 1 of Article 5, does not change the fact that the duration of the applicants' detention was justified by the "wholly exceptional circumstances" described above, and in particular the time it inevitably took the Winner to reach France.

69. That being so, there has been no violation of Article 5 § 3 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

70. 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

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

72. The Government considered the sums claimed "excessive, unjustified and devoid of any causal relationship with the complaints lodged".

73. The Court considers that the applicants undoubtedly sustained non-pecuniary damage, but that the finding of a violation it has reached constitutes in itself sufficient just satisfaction.

B. Costs and expenses

74. The applicants claimed EUR 5,000 for their costs and expenses before the Court. They produced a request for an advance for that sum, drawn up by their counsel on 25 September 2006.

75. The Government invited the Court to reject the applicants' claim.

76. The Court notes that the applicants have produced valid documentary evidence in support of their claim. Considering that the sum claimed is not excessive, it accepts it and awards the applicants jointly EUR 5,000 in respect of costs and expenses.

C. Default interest

77. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT

1. Declares the application admissible unanimously;

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

3. Holds by four votes to three that there has been no violation of Article 5 § 3 of the Convention;

4. Holds unanimously that the finding of a violation of Article 5 § 1 constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicants;

5. Holds unanimously
   (a) that the respondent State is to pay the applicants jointly, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 5,000 (five thousand euros) in respect of costs and expenses, plus any tax that may be chargeable to the applicants;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
6. Dismisses unanimously the remainder of the applicants' claims for just satisfaction.

Done in French, and notified in writing on 10 July 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

P. LORENZEN,
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of Rules of Court, the partly dissenting opinion of Judge Berro-Lefèvre, joined by Judge Lorenzen and Judge Lazarova Trajkovska, is annexed to this judgment.

P.L.
C.W.

PARTLY DISSENTING OPINION OF JUDGE BERRO-LEFÈVRE, JOINED BY JUDGE LORENZEN AND JUDGE LAZAROVA TRAJKOVSKA

I do not share the majority's opinion that there has been no violation of Article 5 § 3 of the Convention in this case, where it is not disputed that the applicants' detention lasted thirteen days on board the Winner, plus two or three days, depending on the applicant, of police custody in Brest.

In the Rigopoulos case the Court found the complaint under Article 5 § 3 manifestly ill-founded, taking into account the wholly exceptional circumstances of the case, and the fact that it was materially impossible to bring the applicant physically before the investigating judge any sooner.

When the Winner was boarded, it too was a long way from the French coast and there is no evidence that escorting it to France took any longer than necessary. Here too it was materially impossible to bring the applicants physically before a judicial authority any sooner.

However, what distinguishes the present case from the Rigopoulos case is that, upon their arrival in Brest, after thirteen days' detention at sea, the applicants were placed in police custody for two days in some cases and three days in others before being brought before a judge or other officer authorised by law to exercise judicial power, formally notified of the charges and placed in detention pending trial. That action was taken against the whole crew, irrespective of the degree of the applicants' involvement in the alleged traffic, and indeed I note that some of them were acquitted by the Ille-et-Vilaine Special Assize Court.

I see no reasonable explanation – and the Government's arguments on this point fail to convince me – why the applicants were not placed under investigation and brought before the liberties and detention judge as soon as they arrived in Brest, considering that the boarding operation had been planned for several weeks, an investigation had been opened and investigating judges had been appointed on 24 June 2002.

Bearing in mind the thirteen days' deprivation of liberty the applicants were subjected to on board the Winner, I consider that the two or three additional days they spent in police custody do not meet the requirement of promptness present in the wording of Article 5 § 3. One of the aims of that requirement of promptness is to protect people against lengthy detention at the hands of the police or the administrative authorities.

What distinguishes the instant case even more from the Rigopoulos case is the fact that the detention imposed on the applicants was not under the supervision of “a judge or other officer authorised by law to exercise judicial power”, but under that of the public prosecutor, who, as explained in the judgment (paragraph 61) in reference to Article 5 § 1, does not qualify as such an officer according to the Court's case-law (Schiesser v. Switzerland, judgment of 4 December 1979, series A no. 34, §§ 29-30, and

Huber v. Switzerland, judgment of 23 October 1990, series A no. 188), whereas in the Rigopoulos case the applicant had been detained under the strict supervision of the Madrid Central Investigating Court – a special investigating court independent of the executive.

After the first seventy-two hours of custody Mr Rigopoulos was immediately, on the basis of a reasoned order, placed in detention pending trial while the ship was rerouted, so that in his case his detention was under judicial supervision once the initial legal period of police custody expired.

The crew of the Winner, by contrast, did not enjoy the protection against arbitrariness that such supervision affords. The judgment points out this shortcoming in paragraph 68, but draws no conclusion from it in respect of Article 5 § 3, referring simply to the "exceptional circumstances" of the case.

I appreciate that where drug trafficking is concerned the national authorities must treat those who contribute to the propagation of this scourge with great firmness (see, for example, the judgments in the cases of Maslov v. Austria, [GC], no. 1638/08, of 23 June 2008, § 80; Dalia v. France, of 19 February 1998, Reports 1998-I § 54; and Baghli v. France, of 30 November 1999, no. 34374/97, ECHR 1999-VIII, § 48).

However, as the present judgment rightly says in paragraph 49, the end does not justify the use of no matter what means.

The Court has constantly reiterated the importance of the provisions of Article 5 in the Convention system: they embody a fundamental human right, namely the protection of individuals against arbitrary interference by the State with their freedom (see in particular Saadi v. the United Kingdom [GC], judgment of 29 January 2008, no. 13229/03, ECHR 2008-..., § 63; Winterwerp v. the Netherlands, judgment of 24 October 1979, Series A no. 33, § 37; and Brogan and Others v. the United Kingdom, judgment of 29 November 1988, Series A, no. 145-B, § 58).

In this particular case France did not have a legislative framework that afforded sufficient protection against arbitrary deprivation of liberty, and in my opinion no exceptional circumstance justified a fifteen- or sixteen-day delay before the applicants were brought before a competent legal authority.

That being so, I consider that there has been a violation of Article 5 § 3 of the Convention.