



Suspects of piracy against French vessels, apprehended in Somalia by the French authorities, should have been brought before a legal authority as soon as they arrived in France

The European Court of Human Rights has today notified its **Chamber judgments**¹ in the cases of [Ali Samatar and Others v. France](#) (applications nos. 17110/10 and 17301/10) and [Hassan and Others v. France](#) (applications nos. 46695/10 and 54588/10).

These two cases concerned nine Somali nationals, who, having hijacked French-registered vessels off the coast of Somalia were arrested and held by the French army, then transferred to France, where they were taken into police custody and prosecuted for acts of piracy.

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 in the case of *Hassan and Others*, as the French system applicable at the relevant time had not sufficiently guaranteed the applicants' right to their liberty; and

a violation of Article 5 § 3 (right to liberty and security)² in both cases, as the applicants had been taken into custody for 48 hours on their arrival in France instead of being brought "promptly" before a legal authority, when they had already been deprived of their liberty for four days and some twenty hours (*Ali Samatar and Others*) and six days and sixteen hours (*Hassan and Others*).

The Court reiterated in particular that the purpose of Article 5 § 3 was to facilitate the detection of any ill-treatment and to minimise any unjustified interference with individual liberty, in order to protect the individual, by means of an automatic initial review, within a strict time-frame leaving little flexibility in interpretation. The Court's case-law to the effect that periods of two or three days before the initial appearance before a judge did not breach the promptness requirement under Article 5 § 3 was not designed to give the authorities the opportunity to intensify their investigations for the purpose of bringing formal charges against the suspects.

Principal facts

Ali Samatar and Others

The applicants in the first case are six Somali nationals: Abdurahman Ali Samatar (application no. 17110/10), born in 1984, and also Ismael Ali Samatar, Abdulqader Guled Said, Mohamed Said Hote, Abdullahi Yusuf Hersi and Daher Guled Said (application no. 17301/10), born in 1981, 1978, 1962, 1987 and 1978 respectively. They were prosecuted in France for acts of piracy committed in 2008.

On 4 April 2008 at 11.15 a.m., mid-way between the coasts of Yemen and Somalia, a cruise ship flying the French flag, the *Ponant*, was intercepted by a dozen men armed with assault rifles and

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.

2 "Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of [Article 5] 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."

rocket launchers. They took possession of the vessel and took its crew hostage – about 30 crew members including 20 French nationals – and sailed it towards the Somali coast. At 1.30 p.m. the French Prime Minister launched the “pirate-sea” plan, mobilising all available resources in the area. On the next day the Somali Transitional Federal Government (TFG) sent a diplomatic note to the French authorities, authorising them to enter Somali territorial waters and to take all necessary measures – including the proportionate use of force – in the context of the crisis. On 11 April, while the *Ponant* was moored off the Somali port of Garacad, the French hostages were released in return for a ransom of 2,150,000 US dollars. On the same day around noon, the six applicants were intercepted by the GIGN (intervention brigade of the French Gendarmerie) just as they were leaving Garacad in a four-wheel-drive vehicle.

The applicants were placed under French military control before being put on a military aircraft on 15 April, around 3 p.m., as soon as the Somali authorities had given their permission. The plane landed in France at around 5.15 p.m. on 16 April 2008. The suspects were taken into police custody. On the morning of 18 April they were taken before an investigating judge and placed under judicial investigation.

The Investigation Division of the Paris Court of Appeal, before which the applicants had lodged an appeal against that decision, complaining in particular that their arrest on Somali territory and their detention before their arrival in France had been unlawful, held in a judgment of 6 April 2009 that the proceedings had been lawful. They had, in particular, been conducted in the context of *ad hoc* cooperation with the Somali authorities and, taking account of the circumstances, in compliance with the requirement of promptness imposed by Article 5 of the European Convention on Human Rights. On 16 September 2009 the applicants’ appeals on points of law were dismissed by a judgment of the Court of Cassation, which found in particular that “insurmountable circumstances, characterised by a wait for the Somali authorities to agree to the transfer of the six suspects to France, justified their deprivation of liberty for about five days before their police custody was officially ordered on 16 April 2008”.

Hassan and Others

The applicants are three Somali nationals, Yacoub Mohammed Hassan, Cheik Nour Jama Mohamoud (application no. 46695/10) and Abdulhai Guelleh Ahmed (application no. 54588/10), who were born in 1983, 1979 and 1975 respectively. They were prosecuted in France for acts of piracy committed in 2008.

On 2 September 2008, off the Somali coast, the French yacht *Carré d’As* was intercepted by three men who obliged the crew, a French couple, to change course in order to join some other vessels. About ten men then boarded the yacht, which reached the Somali coast that evening. The couple were robbed of their possessions and held hostage for a ransom of two million dollars.

On 5 September 2008 the French Naval frigate *Courbet*, which was patrolling the Gulf of Aden, arrived on the scene with a team of commandos. An operation to free the hostages was launched by the French military forces. On 2 June 2008 the United Nations Security Council had adopted a resolution (1816) authorising, for a six-month period, the States cooperating with the Somali TFG in the fight against piracy to enter Somalia’s territorial waters and use all available means to repress acts of piracy and armed robbery. An attack was carried out on 16 September at 0.30 a.m. and six Somalis, including the applicants, were arrested, while they were within Somali territorial waters, and were placed under military guard on the *Courbet*. Having been taken onto the frigate at about 2 a.m. they were held on board until 1.30 p.m. on 22 September 2008. After the Somali authorities had agreed, on 21 September, to the transfer of the six Somali suspects, the applicants were then taken on that date to the Djibouti military base pending their transfer to France. They were put on a military plane on 23 September 2008 and arrived in France on the same day at around 4 p.m. They were then held in police custody until 25 September 2008 at 2.30 p.m., after which they were brought before an investigating judge on the same day: at 5.54 p.m. in the case of Mr Yacoub

Mohammed Hassan, 7.30 p.m. in that of Mr Abdulhai Guelleh Ahmed and 8.09 p.m. in that of Mr Cheik Nour Jama Mohamoud They were then placed under judicial investigation and remanded in custody after their first-appearance examination by the judge.

Ruling on appeals by the applicants, the Investigation Division of the Paris Court of Appeal dismissed their applications on 6 October 2009, finding among other things that “the only measures to have been taken were adapted, in particular, to the aims laid down in Resolution 1816” and that this was especially the case for the restriction on the suspects’ freedom of movement. The court thus held that their arrest and detention pending placement in police custody had not breached Article 5 of the European Convention on Human Rights, having regard in particular to the “wholly exceptional circumstances” of the case in temporal and geographical terms. On 17 February 2010 appeals by the four applicants on points of law were dismissed by the Court of Cassation.

Complaints, procedure and composition of the Court

Relying on Article 5 § 1 (right to liberty and security), the applicants in the case of *Hassan and Others* alleged that their detention by the French military authorities from 16 to 23 September 2008 had no legal basis.

In both cases, relying on Article 5 § 3 (right to liberty and security), the applicants complained that they had not been “brought promptly before a judge or other officer authorised by law to exercise judicial power” after their arrest by the French army in Somali territorial waters / on Somali territory.

Mr Ahmed (*Hassan and Others*) and the applicants in the case of *Ali Samatar and Others* also complained, under Article 5 § 4 (right to have lawfulness of detention decided speedily), that they did not have access to a court to challenge the lawfulness of their arrest in Somalia or their detention until they were taken into police custody in France.

The applications were lodged with the European Court of Human Rights respectively on 15 and 16 March 2010 (*Ali Samatar and Others*) and 13 and 16 August 2010 (*Hassan and Others*).

The Greek Government were authorised to submit written comments as a third-party intervener (Article 36 § 2 of the Convention) in both cases.

The judgments were given by a Chamber of seven judges, composed as follows:

Mark Villiger (Liechtenstein), *President*,
Angelika Nußberger (Germany),
Boštjan M. Zupančič (Slovenia),
Ganna Yudkivska (Ukraine),
Vincent A. de Gaetano (Malta),
André Potocki (France),
Aleš Pejchal (the Czech Republic),

and also Claudia Westerdiëk, *Section Registrar*.

Decision of the Court

Article 5 § 1 (*Hassan and Others*)

The Court took the view that the applicants had undergone a “lawful arrest or detention ... effected for the purpose of bringing [them] before the competent legal authority”, within the meaning of Article 5 § 1 (c), noting in particular that there had been “plausible reasons” to suspect them of committing offences against a French vessel and French citizens. The Court further found that the authorities had acted on the basis of Resolution 1816 adopted by the United Nations Security

Council on 2 June 2008, authorising States, for a period of six months, to enter the territorial waters of Somalia for the purpose of repressing acts of piracy in a manner consistent with such action permitted on the high seas with respect to piracy under relevant international law. Having regard to Articles 101 and 105 (definition of piracy and seizure of a pirate ship) of the United Nations Convention on the Law of the Sea³, it found that the applicants' detention had had a legal basis.

The Court found, however, that the applicable law at the relevant time did not meet the quality criteria laid down by its case-law. It did accept that the French authorities' intervention in Somali territorial waters on the basis of Resolution 1816 was "foreseeable": in the light of that Resolution, the applicants had been able to foresee, to a reasonable degree in the circumstances of the case, that by hijacking the *Carré d'As* and taking its crew hostage they might be arrested and detained by the French forces for the purposes of being brought before the French courts. It noted, however, that the law applicable at the relevant time to the situation of individuals arrested by French forces for acts of piracy on the high seas did not include any rule defining the conditions of deprivation of liberty that would be subsequently imposed on them pending appearance before the competent legal authority. The Court thus concluded that the legal system in force at the relevant time did not provide sufficient protection against arbitrary interference with the right to liberty and that there had therefore been a violation of Article 5 § 1.

Article 5 § 3

In both cases, referring to its case-law⁴, the Court was prepared to admit that "wholly exceptional circumstances" explained the length of the applicants' detention between their arrest and their arrival in France. The French authorities had intervened off the coast of Somalia, 6,000 km from mainland France, to repress acts of piracy of which vessels flying the French flag and a number of its citizens had been victims, in an area where piracy was becoming alarmingly rife. As the Somali authorities lacked the capacity to deal with such offences and, in the present case, to ensure that the applicants stood trial, the French authorities had decided to take them back to France. There was no evidence to suggest that the transfer had taken longer than necessary, in the light of the difficulties relating to the organisation of such an operation from a sensitive area like the Horn of Africa, and given that the flight to France had been arranged in both cases as soon as the Somali authorities had given their permission.

The Court noted, however, that on their arrival in France the applicants had been taken into police custody for 48 hours rather than being brought immediately before an investigating judge. There was nothing to justify that additional delay in either of the two cases. The authorities had intervened rapidly after the hostage taking. Eleven days in the case of *Ali Samatar and Others* and at least eighteen days in *Hassan and Others* had thus passed between the decision to intervene and the applicants' arrival in France, and the French authorities could have made use of that time to prepare for them to be brought "promptly" before the competent legal authority. The Court reiterated, in particular, that the purpose of Article 5 § 3 was to facilitate the detection of any ill-treatment and to minimise any unjustified interference with individual liberty, in order to protect the individual, by means of an automatic initial review, within a strict time-frame leaving little flexibility in interpretation. As regards the French Government's argument that the applicants' period in police custody had been necessary for the purposes of the investigation, the Court pointed out that its case-law to the effect that periods of two or three days before the initial appearance before a judge did not breach the promptness requirement under Article 5 § 3 was not designed to afford the authorities an opportunity to intensify their investigations for the purpose of bringing formal charges against the suspects.

³ Montego Bay Convention of 10 December 1982, see §§ 34 and 35 of the *Hassan and Others* judgment

⁴ *Rigopoulos v. Spain* (decision, 12/01/1999), *Medvedyev and Others v. France* (Grand Chamber judgment, 29/03/2010) and *Vassiss and Others v. France* (Chamber judgment, 27/06/2013).

Consequently, there had been a violation of Article 5 § 3 on account of the fact that on their arrival in France, the applicants, who had already been detained for four days and about twenty hours (*Ali Samatar and Others*) and six days and sixteen hours (*Hassan and Others*), had been taken into police custody rather than being brought “promptly” before a French legal authority.

Other complaints

As regards the complaint submitted by Mr Ahmed and the applicants in *Ali Samatar and Others* under Article 5 § 4, the Court observed that it had already examined under Article 5 § 3 the deprivation of liberty sustained by the applicants before being brought before the investigating judge and placed under judicial investigation. Pointing out that the requirements of paragraph 3 were stricter than those of paragraph 4 as regards the criterion of promptness, the Court found that it did not need to examine the facts under Article 5 § 4.

Just satisfaction (Article 41)

The Court held that France had to pay to each of the applicants in the case of *Hassan and Others* 5,000 euros (EUR) in respect of non-pecuniary damage, and EUR 7,272.46 to Abdulhai Guelleh Ahmed for costs and expenses, and in *Ali Samatar and Others*, EUR 2,000 to each of the applicants in respect of non-pecuniary damage, and for costs and expenses, EUR 9,000 to Abdurahman Ali Samatar, EUR 6,000 jointly to Ismael Ali Samatar, Abdulqader Guled Said, Mohamed Said Hote, Abdullahi Yusuf Hersi and Daher Guled Said, and EUR 3,000 to Abdulqader Guled Said.

The judgment is available only in French.

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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.