

SUBMISSION
OF THE GREEK COUNCIL FOR REFUGEES (GCR) AND
THE EUROPEAN COUNCIL ON REFUGEES AND EXILES (ECRE)

TO THE COMMITTEE OF MINISTERS OF THE COUNCIL OF EUROPE
in accordance with Rule 9.2. of the Rules of the Committee of Ministers
regarding the supervision of the execution of judgments and of terms of
friendly settlements concerning the case of

Safi and others v. Greece
(Application No. 5418/15, 7 July 2022)

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ANNEX

THE PYLOS SHIPWRECK: A CLONE CASE 1 YEAR AFTER THE
ISSUANCE OF SAFI JUDGMENT?

I.THE SUBMITTING ORGANIZATIONS

The Greek Council for Refugees (GCR) is a Non-Governmental Organisation, founded in 1989, that specializes in the provision of legal aid and social support to persons in need of international protection in Greece. GCR *inter alia* participates in the Greek National Commission for Human Rights (GNCHR) since 1999, has a Consultative Status in the UN Economic and Social Council (ECOSOC) since 2001 and it is a member of the Racist Violence Recording Network (RVRN)¹ and the recently established Recording Mechanism of Informal Forced Returns under the auspice of the GNCHR².

GCR, alongside with other civil society organisations, represented the tragic Farmakonisi shipwreck survivors before national Courts and the European Court of Human Rights (hereinafter, ECtHR or the Court).

Today, GCR is amongst the human rights organisations that represent 40 survivors of the deadly Pylos shipwreck in criminal proceedings before the Naval Court of Piraeus with regards the responsibility of the Greek authorities in this case.³ Lastly, GCR since March 2022 has represented before the ECtHR more than 500 refugees, requesting to be granted humanitarian assistance and access to the asylum procedure in Greece, many of whom claimed being victims of multiple pushbacks by the Greek authorities at the EU external borders.⁴

The European Council on Refugees and Exiles (ECRE) is an international alliance of 110 NGOs across Europe working together to protect and advance the rights of refugees, asylum seekers and displaced persons. Their mission is to promote the establishment of fair and humane European asylum policies and practices in accordance with international human rights law. ECRE engages in legal research and training on the application and interpretation of EU asylum law and relevant international human rights instruments, including the 1951 Refugee Convention and the European Convention on Human Rights. ECRE was a third-party intervener in over thirty cases before the European Court of Human Rights. The recent interventions were submitted in the following cases: *T.K. and S.R. v. Russia*, (*Applications Nos. 28492/15 and 49975/15*), *H.T. v.*

¹ Racist Violence Recording Network,
<https://www.nchr.gr/en/racist-violence-recording-network.html>

² Recording Mechanism of Informal Forced Returns,
<https://nchr.gr/en/recording-mechanism.html>

³ GCR *et al.*, Survivors demand an effective investigation, 13 September 2023,
<https://www.gcr.gr/en/news/press-releases-announcements/item/2184-40-survivors-of-the-pylos-shipwreck-file-a-criminal-complaint-before-the-naval-court-of-piraeus>

⁴ GCR's Information Note on interventions and on interim measures granted by the ECtHR in cases regarding pushbacks, Updated on the 15th of November 2023,
<https://www.gcr.gr/en/news/press-releases-announcements/item/1984-information-note>

Germany and Greece, (Application No. 13337/19), Bahoumou Totopa v. Spain (no. 74048/17, December 2019), Al H. and others v. Greece (nos. 4892/18 and 4920/18), M.H. v Serbia (no. 62410/17, March 2019), M.N. v Belgium (GC), (no. 3599/18, March 2019), Trawalli and Others v. Italy (no. 47287/17), N.D. and N.T. v. Spain (GC) (nos. 8675/15 and 8697/15), Ilias and Ahmed v. Hungary (no. 47287/15). ECRE has also made a number of submissions to the Committee of Ministers of the Council of Europe on the implementation of the ECHR judgments, including jointly with the AIRE Centre and DRC in the case *Khlaifia and others v Italy, Ilias and Ahmed v. Hungary* and *M.K. and others v. Poland, Kebe and Others v Ukraine*.

II. THE JUDGMENT

A. The Background of the Case:

1. The case of *Safi and Others v. Greece* (application no. 5418/15 – hereinafter, “the present case”) concerned the sinking of a fishing boat transporting 27 foreign nationals in the Aegean Sea, off the island of Farmakonisi, resulting in the death of 11 people – 8 children and 3 women, including the wives and children of the survivors and applicants thereafter. The survivors argued that the Greek Coast Guard (hereinafter HCG) has been carrying out a pushback operation and not a sea rescue operation. According to the applicants, the shipwreck occurred during and due to a pushback operation of the HCG. No effective criminal and administrative investigation into the circumstances of the incident took place. On 21 January 2015, an application before the Court was lodged by 16 survivors.

B. The Violations of the Convention:

Violations of the European Convention of Human Rights (ECHR or the Convention) as per to the judgment of 7th July 2022:

- **a violation of Article 2 (right to life) under its procedural limb.** The Court found that there had been shortcomings in the proceedings and concluded that the national authorities had not carried out a thorough and effective investigation capable of shedding light on the circumstances in which the boat had sunk.
- **a violation of Article 2 (right to life)** on account of the failure to comply with the positive obligation under this Article. The Court found that the Greek authorities had not done all that could reasonably be expected of them to provide the applicants and their relatives with the level of protection required by Article 2 of the Convention.

- **a violation of Article 3 (prohibition of inhuman or degrading treatment)**, concerning 12 of the applicants who had been on board the boat and who, after it had sunk, had been subjected to degrading treatment on account of the body searches they had undergone on arriving in Farmakonisi.

More specifically:

i. As regards the circumstances of the deadly shipwreck and the sea operation of the HCG:

3. The Court underlined that “*the overriding question in the present case is whether the authorities, in this particular context, acted in a manner which was intended to ensure the protection of the lives of the applicants and their relatives and to place the lives of those concerned in sufficiently and adequately at the center of their concerns*” (para. 148).

4. That said, the Court found a violation of Article 2 (1) ECHR) on the ground that the Greek authorities did not do everything that could reasonably be expected to protect the lives of the applicants and their relatives (para. 165). The Court underlined that “*serious questions arise as to the manner in which the coast guard operation was conducted and organized*” (para 166).

ii. As regards the preliminary investigation by the Prosecutor of the Naval Court:

5. The prosecutor of the Naval Court of Piraeus decided to close and archive the case in the preliminary investigation phase with regard to the offenses of exposure to danger, causing shipwreck and personal injuries allegedly committed by the port police corps. The Court observed that criminal proceedings ignited before the Naval Court of Piraeus were in principle capable of shedding light on the circumstances of the case and leading to the establishment of the facts and, where appropriate, the punishment of those responsible.

6. However, the Court found a violation of Article 2 of the Convention under its procedural limb. The Court has also underlined that it is “*largely due to the absence of a thorough and effective investigation by the domestic Authorities*” that “*it cannot conclude as to whether the applicants were subject to a pushback operation*” (para. 155).

iii. As regards the survivors submitted to strip searches:

7. Upon the rescue and disembarkation on the island of Farmakonisi, the port officers took the applicants to the basketball court and forced them to undress

completely at the same time and in the same place, in front of the other survivors and in front of the present military staff.

8. The Court took into consideration that the applicants had been in an extremely vulnerable and stressful situation, having escaped from a sinking boat and some of them having lost and mourning their children and wives. Thus, the Court concluded that the body searches carried out in such conditions “*could not be said to have been duly based on any compelling security requirements or the need to prevent disorder or crime*”, but instead “*had amounted to degrading treatment within the meaning of the Article 3 of the Convention*”.

C. The Action Plan of the Greek Authorities:

i. General measures:

9. As regards the general measures adopted, the Greek Authorities note that the judgment of the Court has been translated and disseminated to the Prosecutor of the Supreme Court, the Prosecutors of the Naval Revision Court and the Naval Court of Piraeus, as well as the Headquarters of the HCG for further dissemination. Moreover, the Prosecutor of Naval Revision Court issued Circular no 4639/2023 that was sent to the Prosecutors of all military Courts. Additionally, the Prosecutor of Naval Revision Court, requested the Headquarters of the HCG “*to issue directives and to update previous relevant orders, so that body searches and investigation acts, similar to those referred to Safi case, are conducted in line with the judgment’s indications*” (para.10 of the Action Plan).

10. The submitting organisations note that the request of the Prosecutor of the Naval Court as of the issuance of Directives/Orders to the HCG refers only to issues related to the violation of the procedural aspect of Article 2 and Article 3 of the Convention. No Orders or Directives to the HCG have been issued regarding the findings concerning the violation of Article 2 under its substantive limb - organisation and conduct of the operation by the HCG- and in order to avoid future similar violations, nor the prosecutor of the Naval Court has requested the issuance of such Directives/Orders.

a) Regarding the substantive violation of Article 2:

11. The Greek authorities submitted that the *Safi* case is an isolated incident of “*an individual character*” and as the result did not provide any details as to further general measures they are planning to undertake in order to efficiently implement the judgment (para. 14-15 of the Action Plan).

12. To this regard, the Government refers to:

- the paragraphs in *Safi* concerning the “*specific circumstances of the case*” in order to conclude that “*the Court itself signals that the violation found is directly linked with the specific circumstances of the case*”.

However, while the nature of applications before the Court in accordance with Article 34 is indeed individual, ECHR judgments play an important role in ensuring that the States honour their obligations under Article 1 ECHR and take efficient measures in order to prevent similar violations. The Action Plan fails to address such measures;

- A special protocol that has been established (Memorandum of Action) on the basis of international instruments (namely, the International Convention on Maritime Search and Rescue (SAR Convention), the International Aeronautical and Maritime Search and Rescue (IAMSAR) Manual) (para. 16 of the Action Plan). Although the Government notes that such protocol is followed in all SAR cases, no records or incidents details to collaborate this information are included in the Action Plan. For example, it is not clear how this protocol has been implemented in Pylos case, where a search and rescue operation has been initiated only after the boat capsized (see Annex). Additionally, no further information is provided regarding the context of this Memorandum and the latter is not provided as an Annex to the Action Plan for evaluation.
- The number of operations conducted since 2015 onwards and the number of persons rescued or assisted by the HCG (para. 17 of the Action Plan). Without underestimating the data provided by the Authorities, these data should be read in conjunction with the number of shipwrecks, dead and missing during the same period. For example, according to IOM Missing Project, 2.319 have been recorded dead or missing in the Eastern Mediterranean since 2014. This does not include the approximately 600 dead or missing persons of the Pylos shipwreck of 14th June 2023, that have been recorded in the Central Mediterranean.⁵ The submitting organisations understand that a certain level of risk to life and bodily integrity is inherent in rescue operations at sea and, according to the Court, the obligation to rescue is one of means and not result. However, the number of dead or missing persons is an alarming finding which should also be taken into consideration.
- The submitting organisations underline that many cases against Greece pending before the Court refer to similar violations by the HCG, as those found by the Court under the substantive limb of Article 2 ECHR in *Safi* (see below footnote 19). It should be noted that in the examination of the substantive limb of Article 2 in the present case the Court stressed that the central question was whether the HCG had acted “*in a manner which was intended to ensure the protection of the lives of the applicants and their relatives and to place the lives of those concerned in sufficiently and adequately at the center of their concerns*” (para. 148) and underlined that “*serious questions arise as to the manner in which the coast guard operation was conducted and organized*” (para. 165).

⁵ IOM Missing Migrants Project, Data, available at: <https://missingmigrants.iom.int/data>

Thus, cases of delayed search and rescue (*F.M. v. Greece*, application no 17622/21), alleged abandonment at sea or “drift back” practices instead of a search and rescue operation (*inter alia S.A.A. and Others v. Greece*, Application no 22146/21) or disproportionate use of violence (shootings) during an HCG operation (*Alkhatib v. Greece*, Application No 3566/16) are relevant. Moreover, the case of the Pylos shipwreck, where the victims *inter alia* refer to the omission of the HCG to timely organize a search and rescue operation before the boat capsized, to inappropriate and dangerous acts of the HCG resulting in the sinking of the boat and delayed search and rescue after the sinking of the boat, is pending before the Naval Court of Piraeus (see more details on the case at Annex below).⁶

b) As of the procedural limb of Article 2 ECHR

13. The Greek authorities mainly refer to the “*wide dissemination*” of the judgment (para 11-12 of the Action Plan). No measures capable of ensuring the effectiveness of the future investigations have been envisaged so far (see below paras. 31-42 of the present submissions).

c) As of the violation of Article 3

14. The Authorities equally refer solely to dissemination of judgment, the issuance of orders and the training of the HCG personnel (paras. 21-23 of the Action Plan) and no additional measure are described (see below paras. 43-45 of the present submissions).

ii. *Individual measures:*

15. As regards the reopening of the case before the Naval Court following the judgment in *Safi*, the Authorities mention that the Prosecutor of the Naval Court indicated that the requirements for the reopening of the case are not met on the grounds that “*the shortcomings of the criminal investigation found by the Court do not undermine the grounds that led the Prosecutor to archive the case*”, “*no new facts or additional elements of proof*” that could led in the reopening of the case have been provided and that “*statute limitation issues arise*” (para. 6 of the Action Plan).

16. However, according to Article 43 paragraph 6 of the Greek Criminal Procedure Code, the competent public prosecutor has the obligation to re-open a case that was closed only when new facts or elements appear or are invoked. In this case, the Public Prosecutor calls the defendant(s) or the one against whom a preliminary examination was conducted to provide explanations.

⁶ GCR, Press Release, *40 survivors of the Pylos shipwreck file a criminal complaint before the Naval Court of Piraeus*, 14 September 2023, available at: <https://www.gcr.gr/en/news/press-releases-announcements/item/2184-40-survivors-of-the-pylos-shipwreck-file-a-criminal-complaint-before-the-naval-court-of-piraeus>.

17. In *Safi*, the Court did not only find “*shortcomings in the criminal investigation*” but also a violation of the substantive limb of Article 2 due to acts and omissions of the HCG personnel, which in turn may establish criminal liability under the Greek Penal Code. Additionally, the ECtHR judgment in the present case constitutes a “new element” that can establish grounds for the re-examination of the case by the domestic Court, in particular by taking into consideration the findings of the Court both under the procedural limb of Article 2 but also under its substantive limb.

18. Finally, no statute limitation arises in the present case. According to Article 111 para. 2 of the Greek Criminal Code, felony offenses have a 20-year statute of limitations period if the law provides for the penalty of life imprisonment, and a 15-year statute of limitations period in any other case, unless the law provides otherwise. The above statute of limitations suggests the acceleration of the criminal proceedings by the judicial authorities (reopening of the case, new preliminary inquiry) and in no case could justify a refusal in criminal prosecution/reopening of the case.

III. A STRUCTURAL/SYSTEMIC & COMPLEX CASE

A. In respect of the Violation of the substantive aspect of Article 2

19. In order the Authorities to ensure that future violations similar to those established in *Safi* are be avoided, a number of general measures should be adopted and thoroughly implemented. Such measures should be capable of ensuring the proper and timely organization and conduct of search and rescue operation and guaranteeing that any operation of the HCG is taking place in accordance with the standards provided in the judgment and described above. **We respectfully submit that the present case reveals a structural and complex problem, which cannot be considered an isolated incident.**

20. First, it is important to analyse the elements of this case in the wider context of migratory movements in Greece. The data provided by the Authorities regarding the number of persons rescued/assisted at sea should be read in conjunction with shipwrecks, fatal incidents and casualties recorded during the same period.

21. In this line, there is a significant number of reports by independent and reputable actors, including European and international intergovernmental organisations, journalists and investigative actors, documenting cases where assistance at sea has not been provided in line with Article 2 ECHR and international law, which resulted in endangerment and/or loss of life. Example of such practices, include:

- a) delayed SAR response,
- b) alleged dangerous operational tactics applied by the HCG, such as hindering a boat from continuing its journey through a manoeuvre

- creating high waves, towing the boat with a rope and abandoning it at sea, or removing the engine and abandoning the dinghy to float,
- c) alleged practices of leaving people adrift in perilous life rafts in the middle of the sea (the so called “drift-backs”) or transferring people who had reached Greek shores out to the sea and forcing them into inflatable life rafts in the middle of the sea.

22. As noted above, these practices have been documented in numerous reports by authoritative European and international monitoring bodies, which include *inter alia* the UN High Commissioner for Refugees,⁷ the UN Special Rapporteur on the human rights of migrants,⁸ the Council of Europe Commissioner for Human Rights, the European Committee for the Prevention of Torture (CPT),⁹ Frontex and the EU Anti-Fraud Office (OLAF),¹⁰ as well as international media and civil society organisations.

23. The following list presents an indicative sample of such reports:

- the UN High Commissioner for Refugees (UNHCR), in its submission before the Court for the case of S.A.A. and others v. Greece (Application No. 22146/21), referred *inter alia* to reported incidents of a) delayed SAR responses in 2020 and 2021, b) shipwrecks with dozens of dead and missing people in 2021, c) alleged dangerous operational tactics applied by the HCG, such as hindering a boat from continuing its journey through a manoeuvre creating high waves, towing the boat with a rope and abandoning it at sea, or removing the engine and abandoning the dinghy to float, d) fatal incidents where people were forced by the Greek authorities to jump into the water, some without life vests, and swim to nearby shores or islets in Turkish territory, e) photographic material presenting people, including children, forced onto and left adrift with life jackets in perilous life rafts in the middle of the sea (the so called “drift-

⁷ *Inter alia* UNHCR, ‘UNHCR warns of increasing violence and human rights violations at European borders’, 21 February 2022, <https://www.unhcr.org/news/news-releases/news-comment-unhcr-warns-increasing-violence-and-human-rights-violations>; UN High Commissioner for Refugees (UNHCR), Submission by the Office of the United Nations High Commissioner for Refugees in the case of S.A.A. and Others v. Greece (No. 22146/21) before the European Court of Human Rights, July 2022, <https://www.refworld.org/docid/62f39cb44.html>.

⁸ UN Special Rapporteur on the human rights of migrants, Human rights violations at international borders: trends, prevention and accountability, A/HRC/50/31, <https://www.ohchr.org/en/documents/thematic-reports/ahrc5031-human-rights-violations-international-borders-trends-prevention>.

⁹ CPT/Inf (2020) 35, Report to the Greek Government on the visit to Greece carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 13 to 17 March 2020, <https://rm.coe.int/1680a06a86>; CPT/Inf (2019) 4 Report to the Greek Government on the visit to Greece carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 10 to 19 April 2018, <https://rm.coe.int/1680930c9a>.

¹⁰ OLAF, Case No OC/2021/0451/A1, Olaf.03(2021)21088, https://cdn.prod.www.spiegel.de/media/00847a5e-8604-45dc-a0fe-37d920056673/Directorate_A_redacted-2.pdf.

backs").¹¹ UNHCR further mentions that the Agency has recorded 539 incidents of 'informal enforced return' at land and sea borders (referred to as "pushback" or "driftback"), involving at least 17,000 people during 2021-2022.¹² Between early 2020 and February 2022, UNHCR formally submitted 59 cases of informal enforced returns at land and sea borders through 17 official letters addressed to the Greek authorities, requesting investigations.¹³

- The Commissioner for Human Rights of the Council of Europe, has found that "[r]egarding the situation in the Aegean Sea, I am alarmed by reports that some people in distress have not been rescued, while others have been pushed back or endangered".¹⁴
- As stressed by the CPT, "[t]he CPT's delegation also received a number of consistent and credible allegations concerning acts by the Greek Coast Guard to prevent boats carrying migrants from reaching any Greek island".¹⁵
- OLAF Final Report on Frontex, Case No OC/2021/0451/A1 refers to a number of relevant incidents, such as:

*"b. SIR 11095/2020 (incident occurred on the 18-19 April 2020). During the night between 18 and 19 April 2020, the FSA [Frontex Surveillance Aircraft] METIS detected (and video recorded) the activities of some Hellenic Coast Guard (HCG) assets while dealing with a rubber boat of migrants intercepted within the Greek Territorial Waters (GTW). In particular, the migrants were taken on board of one of the HCG vessels only to be subsequently transferred back to the rubber boat. The boat was then **towed** by an HCG asset to the Turkish Territorial Waters (TTW) where it was left adrift with no engine at around 6:20 local time [...]"*

*d. Incident on 27 April 2020. During a mission started on 27 April 2020, the FSA "OSPREY1" recorded, at 23:50 GMT (corresponding to 28 April 2020, 02:50 am local time in Greece) "(...) a small fibre glass migrant boat with approx. 8 or 9 migrants on-board, being **towed** by a HCG vessel at 36°54'50"N 027°20'33"E and accompanied by a smaller HCG vessel [...]"*

¹¹ UN High Commissioner for Refugees (UNHCR), Submission by the Office of the United Nations High Commissioner for Refugees in the case of S.A.A. and Others v. Greece etc.

¹² *Ibid.*

¹³ *Ibid.*

¹⁴ Council of Europe, Commissioner for Human Rights, Time to immediately act and to address humanitarian and protection needs of people trapped between Turkey and Greece, 3 March 2020, available at: <https://www.coe.int/el/web/commissioner/-/urgent-action-is-needed-to-address-humanitarian-and-protection-needs-of-people-trapped-between-turkey-and-greece>

¹⁵ CPT/Inf (2020) 35, Report to the Greek Government on the visit to Greece carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 13 to 17 March 2020, para. 59.

e. SIR 11934/2020 (incident occurred on 4-5 August 2020). On 5 August 2020 at 01:41 Greek local time, the FSA METIS sighted a migrant boat with approximately 30 people on board. The rubber boat was inside GTW and was being towed towards the TTW by a HCG asset. At the time of the sighting the convoy was located approximately 1,2 nautical miles inside the GTW (Annex 14). At 10:40 a.m., ... informed ... about the incident. In ... email, ... stressed that "(...) From a SAR perspective, the move makes no sense as towing an overcrowded fragile boat in the night towards the open sea is a situation that can seriously endanger the lives of the passengers. Our aircraft was immediately instructed to fly away from the scene by the Hellenic Coastguards Expert. It was sent to patrol over Greek land and then back and forth 9 times between 2 way points where no activity was ever observed (...)".¹⁶

- In April 2023, the New York Times published a video footage showing the Greek Coast Guard abandoning asylum seekers at sea.¹⁷
- Forensic Architecture have reported about 1,000 incidents at the Aegean sea (drift-backs) within the last two years on their platform, which allegedly occurred from 2020 to 2022, involving a total number of 27,464 persons.¹⁸

24. Moreover, a number of cases are now pending before the Court which refer to similar rights violations as those found in the present case, including the deficient conduct of search and rescue operation, disproportionate use of force by the HCG, gaps in training, organisation and planning of operations at sea, abandonment on a life-raft at sea etc.¹⁹

25. Thus, the GCR and ECRE respectfully submit that the violations identified by the Court in the present case are not isolated, instead they reflect systemic, structural and complex problems in Greece that repeatedly generate identical or largely similar violations, with the most

¹⁶ OLAF, Case No OC/2021/0451/A1, pp. 20-26.

¹⁷ NYT, Greece Says It Doesn't Ditch Migrants at Sea. It Was Caught in the Act, 19 March 2023, <https://www.nytimes.com/2023/05/19/world/europe/greece-migrants-abandoned.html>

¹⁸ Forensic Architecture, online platform: <https://aegean.forensic-architecture.org/>

¹⁹ These include *S.A.A. v. Greece*, application no 22146/21; *F.M. and other v Greece*, application no 17622/21; *K.K. v. Greece*, application no 1712/21; *G.R.J. v. Greece and A.A.J. and H.J. v. Greece*, applications no 15067/21 and 24982/21; *Alkhatib and others v. Greece*, application no 3566/16; *Almukhlas and Al-Maliki v. Greece*, application no 22776/18; for an analysis of *F.M. and other v Greece*, *Alkhatib and others v. Greece* and *Almukhlas and Al-Maliki v. Greece* see RSA, "Beyond Farmakonisi. The responsibility of the Greek Coast Guard for human rights violations at sea", August 2023, https://rsaegean.org/wp-content/uploads/2023/09/RSA_CoastGuard_PostSafi_EN.pdf; see also ECRE, AIDA Report - Greece 2021, p. 33, available at: https://asylumineurope.org/wp-content/uploads/2022/05/AIDA-GR_2021update.pdf.

tragic demonstration of these being the Pylos shipwreck of 14 June 2023.²⁰

26. In this regard, the statement of the Commissioner for Human Rights of the Council of Europe underlines the need to consider the factual elements of the present case in the context of wider systemic and structural problems in Greece. According to the Commissioner “[...], the shipwreck of 14 June is unfortunately not an isolated incident. The overall context in which the shipwreck occurred should be part of the various investigations but should also lead to a reconsideration of the approach to refugees and migrants arriving by sea at the political, policy and practical level, in order to avoid similar tragedies in the future”²¹

27. The aforementioned repetitive violations have been taking place **within the context of structural deficiencies and problems at national level.**

28. Following the above analysis, GCR and ECRE respectfully request the Committee to recognize the systemic, complex and structural nature of the problems identified in the present case and the need for extensive general measures to ensure that the relevant Greek authorities are conducting search and rescue operations in a manner that protects the life of the persons involved.

29. More specifically, regarding the practices and operations of the HCG, the structural problems relate to:

- a) the absence of efficient SAR protocols and coordination plans in the HCG,
- b) the absence of guidelines and a uniform basis for the establishment of plans for cooperation between passenger and merchant ships and search and rescue services in accordance with SOLAS regulation,
- c) the lack of adequate SAR capacity and assets,
- d) the absence of compulsory measures such as video-recording of the sea operations and investigations.

30. In order to efficiently address these systemic deficiencies, the following general measures should be promptly adopted:

- a) legally binding detailed SAR protocols,
- b) ensuring the availability of adequate for search and rescue vessels and other equipment needed to protect life at sea,
- c) providing interpretation for the communication with National Rescue Center and other emergency telephone lines (e.g. 112),
- d) compulsory use of video/audio recording of HCG operations and tagging of the vessels,

²⁰ See ANNEX: The Pylos Shipwreck: a clone case one year after the issuance of Safi judgment?

²¹ CommHR/DM/sf 024-2023, Letter of the Commissioner for Human Rights to the Prime Minister of Greece, 19 July 2023, <https://rm.coe.int/letter-addressed-to-the-prime-minister-of-greece-by-dunja-mijatovic-co/1680ac03ce>.

- e) adequate training of all the HCG personnel,
- f) possibility for independent monitors to be present on HCG vessels.

B. In respect of the violation of the procedural aspect of Article 2

31. In *the Safi* case the Court found that the allegation of the applicants that they were subject to a pushback operation by the HCG and the shipwreck occurred within this context, has not been properly investigated within the context of the criminal proceeding (para. 127).

32. The ineffective and perfunctory examination procedures in cases of alleged pushbacks, similar to the one the Court identified in the present case, constitute a widespread and persistent problem in the Greek investigation and judicial system. As it will be analyzed below, these deficiencies are not an isolated incident that is only relevant in the facts of the present case.

33. Firstly, despite the overwhelming number of documented incidents and practices of violent pushback operations and deadly shipwrecks, to this day there has been no adequate judicial response at national level. Conversely, “*the Greek judiciary continues to remain inactive, with the cases that have so far been brought before it having remained stuck at a preliminary stage or having been archived*”,²² even with a very similar reasoning as that of the Prosecutor of the Naval Court in *Safi* case.

34. For example, in September 2020, in a case supported by GCR, where the applicant, a Turkish citizen, alleged a pushback by the Greek Authorities directly to her country of origin, the Public Prosecutor dismissed and archived the case on the grounds that there was no evidence against the police and that “*Greece, especially the Greek police, never conducts pushbacks to Türkiye*”.²³ The case is pending before the European Court of Human Rights (*A.E. v. Greece*, application n° 15783/21).

35. In the same vein, in 2022, the UN Committee on Enforced Disappearances expressed concern about the lack of effective investigation and criminal prosecution of enforced disappearances of migrants, including in relation to pushbacks or persons arriving by sea.²⁴ It recommended that Greece

²² GCR and HLHR, *GCR and HLHR appeal: safeguard the Rule of Law in Greece*, 28 March 2023, <https://www.gcr.gr/en/news/press-releases-announcements/item/2124-gcr-and-hlhr-appeal-safeguard-the-rule-of-law-in-greece>

²³ GCR *et al.*, Joint Third Party Intervention in 31 applications v. Greece communicated on 2 December 2021, <https://www.gcr.gr/media/k2/attachments/FinalTPI2.pdf>, p.7.

²⁴ UN Committee on Enforced Disappearances Concluding observations on the report submitted by Greece under article 29 (1) of the Convention, 12 May 2022, CED/C/GRC/CO/1, <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhsihYBwbOeSWh7%2BBIQK%2Fe4jK9zPxmigognLQkl0dUYtvrhWimpEj8Fgdqu%2FG757Ine0%2FoKRAnfuPKcF8aGU75RezhTcQD%2BR%2Bq0Jy%2B%2FAmjAlwoj>, para. 27.

redouble its efforts to prevent and investigate the disappearance of migrants, including in relation to pushbacks and vessels arriving by sea, and ensure that those responsible are prosecuted.

36. The handling of the investigation procedure into the recent Pylos shipwreck (13/14 June 2023) bears testament to the deficiencies in the domestic system that obstruct the effective examination of alleged pushbacks or dangerous search and rescue operations in line with the standards required by Article 2 and Article 3 ECHR. Although the Naval Court initiated an *ex officio* preliminary investigation into the possible criminal responsibility of the Hellenic Coast Guard in 19 June 2023, none of the survivors of the shipwreck, witnesses of the events of 13/14 June 2023, had been called to testify or to provide any evidence on the circumstances of the shipwreck under that investigation up until September 2023, i.e. 3 months after the shipwreck occurred.²⁵ It was only after the survivors lodged a criminal complaint before the Naval Court with regards the responsibility of the HCG, that they have been invited to testify before the Court (see ANNEX).

37. Second, the possibility of such allegations being examined by independent authorities is severely limited in the Greek domestic system. The Greek authorities consistently refer such cases to the National Transparency Authority (NTA) but the latter has been heavily criticized by the civil society organisations and the UN Special Rapporteur on Human Rights Defenders as ineffective due to the incompatibility of its *modus operandi* with the with the well-established relevant principles, namely independence and impartiality, thoroughness and victim involvement.²⁶ Equally, the newly established Fundamental Rights Officer within the Ministry of Migration and Asylum, cannot be considered an impartial and effective mechanism to examine pushback allegations. In addition to the self-evident absence of institutional independence, as it has been established within the Ministry, the mechanism has been criticized as ineffective by the Greek Ombudsman and the National Commission for Human Rights.²⁷

²⁵ GCR et al., *40 survivors of the Pylos shipwreck file a criminal complaint before the Naval Court of Piraeus*, 14 September 2023, <https://www.gcr.gr/en/news/press-releases-announcements/item/2184-40-survivors-of-the-pylos-shipwreck-file-a-criminal-complaint-before-the-naval-court-of-piraeus>

²⁶ See in details Joint Civil Society Submission to the European Commission on the 2023 Rule of Law Report January 2023, Rule of law backsliding continues in Greece, https://rsaegean.org/wp-content/uploads/2023/01/RoL2023_JointSubmission_CSOGreece.pdf, paras. 59-62; see also UN Special Rapporteur on Human Rights Defenders, Statement on preliminary observations and recommendations following official visit to Greece, 22 June 2022, <https://srdefenders.org/statement-on-preliminary-observations-and-recommendations-following-official-visit-to-greece/>, "... the National Transparency Authority [...] is not equipped to conduct independent investigations into the management of migration flows".

²⁷ Greek Ombudsman, "Articles 49 & 50 L 4960/2022", 42673/2022, 29 July 2022, <https://shorturl.at/JQZ56>; Greek National Commission for Human Rights, "Επιστολή της ΕΕΔΑ προς τον Γ.Γ. του Υπουργείου Μετανάστευσης και Ασύλου", 18 October 2022, <https://shorturl.at/bkqvA>.

38. The GCR and ECRE respectfully submit that the measures included in the Action Plan of the Greek authorities are neither capable of ensuring effective investigation into cases with factual elements similar to the ones of the present case nor suitable to remedy the structural problems described above. The translation and dissemination of the judgment in *Safi* is a welcome development but it should be combined with prompt and effective action reinforcing the framework for an effective investigation of similar allegations and addressing systemic dysfunctions in criminal proceedings.

39. This action should include:

- a) measures to ensure interpretation quality and independence in criminal proceedings from the very early stages,
- b) specific prosecutorial instructions with regard to the early stages of an investigation in shipwrecks and pushbacks and jurisdiction to investigate,
- c) instructions precluding the conduct of investigations by police/coastguard personnel in incidents that concern/include possible police and coast-guard misconduct/criminal actions and/or omissions,
- d) an institutional set-up for investigating law enforcement bodies ill-treatment, such as compulsory video recording of investigative actions conducted by the HCG and/or the police²⁸,
- e) legislative measures extending the scope of mandated video recording for law enforcement bodies work,
- f) instructions as regards the procedures to be followed on the competent investigative and prosecuting bodies of possible racist motives/racially motivated crimes,
- g) measures to address the ineffectiveness of investigations,
- h) measures to prevent and stop potential political interference in the investigation of incidents with possible coast-guard and police misconduct/criminal actions and/or omissions,²⁹
- i) the suspension of the statute of limitations for criminal acts that amount to violations of articles 2 and 3 and fall under an ineffective investigation

²⁸ *Ibid.*

²⁹ Official statements by government officials in support of the Hellenic police and/or HCG actions and operations upon reported incidents amount to intolerable interference which affects the independence of the judiciary. Such statements followed both the Farmakonisi shipwreck of 20 January 2014 and the Pylos shipwreck of 14th June 2023. In the case of Farmakonisi shipwreck, the then Greek Minister for Shipping, Maritime Affairs and the Aegean, stated already since 23rd January 2014 that the testimonies about the towing of the boat by the Coast Guard to the Turkish coast were not valid, while he attributed the wreck of the fishing boat to the migrants' ignorance about the maritime element, as, as he said, most of them came into contact with the sea for the first time, see: Kathimerini, 23.1.2014, <https://www.kathimerini.gr/politics/553496/polloi-theloy-n-na-dimioyrgisoyn-politiko-thema-stin-ellada-dilose-o-m-varvitsiotis-gia-to-navagio-sto-farmakonisi/>. In the case of Pylos shipwreck, the Minister of Asylum and Migration stated already since 15th June 2023 (the next day) that "the Coast Guard did whatever it was right" (in Greek 'Το Λιμενικό έκανε ό,τι ήταν σωστό'), see Ertnews, 15.6.2023, <https://www.ertnews.gr/eidiseis/ellada/n-mitarakis-sto-proto-megali-mpizna-i-diakinisi-metanaston-5-ekat-ta-esoda-gia-ton-diakiniti-piso-apo-to-navagio-tis-pylou-audio/>.

according to ECtHR judgments³⁰, amendments of the legislation and/or practice on reviewing decisions terminating investigations/prosecutions and/or refusing initiation of prosecutions³¹ as regards allegations of violent pushbacks and shipwrecks as a result of acts or/and omissions of the HCG,

40. It should be noted that **No. 1/2023 Circular of the Deputy Prosecutor of the Supreme Court**, that following a recent ECtHR judgment–*Torosian v. Greece* (Application No. 48195/17) , 07.07.2022 – provides , among other things, that in the cases of complaints of abuse, related to the violation of art. 3 of ECHR "*when the complaint is against correctional officers and police officers, the criminal preliminary examination will not be conducted by a police investigator employee, but by the First Instance Public Prosecutor in person (article 30 par.1 Criminal Procedure Code, CPC), yet in the event that, according to articles 567 CPC and 85 Penitentiary Code, the supervising Public Prosecutor Officer is allegedly "involved" in the incident under investigation, the Competent Prosecutor of the Court of Appeal will be informed, so that (s)he can carry out according to art. 32 CPC and to ensure the independence of the controller from the controlled*".³²

41. Similar prosecutorial instructions with regard to complaints against the coast guard officers and the following preliminary examination, including *ex officio* preliminary examinations into incidents that involve or could involve possible misconduct and/or other criminal actions and omissions related to violations of Articles 2 and 3 of ECHR, such as pushback operations and deadly shipwrecks or other marine casualties. The Circular No 4639/2023 issued by the Prosecutor of the Naval Court, sent to the Presidents and Prosecutors of all military courts, while further forwarded to the headquarters of the HCG, does not address the aforementioned systemic deficiencies.

42. Following the above analysis, **GCR and ECRE respectfully submit that examinations into pushback or dangerous search and rescue operations can comply with the guarantees of Article 2 and Article 3 ECHR only where their effectiveness is guaranteed through a procedure that is thorough, consistent, independent and transparent. The absence of such procedures result in systemic, repetitive and complex issue in Greece affecting the effective enjoyment of rights enshrined in the Convention and contributing violations similar to those which the Court found in the present case.**

³⁰ See respectively, the elimination of the statute of limitations for the crime of torture in Armenia, within the context of the Committees' supervision of execution of the *Virabyan group* of cases.

³¹ See the respective recommendations of the Committee in the *Tsintsabadze group v. Georgia* case.

³² 2022 Annual Report of the Greek Ombudsman as the National Mechanism for the Investigation of Arbitrary Incidents, pp. 55-56.

C. In respect of the violation of Article 3 ECHR

43. Ill-treatment by law enforcement officers, including the HCG, of third country nationals upon arrival is not an isolated issue and have been extensively reported. For example, the CPT in its 2020 report notes that “*the CPT’s delegation received, once more, a number of allegations by migrants that they had been subjected to slaps to the head and kicks and truncheon blows to the body by members of the Hellenic Police and Coast Guard*”.³³

44. Additionally, most pushbacks reported to UNHCR alleged undue and inappropriate use of force by the HCG and/or Hellenic Police, such as pushing, slapping, hitting with batons (especially when forcing people to embark on a boat, vessel or life raft), and forcing people to remain still and restricted in one area for hours.³⁴ Affected persons reported to UNHCR that during the return operation they experienced insulting and degrading behaviour by members of law enforcement authorities. Testimonies frequently report intrusive and inappropriate body searches, including for women and children, carried out by male officers. In a recent *Médecins Sans Frontières* report, MSF refer to “*non-consensual strip searching and intrusive body searches by uniformed officers and/or unidentified masked individuals*” to newly arrived third country nationals.³⁵

45. GCR and ECRE submit that the Greek authorities should take effective measures to end ill-treatment by law enforcement agents against third country nationals upon arrival. Such measures should include compulsory video recording of HCG operations, adequate training and effective disciplinary and penal control of the HCG personnel actions.

46. GCR and ECRE respectfully reiterate that the case of *Safi v Greece* highlights systemic deficiencies in Greece in relation to ineffective investigations into

(a) whether the SAR operations were carried out with an objective to save lives and all necessary measures are systematically taken by the Greek authorities in order to ensure compliance with Article 2 ECHR;

(b) whether all relevant measures were taken with the aim of preventing similar incidents and

³³ CPT/Inf (2020) 35, Report to the Greek Government on the visit to Greece carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 13 to 17 March 2020, <https://rm.coe.int/1680a06a86>, para. 20.

³⁴ UNHCR, Submission by the Office of the United Nations High Commissioner for Refugees in the case of S.A.A. and Others v. Greece (No. 22146/21) before the European Court of Human Rights, available at: <https://www.refworld.org/pdfid/62f39cb44.pdf>

³⁵ Médecins Sans Frontières, “In plain sight: the human cost of migration policies at Greek sea borders”, <https://www.msf.org/plain-sight-migration-policies-greek-sea-borders>, 4.3.3

(c) whether all necessary measures have been taken in order to prevent, investigate and provide accountability for treatment of migrants violating Article 3 ECHR.

47. In this regard and in view of the crucial importance of general measures in the present case, **the submitting organisations respectfully request the Committee of Ministers to place the present case under the enhanced supervision.**

Athens/Brussels 15 November 2023

ANNEX

THE PYLOS SHIPWRECK: A CLONE CASE 1 YEAR AFTER THE ISSUANCE OF SAFI JUDGMENT?

On 14 June 2023, the *Adriana*, a fishing vessel leaving Libya for Italy with hundreds of migrants on board, sank off Pylos, while over 600 people are dead or/and missing. The incident took place in international waters inside the Greek Search and Rescue (SAR) zone, meaning Greece was the coastal state responsible for initiating the necessary search and rescue operations. Alarm Phone and Frontex separately alerted the Greek authorities. No rescue attempt was initiated.

In the hours following the shipwreck, conflicting accounts about the incident began to circulate. The HCG denied responsibility, claiming that people onboard resisted offers for assistance, and that the boat capsized due to a sudden shift in weight. The survivors unanimously contest this account, blaming the HCG for not taking the necessary rescue measures as soon as the fishing boat was located in a situation of distress and also for multiple failed attempts to tow the boat, which ultimately destabilized it and led to its capsizing.

On 13 September 2023, 40 survivors of the deadly shipwreck in Pylos filed a criminal complaint against all responsible Greek authorities before the Naval Court of Piraeus. The survivors, represented by the Network for Refugee and Migrant Rights, the Hellenic League for Human Rights (HLHR), the Greek Council for Refugees (GCR), the Initiative of Lawyers and Jurists for the shipwreck of Pylos and Refugee Support Aegean (RSA), denounced a series of violations of the Greek authorities' obligations to protect the lives of those on board and demanded an effective investigation into the circumstances of the deadliest shipwreck to occur in the Mediterranean in recent years. The survivors submitted that the Greek authorities failed to immediately intervene and to organize a timely and adequate rescue operation despite their duty to rescue the passengers on board under International Law of the Sea, Human Rights Law, EU and domestic Law. Furthermore, the complainants alleged that the Greek authorities not only refrained from taking the necessary rescue measures as soon as the vessel was sighted, but instead proceeded to an effort to tow the vessel that resulted in its capsizing and sinking.

Pylos Shipwreck and the flaws of the Government's Action Plan in the Safi Case: The Action Plan submitted by Greece claims that the Safi case concerned an isolated incident and that the Hellenic Coast Guard has an otherwise impeccable record as regards search and rescue operations. It is

therefore unsurprising, though unfortunate, that the Action Plan provides little to no information as to how Greece intends to improve its search and rescue operations in order to prevent a tragedy like Safi to reoccur. For the most part, the Action Plan contents itself with praising the work of the Hellenic Coastguard³⁶, thereby indicating that the government apparently sees no real need to improve upon its search and rescue efforts.

The Action Plan only mentions in passing that the Hellenic Coast Guard operates according to a specific protocol that is supposedly based upon the International Convention on Maritime Search and Rescue, the International Aeronautical and Maritime Search and Rescue Manual of the International Maritime Organization (“IAMSAR Manual”). No details as to the precise contents of said protocol are provided. In particular, the Action Plan does not address in any shape or form whether the protocol incorporates any of the lessons learned from the Safi case, e.g. with respect to high-risk towing operations,³⁷ failure to request assistance,³⁸ and timeliness of rescue operations.³⁹

As recent events surrounding the sinking of the *Adriana* have tragically demonstrated, none of these lessons seem to be heeded by the Hellenic Coast Guard. In fact, the Hellenic Coast Guard does not seem to operate in accordance with the IAMSAR Manual either.

Thus, the Hellenic Coast Guard repeated several of the grave failures displayed in the Safi case, by *inter alia* waiting for far too long before initiating rescue measures (which contradicts the clear duty to provide “*locate, support and rescue persons in distress in the shortest possible time*”, as described in para. 3.1.1 of volume II of the IAMSAR Manual 2016).

Despite receiving multiple pleas for assistance by passengers of the *Adriana*, that were relayed by the NGO Alarm Phone,⁴⁰ the Hellenic Coast Guard made no rescue attempt for more than a day and a search and rescue operation has been initiated only after the boat capsized.⁴¹ This stands in direct violation of Art. 98 (1) of the Convention on the Law of the Sea, which stipulates: “*Every State shall require the master of a ship flying its flag [...] to proceed with all*

³⁶ Cf. Communication from Greece concerning the case of Safi and Others v. Greece (Application No. 5418/15), Action Plan, paras. 15 et seqq.

³⁷ Cf. *Safi and Others v. Greece*, para. 161.

³⁸ *Ibid.*, para. 160.

³⁹ *Ibid.*, para. 162.

⁴⁰ Solomon, They are urgently asking for help”: the SOS that was ignored, 15.6.2023, <https://wearesolomon.com/mag/focus-area/migration/they-are-urgently-asking-for-help-the-sos-that-was-ignored/>

⁴¹ HRW, Greece: Disparities in Accounts of Pylos Shipwreck Underscore the Need for Human Rights Compliant Inquiry, 2.8.2023, <https://www.hrw.org/news/2023/08/03/greece-disparities-accounts-pylos-shipwreck-underscore-need-human-rights-compliant>

possible speed to the rescue of persons in distress, if informed of their need of assistance” (emphasis added). In the *Safi* case, the coordination and rescue center has been informed and the search and rescue operation has only be initiated when the fishing boat was already half sunk (paras. 140, 162). The Court underlined “the primordial importance of the time factor in such a situation: every minute that passes counts and can have a crucial impact on the rescue of victims, given the fact that drowning occurs in a few minutes” (para. 162).

The Hellenic Coast Guard also failed to request and to make use of offered assistance,⁴² which runs counter the clear instructions contained in para. 3.5.9 lit. k) of volume II of the IAMSAR Manual 2016, according to which the Hellenic Coast Guard should at an early stage have requested such aircraft, vessels and other services that were in a position to assist and keep monitoring the distressed vessel. In *Safi* case the Court has precisely noted the fact that the the HCG had at no time considered the possibility of requesting additional assistance (para. 160).

The vessel sent by the Hellenic Coast Guard to approach *Adriana* was HGC vessel 920, a high speed pursuit vessel, no suitable for rescue operation, as it was also exactly the case in the *Safi* case. As the Court has stressed in the *Safi* case “there was no explanation as to how the authorities had intended to transport the applicants to safety using a vessel ... which was a speedboat and lacked the necessary rescue equipment” (para. 160).

Apparently, the Hellenic Coast Guard also initiated an ill-conceived attempt at towing the *Adriana*, which (similar to the circumstances in the *Safi* case) was clearly overcrowded and in distress.⁴³ In the end, the actions and inactions of the Hellenic Coast Guard at the very least contributed to the death of hundreds of passengers of the *Adriana*⁴⁴. Apparently, even FRONTEX is considering

⁴² The Guardian, Greek shipwreck: hi-tech investigation suggests coastguard responsible for sinking, 10.7.2023, <https://www.theguardian.com/global-development/2023/jul/10/greek-shipwreck-hi-tech-investigation-suggests-coastguard-responsible-for-sinking>

⁴³ The Hellenic Coast Guard disputes that it attempted to tow the *Adriana*, however in light of survivors' testimony and other evidence was forced to acknowledge that it did attach a line to the ship, cf. <https://www.euronews.com/2023/06/19/as-death-toll-rises-to-81-new-accounts-clash-with-official-version-of-migrant-disaster-off>; <https://www.politico.eu/article/greek-coast-guard-mediterranean-questions-mounting-over-the-circumstances-of-the-sea-tragedy-off-greece/>

⁴⁴ The Guardian, Greece shipwreck: hopes of finding survivors fade on final day of search, 16.6.2023, <https://www.theguardian.com/world/2023/jun/16/greece-shipwreck-people-smuggling-suspects-arrested-as-search-continues>

terminating its cooperation with the Hellenic Coast Guard, due to its grave misconduct.⁴⁵

Unfortunately, the similarities with the Safi case do not end here.

It will be recalled that in the Safi case the Court found the manner in which Greek authorities handled the subsequent investigations into the Hellenic Coast Guard's conduct to be severely defective. On the grounds of various grave flaws, the Court found a violation of the procedural limb of Art. 2 ECHR.⁴⁶

Against this background, procedures followed after the shipwreck are of particular concern.⁴⁷ As documented by various media outlets, including Lighthouse Reports, Der Spiegel, Monitor, SIRAJ, El País, Reporters United and The Times, these attempts include *inter alia*:

- Greek authorities have opened two criminal investigations, one targeted at the alleged smugglers (Public Prosecutor's Office of Kalamata), and another into the actions of the coast guard (Prosecutor Office of Piraeus Naval Court).
- Within the context of the preliminary investigation initiated by the Public Prosecutor of Kalamata, **the first interrogations were conducted by the Hellenic Coast Guard investigative personnel**, even though the facts involved potential responsibility of the HCG. Note for Safi case: In 20, 21 and 22 January 2014, the applicants in Safi Case testified as witnesses before the coast guard investigative authorities of Leros Port Police, within the context of a preliminary investigation into the circumstances and causes of the shipwreck (para 37, judgment).
- **Suppressing witness testimony:** Several survivors have later testified that the Hellenic Coast Guard had omitted parts of their testimony, in particular testimony relating to the Coast Guard's attempt to tow the *Adriana*. For example, when interviewed by the Hellenic Coast Guard, one survivor testified: "*A coastguard ship came to help and suddenly the ship capsized and we were in the water. Then they rescued us with an inflatable boat*". Shortly afterwards, when he was no longer in the custody of the Coast Guard, the same survivor testified: "*The Greek ship*

⁴⁵ Euronews, Frontex: Will the EU border agency quit Greece over the latest migrant boat tragedy?, 29,6,2023, <https://www.euronews.com/2023/06/29/frontex-will-the-eu-border-agency-quit-greece-over-the-latest-migrant-boat-tragedy>

⁴⁶ Cf. *Safi and Others v. Greece*, paras. 122 et seq.

⁴⁷ Counter Investigation, The Pylos Shipwreck, <https://counter-investigations.org/investigation/the-pylos-shipwreck>; Lighthouse Reports, Drowning in Lies, <https://www.lighthousereports.com/investigation/drowning-in-lies/>

... tied a rope to the front of our ship and began to pull us slowly, but the rope broke. The second time they tied it up, at first we felt like we were being pulled, then our ship keeled over. The Greek ship sped up and we shouted in English: Stop!”).⁴⁸ Note for Safi case: The Government in Safi case argued that the applicants in their testimonies before the Leros port police had not referred to any allegations against the coast guard or other state authority. Then, the Public Prosecutor did not intensify the investigation despite all the contradictory statements.

- **Manipulating witness testimony** (as reported by the Guardian: “*Testimonies to the coastguard by two separate survivors of different nationalities are word for word the same when describing the sinking: ‘We were too many people on the boat, which was old and rusty ... this is why it capsized and sank in the end’*”).⁴⁹
- Criminal proceedings have been initiated against nine survivors of the shipwreck. According to Greek authorities, the criminal charges against the nine survivors include the following: illegal entry into the country, smuggling/facilitation, criminal organization, causing a shipwreck, manslaughter by negligence and endangering life.
- **Pressuring survivors into identifying 9 Egyptians on board as smugglers:** at least two survivors have testified that they were pressured into singling out certain people as smugglers that were in charge of the operation. It has been reported that this claim is corroborated by the fact that several of the answers provided in response to questioning by the Coast Guard contained virtually identical sentences.⁵⁰
- Failure to use independent translators in collecting witness testimony.⁵¹
- **Arbitrarily confiscating mobile devices of survivors** that contained videos that documented the sinking of the *Adriana*, without following the

⁴⁸ BBC, Greek coastguard 'pressured' disaster survivors to blame Egyptian men, 13.7.2023, <https://www.bbc.com/news/world-europe-66154654>

⁴⁹ The Guardian, Greek shipwreck: hi-tech investigation suggests coastguard responsible for sinking, 10.7.2023, <https://www.theguardian.com/global-development/2023/jul/10/greek-shipwreck-hi-tech-investigation-suggests-coastguard-responsible-for-sinking>

⁵⁰ Lighthouse Reports, *ibid*; BBC, *ibid*.

⁵¹ Lighthouse Reports, *ibid*.

formal procedure and without providing any documentation or instructions as to how to retrieve the devices.⁵²

- Pressuring survivors to omit any role the Hellenic Coast Guard played in the sinking of the *Adriana* (several survivors testified that survivors who were being questioned by the Hellenic Coast Guard were told to “stop talking” by members of the Hellenic Coast Guard when they stated that the Coast Guard had caused the ship to sink).⁵³
- Arguing that there is **no video-recording available of the operation of the coast-guard vessel ΠΠΛΣ-920**, when the *Adriana* vessel capsized.⁵⁴ Note for Safi case: The Greek authorities had not acceded to the request submitted by the applicants for a copy of the audio and video recording.
- **Contradictory and opposing statements by government and HCG officials as regards the towing of the boat:** as, while for the first two days there was no official report of any attempted mooring or even the existence of the rope, then, the government spokesman said that the Coast Guard threw a rope towards the fishing boat, while, earlier, HCG spokesman had denied any attempt to moor or that a rope was thrown by the Coast Guard towards the *Adriana* vessel.⁵⁵
- The news of the launching of a preliminary investigation into the possible criminal responsibility of the Hellenic Coast Guard in relation to the deadly shipwreck off Pylos by the Naval Court was first made public by EU Commissioner for Home Affairs, Ylva Johansson, during the meeting of the Civil Liberties, Justice, and Home Affairs Committee (LIBE) of the European Parliament, on 6 July 2023.⁵⁶ The investigation has been initiated since 19 June 2023 in secrecy.

⁵² HRW, *ibid.*

⁵³ BBC, *ibid.*

⁵⁴ Solomon, Under the unwatchful eye of the authorities' deactivated cameras: dying in the darkest depths of the Mediterranean, 6.7.2023,

<https://wearesolomon.com/mag/format/investigation/under-the-unwatchful-eye-of-the-authorities-deactivated-cameras-dying-in-the-darkest-depths-of-the-mediterranean/>

⁵⁵ Efsyn.gr, Βυθίστηκαν στις αντιφάσεις, 17.6.2023,

https://www.efsyn.gr/ellada/koinonia/394072_bythistikan-stis-antifaseis

⁵⁶ MEPs of the Committee on Civil Liberties, Justice and Home Affairs (LIBE) discuss with Ylva JOHANSSON, European Commissioner for Home Affairs, and Hans LEIJTENS, Frontex's Executive director, about the migrant boat shipwreck off the coastal town of Pylos (Greece), 6 July 2023, available at: https://multimedia.europarl.europa.eu/en/video/exchange-of-views-on-the-migrant-boat-shipwreck-off-the-coast-of-greece-extracts_1243537

- The Supreme Court Prosecutor had sent a circular late on 15th June night urging **absolute secrecy in the investigations being conducted in relation to the shipwreck**.⁵⁷ The circular was sent to all members of the judiciary involved in the investigation as well as members of the Coast Guard.
- Three months after the tragic event, **none of the survivors of the shipwreck, witnesses of the events of 13/14 June 2023, had been called to testify on the circumstances of the shipwreck under that investigation or to provide any evidence**.⁵⁸ Survivors have been called to testify before the Public Prosecutor of the Naval Court of Piraeus only after the submission of the survivors' complaint against all Greek authorities responsible for the shipwreck, meaning more than 3 months after the shipwreck.
- The mobile phones of the coast-guard vessel personnel have been confiscated by the Prosecutor, as evidence, only after a relevant request by the complainants/survivors and more than 3 months after the shipwreck.
- Until today, the requests submitted before both the Prosecutors of Kalamata and Piraeus Naval Court for the recovery of the Adriana vessel and the shipwreck victims have not been responded.
- Despite the initiation of criminal proceedings, **the Greek Coast Guard has decided not to carry out an internal disciplinary investigation into the operations conducted at the scene by its members**.⁵⁹ On 9 November 2023, **the Greek Ombudsman announced the opening of its own independent investigation**, in its capacity as National Mechanism for the Investigation of Arbitrary Incidents by members of the security forces, into the acts and potential omissions of members of the Greek Coast Guard in relation to the Pylos shipwreck.⁶⁰ The Council of Europe Commissioner for Human Rights Dunja Mijatović "*call[ed] on them [members of the HCG], as well as on all relevant institutions and*

⁵⁷ TVXS.gr, 16.6.2023, <https://tvxs.gr/news/ellada/prosfygiko-navagio-stin-pylo-apolyti-mystikotita-tis-ereynas-zita-o-ntogiakos-en-meso-to/>

⁵⁸ GCR *et al.*, *Survivors demand an effective investigation*, 14.9.2023, <https://www.gcr.gr/en/news/press-releases-announcements/item/2184-40-survivors-of-the-pylos-shipwreck-file-a-criminal-complaint-before-the-naval-court-of-piraeus>

⁵⁹ Greek Ombudsman, *The Greek Ombudsman investigates the Pylos shipwreck case*, 9.11.2023, <https://www.synigoros.gr/en/category/default/post/deltio-tytoy-or-o-synhgoros-toy-polith-ereyna-to-navagio-ths-pyloy?fbclid=IwAR1NlfCN-n5yMGMZelJdBP9nibXqXAzTUfz3KgBRGtj3Uv3kR06t9Mg1kqI>

⁶⁰ *ibid.*

stakeholders to fully co-operate with the Greek Ombudsman institution's investigation".⁶¹

⁶¹ Council of Europe, Commissioner for Human Rights, Greece: the Ombudsman institution opening an independent investigation into the Pylos shipwreck is a welcome step, <https://www.coe.int/en/web/commissioner/-/greece-the-ombudsman-institution-opening-an-independent-investigation-into-the-pylos-shipwreck-is-a-welcome-step>