



Beyond Farmakonisi

The responsibility of the Greek Coast Guard for human rights
violations at sea

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Table of contents

Introduction	2
1. Substantive violations of Articles 2 and 3 ECHR	5
1.1. Key points of the <i>Safi v. Greece</i> judgment	5
1.2. Deficient conduct of search and rescue operations	5
1.3. Endangerment of life at sea	6
Use of firearms	6
Abandonment on life-rafts at sea	8
1.4. Treatment of shipwreck survivors	9
2. Deficiencies and ineffectiveness of judicial investigations	10
2.1. Key points of the <i>Safi v. Greece</i> judgment	10
2.2. Systemic deficiencies in preliminary interrogations and investigations	11
2.3. Deficient collection of evidence	13
Deficiencies in witness testimonies and in interpretation	13
Deficiencies in inspections, expert reports and digital evidence	14
Deficiencies in forensic reports	15
Rulings of criminal courts	16
2.4. Criminal prosecution against victims	16
3. Recommendations	17

Introduction

The European Court of Human Rights (ECtHR) delivered a landmark judgment on 7 July 2022, condemning Greece for the deadly shipwreck that took place in January 2014 off the coast of the island of Farmakonisi.¹ The ruling became final on 7 October 2022. The *Safi v. Greece* judgment not only comes as vindication for the victims of the tragic incident and for their relatives but also prompts an in-depth assessment of Greece's responsibility to comply with human rights, to address structural issues in the management of sea arrivals of refugees and migrants, and to credibly and effectively investigate cases of ill-treatment by law enforcement bodies at sea.

The protection of human lives and the duty of rescue at sea constitute fundamental principles of international, EU and national law.² The prohibition on torture and ill-treatment is an absolute obligation of states.³ For their part, border surveillance and protection operations at sea must abide by standards on refugee protection and on the right to asylum.⁴ Specifically, Regulation (EU) 656/2014 on sea operations coordinated by Frontex, including "Operation Poseidon" implemented in the Aegean Sea for over ten years,⁵ lays down strict obligations on Greek authorities as regards respect for the right to life and the principle of *non-refoulement*.⁶

The Action Plan submitted by the Greek government to the Committee of Ministers of the Council of Europe in the context of supervision of the execution of the *Safi v. Greece* ruling concludes that the Farmakonisi case was an isolated incident and does not point to systemic breaches vis-à-vis rescue.⁷

Over the past decade, the Refugee Support Aegean (RSA) and PRO ASYL legal team has represented refugees who have brought actions before Greek authorities and the ECtHR to denounce substantive and procedural violations of Article 2 ECHR on the right to life and of Article 3 ECHR on the prohibition of torture, inhuman and degrading treatment related to Coast Guard operations at sea. Our organisations stress that the deficiencies identified in the Farmakonisi case are not isolated. They point to broader breaches of Articles 2 and 3 ECHR in the general course of Coast Guard operations on border protection and rescue, as well as in the context of investigation of complaints.

¹ ECtHR, *Safi v. Greece*, App No 5418/15, 7 July 2022.

² *Inter alia*, Article 98 Convention on the Law of the Sea; Article 3 Regulation (EU) 656/2014 of the European Parliament and of the Council of 15 May 2014 establishing rules for the surveillance of the external sea borders in the context of operational cooperation coordinated by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European [2014] OJ L189/93; Article 5(2) L 4150/2013, Gov. Gazette A' 102/29.04.2013.

³ *Inter alia*, Article 4 Charter of Fundamental Rights of the European Union ("Charter"); Article 3 European Convention on Human Rights (ECHR).

⁴ Article 18 Charter; Article 6 Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedure for granting and withdrawing international protection (recast) [2013] OJ L180/60.

⁵ Frontex, *Main Operations*, available at: <https://bit.ly/3CCSTXM>.

⁶ Articles 3 and 4 Regulation 656/2014.

⁷ Greek Government, *Action Plan (02/06/2023) - Communication from Greece concerning the case of Safi and Others v. Greece (Application No. 5418/15)*, DH-DD(2023)696, 2 June 2023, paras 14-15, available at: <https://shorturl.at/rsH17>.

Furthermore, RSA is a member of the Informal Forced Returns Recording Mechanism managed by the Greek National Commission for Human Rights (NCHR), which records incidents of push backs at sea, among others.⁸

The present note cites an indicative list of cases represented by RSA, in which applicants' allegations before the Greek authorities concern deficiencies and delays in rescue operations (Agathonisi case: *F.M. v. Greece*), unreasonable use of firearms during interception operations (Pserimos case: *Alkhatib v. Greece*, Symi case: *Almukhlas v. Greece*), abandonment on life-rafts during attempted push backs (Rhodes I case: *Alnassar* case, Rhodes II case), prosecution and conviction of victims following their complaints against Coast Guard officers and acquittal thereof (Chios case). Serious deficiencies are equally identified in relation to judicial investigations of complaints, treatment of shipwreck survivors and non-registration of missing persons.

Case	Date	Incident details & judicial investigation
Chios	17 Jun 2007	Torture by Coast Guard officers on board a ship. ⁹ Conviction of Coast Guard officers at first instance, acquittal on appeal. ¹⁰ Conviction of witness for perjury.
Farmakonisi	20 Jan 2014	Causing of a shipwreck during a push back operation and failure to rescue. 11 dead, women and children. Case archived by the Naval Court Prosecutor and the Reviewing Court Prosecutor. ¹¹ <i>Safi v. Greece</i> , App No 5418/15.
Pserimos	22 Sep 2014	Lethal shooting of a passenger by Coast Guard fire on the engine of a boat carrying refugees during a sea border protection operation, aimed at immobilising the boat. Case archived by the Naval Court Prosecutor and the Reviewing Court Prosecutor. ¹² <i>Alkhatib v. Greece</i> , App No 3566/16. ¹³
Symi	31 Aug 2015	Lethal shooting of a minor passenger by Coast Guard fire inside a ship carrying refugees, during a capture operation. Acquittal order by the Judicial Council of the Naval Court of Piraeus. ¹⁴ <i>Almukhlas v. Greece</i> , App No 22776/18. ¹⁵
Agathonisi	16 Mar 2018	Delayed search and rescue despite EKSED notification. ¹⁶ 16 dead, including children.

⁸ NCHR, *Μηχανισμός Καταγραφής Άτυπων Αναγκαστικών Επιστροφών*, available at: <https://shorturl.at/jkF78>.

⁹ PRO ASYL & Group of Lawyers for the rights of refugees and migrants, "The truth may be bitter, but it must be told", October 2007, 10-11, available at: <https://bit.ly/3XO2sen>.

¹⁰ Naval Court of Piraeus, 365/2013, 25 November 2013; Reviewing Court, 167/2014, 6 November 2014.

¹¹ Naval Court of Piraeus Prosecutor, 263/2014, 27 June 2014; Reviewing Court Prosecutor, 22 July 2014.

¹² Naval Court of Piraeus Prosecutor, 241/2015, 18 June 2015; Reviewing Court Prosecutor, 6223/2015, 29 June 2015.

¹³ Communicated 27 March 2019.

¹⁴ Naval Court of Piraeus Judicial Council, 33/2017, 11 October 2017.

¹⁵ Communicated 27 January 2021.

¹⁶ RSA, '#AgathonisiShipwreck: The case file', 26 June 2018, available at: <https://t.ly/bSb8v>.

		Dismissal of complaint the Naval Court Prosecutor and the Reviewing Court Prosecutor. ¹⁷ <i>F.M. v. Greece</i> , App No 17622/21. ¹⁸
Rhodes I	29 Mar 2020	Arbitrary detention, abandonment at sea / push back on a life-raft. Pending preliminary investigation. <i>Alnassar v. Greece</i> , App No 43746/20.
Rhodes II	14 Jan 2021	Arrest of shipwreck survivors on shore. Failure to register and search for missing persons. Transfer on board a Coast Guard vessel and abandonment at sea. Rescue by the Turkish Coast Guard. Pending report before the Naval Court of Piraeus Prosecutor.
Lesvos	30 Jul 2021	Shipwreck with missing persons. Delay and deficiencies in registration of missing persons. Failure to collect DNA. Lack of information to survivors and relatives of victims. Detention of survivors without access to phones, lawyers, psychologists and support. Complaint before the Greek Ombudsman.
Antikythira	24 Dec 2021	Shipwreck with missing persons. Detention of survivors in inadequate conditions. Complaint before the Greek Ombudsman.
Mykonos	18 Jun 2022	Shipwreck with missing persons. Detention of survivors in inadequate conditions. Complaint before the Greek Ombudsman.
Kythira	5 Oct 2022	Shipwreck with missing persons. Detention of survivors during reception and identification procedures. Complaint before the Greek Ombudsman.

The violations illustrated in the above cases amount to systemic deficiencies in human rights compliance and in broader Coast Guard practice. These issues have re-emerged in the aftermath of the shipwreck that occurred off the coast of Pylos on 14 June 2023 and left 82 people dead and several hundred missing. Pending the investigation into the incident by the Greek judiciary,¹⁹ a recent letter from the Council of Europe Commissioner for Human Rights to the Greek government noted that “the shipwreck of 14 June is unfortunately not an isolated incident” and urged for an effective investigation thereof.²⁰

¹⁷ Naval Court of Piraeus Prosecutor, 6/2019, 20 March 2019; Reviewing Court Prosecutor 13/2019, 31 December 2019.

¹⁸ Communicated 11 October 2021.

¹⁹ RSA, ‘Pylos Shipwreck: Timeline and archive of a tragedy that could have been avoided’, 27 July 2023, available at: <https://t.ly/7iBzr>; ‘Blatant lack of information and investigation, one month after the shipwreck in Pylos, Greece’, 14 July 2023, available at: <https://t.ly/ffp1u>; ‘Enough! Respect to the survivors and the dead. Legal and safe routes now!’, 14 June 2023, available at: <https://t.ly/kXv97>.

²⁰ Council of Europe Commissioner for Human Rights, ‘Pylos shipwreck: the Greek authorities must ensure that effective investigations are conducted’, 28 July 2023, available at: <https://shorturl.at/cefhT>.

1. Substantive violations of Articles 2 and 3 ECHR

1.1. Key points of the *Safi v. Greece* judgment

In *Safi v. Greece*, the ECtHR condemned Greece for breaching its positive obligations stemming from the right to life under Article 2 ECHR. The Court concluded that “the Greek authorities did not do all that could have reasonably be expected of them in order to offer the applicants and their relatives the level of protection required by Article 2 of the Convention”.²¹ Whereas it knew from the outset that the boat was unseaworthy and overcrowded, the Greek Coast Guard set up and conducted a towing operation without securing the safety of passengers on board, the Coast Guard speedboat did not carry rescue equipment and therefore people were not given life-vests, and the Rescue Coordination Centre (Ενιαίο Κέντρο Συντονισμού Έρευνας και Διάσωσης, EKSED) was informed with significant delay, at which point a large part of the boat had already sunk.²² The Court also found that the Greek government had failed to provide explanations as to the above omissions and delays, and dismissed its argument that rescue assets were unavailable due to increased arrivals of refugees on the day of the shipwreck.²³

In addition, the ECtHR held that Greece had also breached Article 3 ECHR on account of degrading treatment suffered by survivors of the shipwreck on Farmakonisi island, where they were transferred to an outdoor sports field and ordered to remove their clothes and to undergo a strip search in the presence of at least thirteen persons, including military officers. The Court stressed that the survivors were under the authorities’ control and not at liberty. It also recalled that “they were in a state of extreme vulnerability: they had just survived a shipwreck and some had lost their relatives”.²⁴

Similar infringements of Greece’s international obligations are alleged in other cases of Coast Guard operations in the Aegean Sea. These demonstrate a wider tendency on the part of the Greek authorities to award priority to border surveillance and to deflecting refugee arrivals in a manner resulting in dereliction of the duty to rescue and of the value of human life and dignity.

Specifically, cases legally supported by RSA involve allegations of: (1.2) deficient conduct of search and rescue operations; (1.3) endangerment of life either through unreasonable use of firearms or through abandonment of people adrift on life-rafts; (1.4) detention of survivors in inadequate conditions and severe gaps in registration of missing persons.

1.2. Deficient conduct of search and rescue operations

In the **Agathonisi case (F.M. v. Greece)**, the applicants submit that the Coast Guard refrained from conducting a search and rescue operation of reasonable duration, scope and effectiveness in order to locate a boat which sunk in the early hours of 16

²¹ ECtHR, *Safi v. Greece*, para 166.

²² *Ibid*, para 162.

²³ *Ibid*, para 164.

²⁴ *Ibid*, paras 193 and 196.

March 2018 off the coast of Agathonisi island. Following the notification of EKSED on 06:25 by a caller, relative of missing persons, the search operation was concluded within less than six hours at 12:15 on the same day, without locating the missing persons. In contrast, a large-scale search and rescue operation was carried out on the next day, 17 March 2018, after three shipwreck survivors were found on Agathonisi.

More specifically, search and rescue on 16 March 2018 took place in parallel to the identification of a different boat; passengers were eventually disembarked on Farmakonisi. As a result, no signals were issued to other Coast Guard or military authorities and no emergency plan was activated for the incident in question. One of the three Coast Guard vessels involved in the operation was active for about three hours, while transporting persons disembarked on the island from a different boat. The second vessel participated for about two hours, and the third for about three hours, while also transporting persons disembarked from a different boat.

The effectiveness of the search operation is marred by further deficiencies. On the one hand, EKSED authorities did not take the necessary steps to facilitate communication with the caller. This prevented the authorities from collecting the necessary information and from correctly ascertaining the distress phase at hand, i.e. a shipwreck and not a boat “in difficult position” (σε δυσχερή θέση).²⁵ The fact that the caller “spoke basic or incomprehensible English” is admitted in the criminal case file. Hence several parts of communication have been recorded as “incomprehensible” in the transcript of the call, while transcripts of other EKSED communications present similar issues of interpretation.²⁶ Nevertheless, at no point did the Greek authorities ask for clarifications from the caller or request assistance from an interpreter in a language they understood, even though the caller resided in the Reception and Identification Centre (RIC) of Samos – where interpretation services are available – and was available to the authorities. The lack of interpretation in the 112 telephone line and rescue procedures constitutes a broader, general gap.

On the other hand, EKSED failed to make use of available digital means to ‘scan’ the area and to record the scope of the operation. For their part, the vessels conducting the search operation did not carry adequate equipment to locate victims of a sunk boat. EKSED was also late in using the location signal it had received via WhatsApp.

These deficiencies are linked to the broader issue of absence of adequate equipment, training and digital recording of the course of Coast Guard vessels.

1.3. Endangerment of life at sea

Use of firearms

The cases of **Pserimos (Alkhatib v. Greece)** and **Symi (Almukhlas v. Greece)** concern incidents of disproportionate use of violence, consisting of shootings by Coast Guard officers against refugees. The applicants allege unreasonable use of firearms, stemming from (i) an insufficient regulatory framework on the use of firearms in sea

²⁵ It is not clear to which search and rescue phase this description corresponds.

²⁶ Reviewing Court Prosecutor, 13/2019, 31 December 2019, 11-12, 17.

operations of the Coast Guard in the context of border surveillance; and (ii) gaps in training, organisation and planning of operations at sea.

We recall that the ECtHR has previously condemned Greece for violations of Article 3 ECHR in similar cases relating to deficient planning of police operations.²⁷

According to the Greek Regulation on possession, carrying and use of firearms by Coast Guard personnel,²⁸ an immobilising shot against a vessel with a risk of injury of a passenger is only permitted for the purposes of preventing an armed attack or the imminent commission of a dangerous felony or a felony committed with (threat of) bodily harm.²⁹ The Regulation prohibits immobilising or neutralising shots where there is a serious risk of injury of a third party by missed shot or ricochet.³⁰

However, 1992 “rules of engagement”³¹ which standardise modes and processes of action by personnel of Coast Guard patrol vessels allow the use of “warning shots” at a safe sea area where the boat does not comply with an order to leave or acts against the Coast Guard vessel. They permit “intimidation shots” in the direction of the boat, either on the mast or on the lower part of the freeboard, in the case of non-armed resistance on the part of the boat drivers e.g. through repeated attempts to ram the Coast Guard vessel.

The aforementioned rules of engagement do not take into consideration the specific features of refugee arrivals in the Aegean, which usually involve refugees embarking on unseaworthy and overcrowded boats. These considerations are reasonably expected to be known and foreseeable by Coast Guard authorities in the implementation of sea operations and use of warning shots. The rules of engagement have not, however, been updated to date in order to safeguard the safety of passengers as a priority during the stages of escalation of sea operations.

Neither the Regulation on firearms nor the rules of engagement take into account legislation in force, namely Regulation 656/2014 on sea border surveillance operations or the Asylum Procedures Directive. The latter requires the Coast Guard to provide information to arriving persons on access to the asylum process where there are indications that such persons may wish to seek protection.³²

In both *Pserimos* and *Symi* cases, the authorities should have inferred from the nature of the incidents and operations that more people were likely to be on board the boats and therefore that the use of firearms would entail a risk for the life and safety of the passengers:

In the ***Pserimos case (Alkhatib v. Greece)***, the Coast Guard officers ought to have taken all necessary measures to protect the passengers on board, since no evidence

²⁷ ECtHR, *Celniku v. Greece*, App No 21449/04, 5 July 2007, paras 57-58; *Makaratzis v. Greece*, App No 50385/99, 20 December 2004, para 70.

²⁸ Ministerial Decision 114.1/04/2004, Gov. Gazette B' 663/07.05.2004.

²⁹ Article 10(5) and (6)(a)-(b) MD 114.1/04/2004.

³⁰ Article 10(8)(a) MD 114.1/04/2004.

³¹ Standing Order on Hellenic Coast Guard Operational Means (ΠΔΕΜ 05/92), 23 December 1992.

³² Article 8(1) Asylum Procedures Directive.

suggested that they had been disembarked on the island of Pserimos. Yet, without exhausting less coercive alternatives, the Coast Guard made use of a mobile gun on board to fire seven intimidating shots at a safe area and thirteen times at the engine of the boat to stop its course. This put the passengers' life and safety at serious risk and resulted in injuring two people, one of whom ultimately died. The Greek authorities submitted that they observed the rules of engagement and that the refugee boat repeatedly attempted to ram the Coast Guard vessel. They also argued that the Coast Guard officers were not aware of the presence of passengers on board and that it was necessary to fire twenty shots, including thirteen at the engine of the boat.

Conversely, in the **Symi case (Almukhlas v. Greece)**, the Coast Guard was aware that the boat in question had previously been involved in migrant smuggling. The Coast Guard officers therefore ought to have known that the intercepted boat was both overcrowded with non-Greek speakers and equipped with cabins in its lower deck. They nevertheless boarded the boat without taking any safety precautions for the passengers, without inquiring whether more people were present in the cabins or calling them to come to the deck. The Coast Guard officers contributed to an escalation of the situation by firing warning shots on board. They subsequently fired immobilising shots inside the cockpit in an attempt to arrest the drivers. This led to the death of the minor passenger who was in the cabins.

These incidents demonstrate a lack of adequate training, organisation and clear guidelines on operational planning and on appropriate response to potential situations of tension without jeopardising the life and physical integrity of third parties, including vulnerable people.

Abandonment on life-rafts at sea

The **Rhodes I case (Alnassar v. Greece)** concerns an incident occurred on 29 March 2020 on the island of Rhodes. The applicant alleges that the Greek authorities transported him together with a group from an informal detention site on Rhodes to a Coast Guard vessel. After they reached the high seas, the Coast Guard turned off the engine and lights of its vessel and ordered people to board a life-raft that had no oars or engine. The Coast Guard left the people adrift without any help, putting their life at risk. The Greek authorities deny the incident and have not registered any apprehension of the applicant.

The **Rhodes II** case also relates to alleged arrest of persons on shore on Rhodes and abandonment on a life-raft at sea. RSA has also registered recent push back allegations – including family separation – by persons apprehended on the island of Lesbos and subsequently abandoned on life-rafts at sea.

The push back practice of abandoning refugees adrift on life-rafts has been documented *inter alia* by Frontex and the European Anti-Fraud Office (OLAF),³³ the United Nations High Commissioner for Refugees (UNHCR)³⁴ and the UN Special

³³ OLAF, *Final Report: Case No OC/2021/0451/A1*, Olaf.03(2021)21088, 23 et seq.

³⁴ UNHCR, 'UNHCR warns of increasing violence and human rights violations at European borders', 21 February 2022, available at: <https://rb.gy/8vh7q>.

Rapporteur on the human rights of migrants.³⁵ Such a practice is a direct breach of Article 2 ECHR.

1.4. Treatment of shipwreck survivors

According to the Greek Asylum Code,³⁶ persons irregularly entering or staying in Greece “shall immediately be transferred by police or coast guard authorities to a Reception and Identification Centre or a Closed Controlled Access Centre” to undergo reception and identification procedures.³⁷ Domestic law expressly refers to “rapid and appropriate transfer of persons belonging to vulnerable groups” such as “direct relatives of victims of shipwrecks”, with a view to receiving “specialised care and protection”.³⁸

The Greek authorities have, however, circumvented reception and identification procedures in several cases of shipwreck survivors to date. They instead continue to automatically detain them in pre-removal detention centres without adequate care and psychological support, contrary to the above standards. The practice has persisted despite repeated interventions and missions from the Greek Ombudsman, highlighting that “one the one hand... [Medical Health Units] personnel working in [pre-removal centres] is not familiar with the vulnerability screening performed in Reception and Identification Centres, since it offers services to the Hellenic Police and deals with foreigners in return proceedings in pre-removal centres, not new arrivals from the borders... on the other hand, existing profiles do not cover all medical conditions”.³⁹

Examples of this practice include the shipwrecks that took place in Antikythira on 24 December 2021 and Mykonos on 18-19 June 2022. The survivors of the **Antikythira shipwreck**, including families with minor children, were transferred to the pre-removal detention centre of Amygdaleza. They remained there from the end of December 2021 to early February 2022 in poor hygienic conditions, without receiving psychological support.⁴⁰ Survivors of the **Mykonos shipwreck**, including families with minor children, were placed in detention in the Amygdaleza pre-removal detention centre for over ten days until early July 2022 without undergoing reception and identification procedures or receiving care or psychological assistance.⁴¹

On other occasions, survivors of shipwrecks are transferred to facilities managed by the Reception and Identification Service (RIS) of the Ministry of Migration and Asylum and are held there in *de facto* deprivation of liberty, without benefitting from necessary care and support. On 30 July 2021, survivors of the **Lesvos shipwreck**, including relatives of missing persons, were transferred to a quarantine facility in Megala Therma and were then placed under quarantine in the RIC of Lesvos until 6 August 2021, without access to a lawyer or phones and without psychological assistance. They were also called to

³⁵ UN Special Rapporteur on the human rights of migrants, *Report on means to address the human rights impact of pushbacks of migrants on land and at sea*, A/HRC/47/30, 12 May 2021, σκ. 52.

³⁶ L 4939/2022, Gov. Gazette A' 111/10.06.2022.

³⁷ Article 38(1) Asylum Code.

³⁸ Articles 1(q), 38(1) and 41(d) Asylum Code.

³⁹ Ombudsman, 311575/22138/2022, 21 April 2022.

⁴⁰ Ombudsman, 311575/6117/2022, 3 February 2022.

⁴¹ Ombudsman, 320954/39576/2022, 14 July 2022.

testify before the Coast Guard of Mytilene regarding the circumstances of the shipwreck while they were still under quarantine, without receiving any further information or legal support.⁴²

Survivors of the shipwreck that took place on 5 October 2022 on the island of **Kythira** were initially transferred to a school on Kythira for a few days. On 12 October 2022, they were transferred to the RIC of Malakasa and remained there for a prolonged period of time without psychological support until the completion of reception and identification procedures and the registration of their asylum claims. In at least one survivor's case, the duration of stay in the RIC exceeded the maximum time limit of 25 days laid down in Article 40 of the Asylum Code.⁴³

Moreover, registration of missing persons and provision of information to relatives in the context of the 30 July 2021 **Lesvos shipwreck** have been marred by severe deficiencies and indifference. Missing persons were not immediately registered via relatives, DNA samples were not collected from (even first-degree) family members and no information was provided to surviving relatives. Following the Greek Ombudsman's intervention in the case of a shipwreck survivor, father of a missing child, the authorities revealed that the three missing persons of the shipwreck were registered as late as one and a half months after the incident without any recording of their personal details. The authorities' failure to diligently register the missing persons and to collect relevant information effectively prevents identification of any bodies retrieved in the future. This case is illustrative of systemic concerns in the registration of missing persons in Greece.

In a similar vein, applicants in the **Rhodes II case** allege that they were on board a boat near the coast of Rhodes on 14 January 2021 when six passengers fell into the water due to bad weather. Survivors, including close relatives of missing persons, managed to disembark on the island and were apprehended by the authorities. The Greek authorities did not register the missing persons and therefore did not trigger a search and rescue operation. They also refrained from registering the survivors, including the father of a missing person and the grandson of another. They instead transferred them back to the sea and left them adrift on a life-raft, as described above. The missing persons were only registered by the Greek authorities at a later stage, following a written request from relatives residing in an EU Member State.

2. Deficiencies and ineffectiveness of judicial investigations

2.1. Key points of the *Safi v. Greece* judgment

The ECtHR judgment in *Safi v. Greece* recalled that Article 2 ECHR imposes on national authorities a procedural obligation to effectively investigate incidents of breach of the right to life. Compliance of investigations therewith is assessed based on adequacy, immediacy, independence and victim involvement. The Court clarified that authorities must consider all reasonably available means of collection of evidence such as witness statements and expertise, and must act *ex officio* and immediately upon receiving

⁴² Ombudsman, «Διερεύνηση αναφοράς επιζησάντων ναυαγίου σχετικής με τις υπηρεσίες σας», 311527/21917/2022, 20 April 2022.

⁴³ Ombudsman, «Επιβολή περιορισμού ελευθερίας στο Κέντρο Υποδοχής και Ταυτοποίησης Μαλακάσας», 327045/328337/67645, 12 December 2022.

knowledge of the incident. The Court highlighted that the launch of investigations is crucial to safeguarding the quantity and quality of evidence. The lack of diligence in investigations causes doubts as to their conduct in good faith.⁴⁴

In the *Farmakonisi* case, the ECtHR held that Greece had breached the procedural obligations imposed by Article 2 ECHR due to severe deficiencies in the investigation of the shipwreck incident. On the one hand, the Greek authorities were aware of deficiencies in interpretation during the survivors' depositions, given that at least one of the interpreters demonstrably did not speak their language. Due to this, witness statements were incorrectly transcribed. The testimonies nevertheless remained in the case file until the case was archived by the Prosecutor of the Naval Court of Piraeus. On the other hand, the survivors' request for access to signal recordings was rejected on national security grounds. Finally, the Naval Court of Piraeus Prosecutor succinctly dismissed the survivors' allegations of a push back attempt against them on the ground that "such a practice does not exist". The Prosecutor also failed to examine further submissions from the survivors relating to the nature of the Coast Guard operation and to its adequacy in safeguarding the right to life, prior to archiving the case.⁴⁵

RSA, PRO ASYL and other organisations have consistently highlighted the lack of effective investigations of complaints lodged before Greek authorities due to a series of systemic procedural deficiencies *inter alia* relating to incidents of ill-treatment at sea.⁴⁶ As a result of those, establishing alleged violations in practice is extremely difficult, if not impossible. Beyond *Safi*, Greece has recently been condemned by the Strasbourg Court in *Torosian v. Greece*⁴⁷ and *B.Y. v. Greece*⁴⁸ for procedural violations of Article 3 ECHR vis-à-vis ineffective investigations into ill-treatment by law enforcement bodies.

Applicants in cases represented by RSA have alleged (2.2) systemic gaps in preliminary interrogations and examinations, and (2.3) gaps in the collection and assessment of evidence, contrary to the procedural duties stemming from Articles 2 and 3 ECHR. Importantly, (2.4) in the only case referred to a criminal trial, following the acquittal of the Coast Guard officers, the alleged victims of torture on board a Coast Guard vessel were prosecuted and convicted for defamation and related offences.

2.2. Systemic deficiencies in preliminary interrogations and investigations

The Greek Coast Guard is an armed law enforcement body under military organizational structure, whose armed personnel has military status. According to the Greek Military Criminal Code, competence for such personnel lies with military courts and particularly the Naval Court of Piraeus. Therefore, the Prosecutor of the Naval Court of Piraeus is the competent prosecution service for investigations into potential criminal responsibility of Coast Guard officers.

⁴⁴ ECtHR, *Safi v. Greece*, paras 115-120.

⁴⁵ *Ibid*, paras 121-127.

⁴⁶ ECCHR κ.α., *Joint Third Party Intervention (ECCHR, Pro Asyl & RSA) in M.A. v. Greece and 7 other applications*, July 2022, available at: <https://bit.ly/3e6kE1H>.

⁴⁷ App No 48195/17, 7 July 2022.

⁴⁸ App No 60990/14, 26 July 2023.

The Greek Criminal Procedure Code provides that a preliminary interrogation (προανάκριση) shall be conducted upon prosecutorial order or *ex officio* in case of an offence *in flagrante delicto* or where delays would entail an imminent risk of loss of evidence or of difficulties in interrogation.⁴⁹ The preliminary interrogation is conducted by interrogating officials, which include Coast Guard and Police officers as “general interrogating officials”.⁵⁰

According to the Criminal Procedure Code, interrogating officials are bound by the independence and impartiality standards applicable to judges. They are required to promptly report to the Prosecutor any grounds on which their participation in the process would infringe these principles.⁵¹ However, constant ECtHR case law requires investigations into infringements of Articles 2 and 3 ECHR must observe hierarchical, institutional and practical independence.⁵² The conduct of preliminary interrogations by officials operating in the same authority as alleged perpetrators undermines the institutional independence of investigations and amounts to a direct breach of Greece’s procedural obligations under human rights law.⁵³

It is worth noting that the Supreme Court Prosecutor issued Circular 1/2023 following the ECtHR ruling in *Torosian v. Greece*. To ensure compliance with the duty to conduct “independent, rapid and conclusive” investigations into alleged ill-treatment of prisoners, the Circular stipulates that “Where a complaint is directed against prison officials and police officers, the criminal preliminary examination shall not be conducted by a police officer but directly by the Public Prosecutor...”⁵⁴

In the **Pserimos case (Alkhatib v. Greece)**, the preliminary interrogation following the shooting incident near Pserimos island was carried out by the Coast Guard of Kalymnos, i.e. the service of the two officers on board the Coast Guard vessel who opened fire against the boat. Similar issues arise in the **Symi case (Almukhlas v. Greece)**. There, the initial preliminary interrogation relating to the shootings on board a boat off the coast of Symi that led to the death of a minor passenger was conducted by officers of the Port Authority of Rhodes under the supervision of the Coast Guard of Symi. As for the **Agathonisi case (F.M. v. Greece)**, the *ex officio* preliminary interrogation was carried out by the Coast Guard of Samos. After a complaint was lodged, the Naval Court of Piraeus Prosecutor delegated the preliminary examination of the case to the Internal Affairs Unit within the Coast Guard; the same unit conducted a Sworn Administrative Examination (Ένορκη Διοικητική Εξέταση, EDE).

Crucially, preliminary interrogations in such cases are carried out in the context of investigations into the criminal responsibility of passengers by the territorially competent Public Prosecutor; investigations into the responsibility of Coast Guard officers lie with

⁴⁹ Articles 31(1) and 245 Criminal Procedure Code.

⁵⁰ Article 31(1)(b) Criminal Procedure Code, L 4620/2019, Gov. Gazette A' 96/11.06.2019.

⁵¹ Article 25 Criminal Procedure Code.

⁵² ECtHR et al., *Joint Third Party Intervention (ECCHR, Pro Asyl & RSA) in M.A. v. Greece and 7 other applications*, Ιούλιος 2022, para 5.

⁵³ Namely, ECtHR, *Ramsahai v. the Netherlands*, App No 52391/99, 15 May 2007, paras 335-341; *Najafli v. Azerbaijan*, App No 2594/07, 2 October 2012, paras 52-54.

⁵⁴ Supreme Court Prosecutor, Circular 1/2023 'Απόφαση του ΕΔΔΑ από 7-7-2022 στην προσφυγή TOROSIAN κατά Ελλάδας – Γενικές Οδηγίες προς αποφυγή συναφών παραβιάσεων της ΕΣΔΑ', 3 January 2023, 3, available at: <https://bit.ly/3Qhym05>.

the Naval Court of Piraeus. In the **Pserimos and Symi cases**, the preliminary examination by the Naval Court took place at a later stage from the preliminary interrogation by the territorially competent Public Prosecutor and following the conclusion of an EDE. Specifically in the **Symi case**, despite receiving the preliminary interrogation file, the Naval Court Prosecutor did not order a preliminary examination until after the relatives of the minor lodged a complaint. This led to prosecution in 2016 – two years after the incident – and eventually to an acquittal order.

Finally, the preliminary examination in the **Rhodes I case (Alnassar v. Greece)** was conducted by the Internal Affairs Unit of the Hellenic Police upon order from the Public Prosecutor of Rhodes and was subsequently referred to the Naval Court of Piraeus Prosecutor. The case is pending at the time of writing.

Additional barriers to independent and effective investigation of ill-treatment by the Coast Guard are posed by a Criminal Procedure Code provision allowing the Prosecutor to archive the case without a preliminary examination where an EDE or a “report of a relevant audit authority” such as the National Transparency Authority (NTA) has been delivered.⁵⁵ Neither EDE nor NTA audits comply with independence and impartiality requirements set by the ECHR.⁵⁶ Similar to the Farmakonisi case (*Safi v. Greece*), EDE were conducted in the remaining cases and found no liability of Coast Guard officers. The EDE file was included in the criminal case file in the course of the preliminary examination.

2.3. Deficient collection of evidence

Deficiencies in witness testimonies and in interpretation

In the **Symi case (Almukhlas v. Greece)**, only certain witnesses were selected to testify in the preliminary interrogation conducted by the Coast Guard regarding the incident. Only nine out of 99 passengers gave testimonies. None of them were close to the minor killed in the cabins of the boat. In addition, the Coast Guard of Symi did not provide an adequate, certified interpreter for depositions. The complainant has contested the accuracy of the transcript of her statements, arguing that – contrary to the contents of the transcript – they never saw the boat drivers remove a gun or stick from the Coast Guard officers or pour gasoline on any of them. However, the interrogating authorities of the Naval Court of Piraeus Prosecutor did not review these irregularities and called only Coast Guard officers and none of the passengers to testify. For its part, the Judicial Council of the Naval Court of Piraeus did not summon the parties or refer the case for further interrogation.

In the **Pserimos case (Alkhatib v. Greece)**, the prosecution authorities concluded that the Coast Guard shootings were attributable to the boat drivers on the basis of transcripts of ten witnesses / survivors’ preliminary interrogation testimonies. The testimonies appear to be identical and are structured as a narrative rather than answers to questions asked by interrogating officials. The witnesses were not summoned to testify again during the preliminary examination, while the two injured persons were

⁵⁵ Article 43(1) and (4) Criminal Procedure Code, as amended by L 4855/2021.

⁵⁶ See further RSA et al., *Rule of law backsliding continues in Greece*, January 2023, paras 59-63, διαθέσιμο στο: <https://t.ly/hFMKr>.

never called to testify at all. Here too, the process lacked an adequate, certified interpreter.

Witness statements in the preliminary interrogation conducted by the Coast Guard of Mytilene regarding the **Lesvos shipwreck** of 30 July 2021 also bear identical contents and read as a narrative. These testimonies were collected on 2 August 2021 while survivors were in quarantine without registration, information or access to legal assistance.⁵⁷

Serious procedural irregularities have arisen in the **Agathonisi case (F.M. v. Greece)** case as well. The Coast Guard contests the testimonies of the shipwreck survivors based on statements they allegedly gave in “debriefings”, i.e. unwritten testimonies taken without a formal procedure and with a non-certified interpreter, resident of the RIC of Samos. In the dismissal of the criminal complaint, the Reviewing Court Prosecutor accepts the Coast Guard officers’ version of the statements allegedly made by “foreign survivors in their oral contact with the Coast Guard officers during the initial collection of information on the incident” in breach of procedural safeguards. Crucially, these alleged statements are in full contradiction with the statements given by survivors in the formal testimonies they gave under oath.⁵⁸ Specifically, the Reviewing Court Prosecutor accepts that the shipwreck took place not on 16 but on 17 March 2018 and that the passengers returned to Turkey on 16 March before coming back on the next day. The survivors stated that the shipwreck occurred in the early hours of 16 March. Their statements coincide with transcripts of the communication between the caller and EKSED regarding the incident.⁵⁹ Yet, at no point do the prosecution authorities explain why they have relied on the Coast Guard officers’ accounts of “debriefings” with survivors and not on eye-witness testimonies.

Deficiencies in inspections, expert reports and digital evidence

In the **Symi case (Almukhlis v. Greece)**, an inspection report was issued on the same day as the Coast Guard preliminary interrogation. The inspection was conducted by the Coast Guard of Symi, not by dedicated experts. This resulted in loss of crucial evidence. The report contains no elements on the trap door inside the cockpit and on the cabins of the boat. It concludes that no bullets or bullet cases were found due to the insalubrious state of the boat.

In the **Pserimos case (Alkhatib v. Greece)**, the expertise entrusted by the Port Authority of Kalymnos to experts is not sufficiently detailed and lacks photographs and sketches of the vessels involved in the incidents. No forensic reports have been issued on the victims’ injuries. Such reports, in conjunction with detailed expertise, could have shed light on the circumstances of the shootings.

In the **Agathonisi case (F.M. v. Greece)**, the authorities did not request supplementary expertise in order to examine satellite images submitted by the applicant which give serious grounds to contest the veracity and accuracy of the hand-drawn vessel courses

⁵⁷ Ombudsman, «Διερεύνηση αναφοράς επιζησάντων ναυαγίου σχετικής με τις υπηρεσίες σας», 311527/21917/2022, 20 April 2022.

⁵⁸ For instance, Naval Court of Piraeus Prosecutor, 6/2019, 20 March 2019, 15-21.

⁵⁹ Reviewing Court Prosecutor, 13/2019, 31 December 2019, 42-43.

presented by Coast Guard officers. As a result, it was impossible to safely assess the scope of the search operation and the distance at which the Coast Guard approach the location of the shipwreck. In addition, the authorities failed to enlist expertise for an existing voice message on a mobile phone from the moment of the shipwreck. Further significant gaps in evidence collection include the lack of photographs on the location where the boat and bodies were retrieved. These are equally crucial elements for the investigation and determination of the facts.

None of the cases includes digital registration of the course of the vessels. In the **Agathonisi case (F.M. v. Greece)**, addition to the lack of digital registration of the search operation, as described above, there are also no photographs on the location where the bodies of the shipwreck were retrieved.

Deficiencies in forensic reports

The sixteen forensic reports presented in the **Agathonisi case (F.M. v. Greece)** are marred by serious gaps.⁶⁰ They do not include the exact time and circumstances of recovery of each body – in or out of water – or the time and circumstances of transport from the place of recovery to the place of autopsy. Despite a request from the survivors, the authorities did not take photographs of the bodies, including of fingers; this would have demonstrated the state of soaking and thereby the length of the persons' stay in the water. Moreover, forensic reports appear to be identical and do not indicate full identity details for each deceased person, even though the victims had previously been identified. The reports were issued on 10 April 2018, i.e. at a significant time lapse from the autopsy, not as soon as possible after the incident. Despite the above deficiencies, the Naval Court of Piraeus Prosecutor and the Reviewing Court Prosecutor not only relied on the conclusions of the forensic reports but made an arbitrary reading thereof in relation to the time of the shipwreck. They deemed it “undeniable that the deadly shipwreck which the three complainants survived took place in the early hours between 6.30 and 7.00 on 17.3.2018. This finding is based on and supported by the conclusions of the forensic expert”. Yet, the forensic reports point to death “at midnight 16/3/2018 to 17/3/2018, more or less 3-4 hours”, i.e. between 8pm on 16 March and 4am on 17 March.⁶¹

The recent Circular 1/2023 issued by the Supreme Court Prosecutor following the *Torosian v. Greece* ruling recalls that “In the case of allegation of ill-treatment with bodily harm of a detainee, their medical examination by a competent forensic expert is evidently of absolute priority and shall be conducted as soon as possible, if possible on the same day.”⁶²

⁶⁰ On accuracy and quality of forensic reports, see also ECtHR, *Sarwari v. Greece*, App No 38089/12, 11 April 2019, paras 118-119.

⁶¹ For instance, Naval Court of Piraeus Prosecutor, 6/2019, 20 March 2019, 24.

⁶² Supreme Court Prosecutor, Circular 1/2023 ‘Απόφαση του ΕΔΔΑ από 7-7-2022 στην προσφυγή TOROSIAN κατά Ελλάδας – Γενικές Οδηγίες προς αποφυγή συναφών παραβιάσεων της ΕΣΔΑ’, 3 January 2023, 3.

Rulings of criminal courts

In two of the cases represented by RSA, the competent authorities refrained from considering previous rulings of criminal courts which determined crucial elements of the incidents at hand. In the **Pserimos case (Alkhatib v. Greece)**, an irrevocable judgment of the Mixed Jury Court of Rhodes acquitted the boat drivers of the offences of attempted causing of a shipwreck, dangerous bodily harm and serial endangerment. The Court convicted the drivers only for the offences of migrant smuggling and illegal entry.⁶³ The ruling dispelled the Coast Guard officers' accounts of the facts of the case. Yet, the Naval Court of Piraeus Prosecutor and Reviewing Court Prosecutor completely omitted it when they archived the case.

As for the **Symi case (Almukhlas v. Greece)**, the Felony Court of Appeal of Dodecanese acquitted the two boat drivers of the offences of attempted causing of a shipwreck, attempted explosion – noting that “they did not attempt to cause an explosion, since no evidence substantiates the type of liquid spilled on the floor, flammable or other” – as well as attempted manslaughter for want of homicidal intent.⁶⁴ The Judicial Council of the Naval Court of Piraeus disregarded the judgment and held in its acquittal order that the boat driver had poured flammable liquid on the Coast Guard colleague of the perpetrator and that the firearm was lawfully discharged in self-defence.⁶⁵

2.4. Criminal prosecution against victims

Out of the cases presented above, only two (Chios, Symi) led to prosecution of Coast Guard officers and only one (Chios) went to trial. This case was represented by the Group of Lawyers for the rights of refugees and migrants, in collaboration with PRO ASYL.

In the **Chios case**, charges against all responsible persons were brought by the Naval Court Prosecutor following an *ex officio* preliminary examination based on related media reports. One of the victims testified as a witness in the preliminary examination and subsequently intervened as civil party. The second victim in the case lodged a complaint against all responsible Coast Guard officers. Both persons testified as civil parties in the main interrogation by outlining the incident and identifying the officers involved. Following identification, the accused were referred to trial before the Naval Court. The Director of the Medical Centre for Rehabilitation of Victims of Torture, a doctor who had examined the victims, testified in the trial. The Naval Court convicted two of the accused for aggravated torture and handed down respective sentences of imprisonment of six years and three years with suspensive effect.⁶⁶ The Reviewing Court irrevocably acquitted the accused on appeal.⁶⁷

Following their irrevocable acquittal, the Coast Guard officers filed a criminal complaint before the Public Prosecutor of Piraeus. The Prosecutor charged the victims

⁶³ Mixed Jury Court of Rhodes, 50-56/2015, 15 May 2015.

⁶⁴ Felony Court of Appeal of Rhodes, 12/2016, 8 June 2016, 16.

⁶⁵ Naval Court of Piraeus Judicial Council, 33/2017, 11 October 2017.

⁶⁶ Naval Court of Piraeus, 365/2013, 25 November 2013.

⁶⁷ Reviewing Court, 167/2014, 6 November 2014.

of the incident with the offences of false testimony, false complaint, defamation and perjury in relation to the case. The two civil parties were irrevocably convicted of the offence of false testimony for the depositions given in 2010 as civil parties in the interrogation and identification of the accused, with a one-year imprisonment sentence. Moreover, one of them was convicted for false complaint due to his complaint – albeit at the time directed at any responsible Coast Guard officer, since the officers involved had not yet been identified – and for defamation relating to his 2010 complaint, his testimony before the interrogating judge and the identification of the accused. The second victim was convicted for perjury relating to his 2008 witness statement in the preliminary examination of the case and for defamation for his testimony in the preliminary examination, his civil party testimony before the interrogating judge and the identification of the accused.⁶⁸

The victims appealed the ruling and were again convicted by the Court of Appeal of Piraeus for the aforementioned offences, with respective sentences of imprisonment of one year and 20 months and one year and eight months.⁶⁹ The Court of Appeal judgment has become irrevocable for one of the persons and was quashed by the Supreme Court in 2019 for the second one.⁷⁰ After the case was remanded to the Court of Appeal of Piraeus, the Court closed the proceedings on grounds of late submission of the defamation complaint and on grounds of statute of limitation for perjury charges.

Such practices should be denounced insofar as they effectively intimidate and discourage victims of ill-treatment from testifying and participating in procedures establishing the facts and criminal responsibility of the perpetrators.

3. Recommendations

Drawing on the observations from the cases analysed above, RSA and Stiftung PRO ASYL make the following recommendations to ensure compliance with Articles 2 and 3 ECHR:

1. The regulatory framework governing Coast Guard operations in the area of border protection and search and rescue should be updated in full compliance with international, EU and national law and in particular Regulation (EU) 656/2014 and the Asylum Procedures Directive (2013/32/EU). Such a revision would ensure correct and sufficient guidance on how to assess distress phases, to safeguard the life and integrity of third parties on board in the management of incidents concerning refugees at sea, and to guarantee access to the asylum procedure.
2. Greek authorities should ensure sufficient and adequate interpretation services to enable effective communication of interested parties with EKSED, 112 and involved Coast Guard vessels.

⁶⁸ Misdemeanour Court of Piraeus, 2068/2015, 27 April 2015; 3131/2017.

⁶⁹ Misdemeanour Court of Appeal of Piraeus, 1762/2018.

⁷⁰ Supreme Court, 1612/2019, 1 October 2019.

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3. Coast Guard operations and vessel courses should be fully audio- and video-recorded, with a view to improving coordination, prevention of instances of ill-treatment and effective investigation of complaints.
 4. Greek authorities should immediately cease practices endangering human lives at sea e.g. unreasonable use of firearms, push backs and abandonment of people on life-rafts.
 5. The Prosecutor of the Naval Court of Piraeus should immediately intervene in cases involving the Coast Guard. Preliminary interrogations should not be conducted by Coast Guard officers, in conformity with Circular 1/2023.
 6. Testimonies should be collected from all passengers, otherwise a substantial number, with an adequate, certified and independent interpreter in a language they understand.
 7. Inspections, expert reports and forensic reports should be independent and reliable in line with international standards. Digital evidence, where available, should be used in the criminal investigation of incidents.
 8. Survivors of shipwrecks should immediately be referred to adequate living conditions and support services, and should not be detained. The authorities should immediately register missing persons, collect DNA samples and issue certificate of missing persons to their relatives.



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