



Violations of the Convention in a case concerning the sinking of a migrant boat

The case of **Safi and Others v. Greece** (application no. 5418/15) concerned the sinking on 20 January 2014 of a fishing boat transporting 27 foreign nationals in the Aegean Sea, off the island of Farmakonisi, resulting in the death of 11 people, including relatives of the applicants.

In today's **Chamber** judgment¹ in this case the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 2 (right to life) of the European Convention on Human Rights under its procedural head. 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.

A legal summary of this case will be available in the Court's database HUDOC ([link](#)).

Principal facts

The application was lodged by a group of 16 applicants, made up of 13 Afghan nationals, two Syrian nationals and a Palestinian national. It concerned the sinking on 20 January 2014 of a fishing boat transporting 27 foreign nationals in the Aegean Sea, off the island of Farmakonisi. The applicants were on board the boat, the sinking of which resulted in the death of 11 people, including relatives of the applicants.

According to the applicants, the coastguard vessel was travelling at very high speed in order to push the refugees back towards Turkish waters, and this caused the fishing boat to capsize.

According to the national authorities, the boat was being towed towards the island of Farmakonisi in order to rescue the refugees, and it capsized because of panic and sudden movements among those on board.

Complaints, procedure and composition of the Court

Relying on Article 2 (right to life) of the Convention, the applicants submitted that, on account of the actions and/or omissions of the coastguards, their lives had been put in danger when the boat had sunk. Some of the applicants also complained about the death of their relatives on that occasion.

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

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

Relying on Article 2 of the Convention under its procedural head, the applicants alleged that the administrative and judicial investigation conducted by the national authorities to identify those responsible for the fatal accident had been inadequate.

Under Article 13 (right to an effective remedy) of the Convention, they submitted that they had not had an effective domestic remedy whereby they could have raised their complaints under Article 2.

The Court decided to examine those complaints under Article 2 alone.

In addition, relying on Article 3 (prohibition of inhuman or degrading treatment) of the Convention, the applicants complained that they had been subjected to inhuman and/or degrading treatment following their transfer by the coastguards to the island of Farmakonisi.

The application was lodged with the European Court of Human Rights on 21 January 2015.

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

Marko **Bošnjak** (Slovenia), *President*,
Péter **Paczolay** (Hungary),
Krzysztof **Wojtyczek** (Poland),
Alena **Poláčková** (Slovakia),
Erik **Wennerström** (Sweden),
Raffaele **Sabato** (Italy),
Ioannis **Ktistakis** (Greece),

and also Renata **Degener**, *Section Registrar*.

Decision of the Court

[Article 2: concerning the investigations by the national authorities](#)

The Court observed that criminal proceedings had been instituted against the coastguards involved in the events in question. Such proceedings 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. However, the Court noted the following with regard to the proceedings.

Firstly, some of the applicants complained of problems of interpretation when statements had been taken from them. They submitted that the records of their statements did not reflect their true content and that they had never said that the boat had sunk as a result of the sudden movements of those on board. Proceedings had been instituted against the two interpreters for perjury in the course of their professional duties, and the Criminal Court, which had acquitted one of the interpreters, had acknowledged that he did not speak the applicants' language. The authorities had been informed of these serious problems of interpretation as early as 23 January 2014. However, despite the fact that there had been serious flaws in the records of the statements, they had remained an integral part of the case file until the public prosecutor had discontinued the proceedings. The Court took the view that, once the authorities had become aware of the applicants' allegations concerning such flaws, they should at least have investigated them before including the statements in the case file.

Secondly, the applicants had asked the public prosecutor to order the removal of the fishing boat from the site and its examination by experts, to provide them with the recording of communications between the coastguards and data from the signal and radar at the Farmakonisi military base and to grant them leave to appoint an expert. Only the first two of those requests had been accepted by the prosecutor. The Court found that the case had involved very complex aspects known only to the authorities. In the Court's view, it was highly questionable whether the applicants had been able to

participate properly in the proceedings, which had concerned extremely serious events, without the recordings they had requested, since the essence of the case lay precisely in that aspect.

Thirdly, the Court observed that, in discontinuing the case, the public prosecutor had merely stated that “there [was] no practice of pushbacks as a procedure for removal or towing ... to Turkish territorial waters...”. It noted that, according to the applicants, the then Minister for Naval Affairs had previously stated that the Greek authorities “sent [migrants] back to the Turkish side” and had added that the number of migrants who had been prevented from arriving in Greece by the coastguards was a “multiple” (of the 7,000 who had been arrested). The applicants had also made other allegations, which had not been examined by the competent public prosecutor. They had complained, in particular, that the entire operation in question had not been organised and conducted in such a way as to guarantee protection of their right to life and that of their relatives, that the coordination and research centre had not been informed and that the provisions of the relevant international instruments had not been complied with. In the Court’s view, these were obvious lines of inquiry which had not been pursued, thus undermining the ability of the investigation to determine the exact circumstances in which the boat had sunk.

Accordingly, there had been a violation of Article 2 of the Convention under its procedural head in respect of all the applicants.

Article 2: concerning positive measures for the protection of life

The Court considered that it could not express a position on a number of specific details of the operation that had taken place on 20 January 2014 or on whether there had been an attempt to push the applicants back to the Turkish coast. It pointed out that this inability stemmed largely from the lack of a thorough and effective investigation by the national authorities.

However, it observed that some of the facts were not disputed between the parties or were undeniably apparent from the evidence in the case file and the decisions of the domestic courts.

On arrival at the scene, the crew of the PLS 136² had apprised themselves of the precise conditions in which the fishing boat had been sailing, including its physical condition, and the fact that there had been women and children on board. According to the Government, it was precisely because of the condition of the boat, which was badly maintained and unfit for navigation, the number of passengers, which had exceeded the maximum permitted limit, and the adverse weather conditions at the scene that orders had been given for the boat to be towed to safety in Farmakonisi.

However, there was no explanation as to how the authorities had intended to transport the applicants to safety using a vessel, the PLS 136, which was a speedboat and lacked the necessary rescue equipment. Furthermore, the coastguards had not at any point considered the possibility of requesting additional assistance, or else the relevant authorities had not been informed that a vessel more suitable for a rescue operation should be sent to the scene. According to the applicants’ allegations, the passengers rescued from the fishing boat had not been given lifejackets because none had been available on the PLS 136.

In addition, the first stage of the towing operation had been interrupted when the anchor point on the bow of the boat had become detached. Even assuming that the fishing boat had capsized, as the Government maintained, on account of panic and sudden movements among those on board, the Court could only observe that such panic was to be expected, given the conditions prevailing at the scene. Nevertheless, the coastguards had made a second attempt to tow the boat. The Government did not explain why they had insisted on carrying out the second attempt, despite the fact that panic had been observed the first time round.

² Coastguard patrol vessel (λιμενικό καταδιωκτικό σκάφος) PLS 136, which allegedly had a crew of four.

Furthermore, the coordination and research centre had not been informed about the incident until 2.13 a.m., by which time the fishing boat had already half sunk. By 2.16 a.m. the boat had sunk completely and some of the applicants' relatives had been trapped inside the cabin. The Court emphasised in that regard the paramount importance of the time factor in such a situation.

Furthermore, a "Mayday Relay" call alerting any ships sailing in the area so that they could quickly make their way to the scene had not been sent until 2.25 a.m., 12 minutes after the coordination centre had been belatedly informed of the sinking by the coastguards. There had been a further significant delay in the mobilisation and arrival of the available rescue resources: the helicopter requested by the national coordination and research centre at 2.29 a.m. had not arrived on the scene until 3.52 a.m.; the provision of a naval vessel had not been requested by the national coordination and research centre until 2.45 a.m. and the first coastguard vessel, the PLS 616, had not arrived on the scene until 3.32 a.m.

The Court noted that the Government had not provided any explanation as to the specific omissions and delays in the present case and that serious questions arose as to the manner in which the operation had been conducted and organised. Accordingly, it 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. There had therefore been a violation of that Article in respect of all the applicants.

Article 3: concerning degrading treatment (in respect of 12 of the applicants)

The Court noted that on arriving in Farmakonisi, the applicants concerned had not been free to move about. They had been under the control of the authorities and had thus been expected to follow instructions from the security forces. It further observed that the survivors of the sunken boat had been taken to an open-air basketball court and ordered to undress. They had then been subjected to a body search in front of the other survivors and a group of soldiers. They had been asked to bend forward and turn around.

The Government did not explain why the strip-search had been necessary to ensure safety. Nor did they argue that there had been any other public-policy considerations requiring the search to be carried out. Moreover, they did not indicate that there had been any suspicion that the applicants had been armed or posed a threat to the security forces' safety. On the contrary, on arriving in Farmakonisi the applicants had been exhausted, shocked by the events and worried about the fate of their relatives.

As to the conditions in which the search had taken place, the Court observed that the applicants concerned had been forced to undress at the same time and in the same place, in front of at least 13 other people. It was mindful of the fact that the applicants had been in an extremely vulnerable situation: they had just escaped from a sinking boat and some of them had lost their relatives. They had undoubtedly been in a situation of extreme stress and had already been experiencing feelings of intense pain and grief.

Against that background, the body searches carried out on the 12 applicants concerned 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.

The Court found that the search could have caused these applicants to experience feelings of arbitrariness, inferiority and anxiety resulting in a degree of humiliation exceeding the – unavoidable and hence tolerable – level that strip-searches inevitably involved. It concluded that the search that these applicants had undergone in such circumstances had amounted to degrading treatment within the meaning of Article 3 of the Convention. There had therefore been a violation of that Article in respect of the 12 applicants concerned.

Just satisfaction (Article 41)

The Court held that Greece was to pay a total of 330,000 euros (EUR) in respect of the non-pecuniary damage sustained by the applicants, broken down as follows: EUR 100,000 to one of the applicants, EUR 80,000 to three of the applicants jointly, EUR 40,000 to another of the applicants, and EUR 10,000 to each of the remaining 11 applicants.

The judgment is available only in French.

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