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Communication

In accordance with Rule 9.2 of the Rules of the Committee of Ministers

Concerning the judgment *Safi and Others v Greece* (5418/15)

19 June 2023

Hellenic League for Human Rights

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With reference to our submission of 20 February 2023, and the latest submission by the Greek Government of 2 June 2023, which raises serious concerns about the reliability of the provided information, the HLHR respectfully submits the following comments:

1. In para 6 of the Government's submission it is stated, with reference to the Naval Court Prosecutor, that "...it should be taken under consideration that almost 10 years have elapsed from the time of the facts of the case and, therefore, statute limitation issues arise that block the possibility of criminal prosecution". This is blatantly false, as the offences that should be investigated by the judicial authorities are felonies, therefore, the statute of limitation is 15 years, according to art. 111 para 2 of the Greek Criminal Code, that can be extended to 20, according to art. 113 of the same Code, if the perpetrator is indicted within 15 years. Subsequently, there are no procedural issues that block the criminal prosecution. Furthermore, as almost 10 years have indeed elapsed, the judicial authorities should take every measure in order to accelerate, rather than stall, the criminal prosecution.

2. Regarding the interpretation of art. 43 para 6 of the Code of Criminal Procedure, as commented by the Naval Court Prosecutor (as indicated in para 6 of the Government's submission), we need to underline that:

a) The Court has not identified *only* shortcomings of the criminal investigation, as the Prosecutor has falsely stated. The Court has linked directly the actions and omissions of the Coast Guard crew to the death of the victims, hence the finding of violation of the right to life, on account of the failure to comply with the positive obligation under Article 2. 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 Art. 2 of the Convention (substantive positive obligations, omissions and delay of the national authorities in conducting and organising the rescue operation of refugees). From that point of view, the decision of the Court constitutes a "new element", as the law requires, in order to -at least- re-examine the case, i.e. to order a preliminary examination that could lead to the prosecution of the perpetrators.

b) The Court has identified serious flaws in the records of the statements of the applicants (procedural aspect of Art. 2) that were the result of severe interpretation problems; the interpreters were not able to understand and speak any of the languages known by the applicants. This fact alone should be considered as a "new element" that the competent judicial authorities should take into account and order the re-opening of the

case. It should be recalled that the Naval Court Prosecutor who decided to discontinue the case, considered these statements as valid and reliable and took them into account for closing the investigation. According to the prosecutor, these falsified testimonies were *not raising any question regarding the responsibility of the Coast Guard and converged with the testimonies of the crew of the ship of vessel of the Coast Guard*. (see also: *Safi judgment*, para. 123).

c) Therefore, the procedural violation of Art. 2 does undermine the factual basis of the Prosecutor's decision to discontinue the case, as it concerns the evaluation of the testimonies of the key witnesses who are the survivors of the shipwreck.

3. Consequently, the refusal of the Prosecutor of the Naval Court to order even a preliminary procedure, as the law provides, constitutes a breach of art. 43 para. 6 of the Code of Criminal Procedure. The reluctance of the Greek judicial authorities to re-examine the case, as they should, violates their obligation under the Convention to conduct a thorough and effective investigation into the facts that caused the sinking of the ship and the death of the children and wives of the applicants of the case, victims of violation of Art. 2.

4. The present submission should be read in the context of the shipwreck large of Pylos (South-West Peloponnese) and the death of approximately 500 people within the zone of rescue responsibility of the Greek Coast Guard, on 14 June 2023. The questions related to failed rescue operations causing human losses illustrate the structural problems underpinning the Safi and Others case, on which we have commented extensively in our previous submissions.