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Addendum to our Communication dated 20th February 2023

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

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

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Hellenic League for Human Rights

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1. The present submission is an addendum to our report dated 20th February 2023 and contains a response to some of the key points in the Greek Government's reply dated March 3rd¹. The Government has replied to the HLHR's submission as well as to the submissions made by three other NGOs (the joint submission of February 20th by Human Rights Legal Project and I Have Rights² and the separate submission of February 24th by the Border Violence Monitoring Network³).
2. The State provides a nearly identical response to all the NGO submissions. It argues that *Safi a.o. v. Greece* (no. 5418/15) does not concern the “*management of migration flows*” or “*procedures for removal*”. It also argues that the judgment does not deal with a “complex issue”, because, as the State tries to argue, the violations that occurred in *Safi* were an “*isolated incident*”.
3. The HLHR would like to emphasize, first, that the violation in *Safi a.o.* is not of an isolated character. The application leading to the *Safi* judgment is one of numerous complaints about similar practices taking place within the span of nearly the past decade, beginning as far back as at least 2016, and gaining traction in the public discourse at the litigation level since 2020. Numerous NGOs and civil society actors, as well as state agencies and international bodies, such as the Greek Ombudsman and the National Commission for Human Rights, as well as the CPT, have published relevant reports presenting conclusive evidence towards a systematic practice taking place both at sea and at land. To this end we refer the CoMM to the numerous sources included in our original submission. It is noted that the State makes no effort to respond to these findings, despite several of these reports having originated from actors who enjoy widespread international recognition as well as actors operating within the state apparatus.
4. Secondly, it is recalled that, as presented in HLHR's initial submission, the judgment of *Safi a.o.* has opened the way for several other cases encouraging many victims to bring very similar complaints to the ECtHR as well as to UN monitoring bodies,

¹ [https://hudoc.exec.coe.int/ENG#{%22EXEIdentifier%22:\[%22DH-DD\(2023\)277revE%22\]}](https://hudoc.exec.coe.int/ENG#{%22EXEIdentifier%22:[%22DH-DD(2023)277revE%22])

² [https://hudoc.exec.coe.int/ENG#{%22EXEIdentifier%22:\[%22DH-DD\(2023\)277revE%22\]}](https://hudoc.exec.coe.int/ENG#{%22EXEIdentifier%22:[%22DH-DD(2023)277revE%22])

³ [https://hudoc.exec.coe.int/ENG#{%22EXEIdentifier%22:\[%22DH-DD\(2023\)300E%22\]}](https://hudoc.exec.coe.int/ENG#{%22EXEIdentifier%22:[%22DH-DD(2023)300E%22])

leading to dozens of pending applications of a repetitive nature⁴. This is also indicative of the existence of a complex issue of a systemic character. As a result, enhanced supervision would be crucial towards remedying the systemic pathologies which provide fertile ground for similar human rights violations.

5. Thirdly, HLHR points that the complex nature of the problem is also related to the number of state actors who participated in the *Safi* case; acts and omissions which led to human rights violations necessitating stricter scrutiny were committed by **a)** the Hellenic Coast Guard; **b)** the Hellenic Police; **c)** the Greek Military; **d)** the Prosecutorial Authorities and **e)** the criminal courts. The violations in *Safi* were the result of the interaction of several state actors with absolute power and control over vulnerable individuals who came under Greek jurisdiction. The actors in question enjoyed a status of impunity and are subject to lax scrutiny, to such an extent that the ECtHR itself found (para. ...) that the omissions committed prevented it from fulfilling its functions and from establishing the exact nature of the operation that resulted in the sinking of the applicants' fishing vessel. This is the reason why the Court had no other option but reluctantly to accept to operate on a fiction, the fiction in question being that the violation resulted from a rescue operation. This is a well-known problem in the case law under Articles 2 and 3 ECHR. The procedural violation prevents the ECtHR from conducting a proper review of the complaint about the substantive violation of the same provisions. This problem, which appears in a particularly acute manner in *Safi*, should not prevent the CoMM from engaging in a fruitful dialogue with the Greek authorities about the structural issues that led to the finding of the substantive and procedural violation.
6. The HLHR also points that the State has not cited any sources for the numbers it has provided in its response. Nor has it annexed relevant documents. As such the accuracy of these numbers can be put in question. Even if it is assumed that these figures are correct, there is no correlation between them and the total number of arrivals in Greece (migration flows) or the total number of individuals who were finally able to submit an asylum claim in a Reception and Identification Center in Greece. It is also reminded that in para. 127 of the judgment the Court observed that one of the "obvious avenues of investigation" ignored by the competent prosecutor

⁴ See relevant notes in initial submission under no. 14 s well as the Legal Action Database managed by BVMN (<https://borderviolence.eu/databases/legal-actions/>) in collaboration with the Heinrich Böll Stiftung based in Thessaloniki

had been the link between the applicants' complaint and the assertion of the Minister of Maritime Affairs of the time that the Greek authorities had "*sent (the migrants) back to the Turkish side" and that the coast guard had prevented (from arriving in Greece) a "multiple" number of migrants (in relation to the 7,000 persons arrested)*". This statement echoes current similar statements made by the competent ministers about preventing "*more than 260.000 illegal migrants from entering the borders in 2022*".⁵ If the Greek authorities have received orders to conduct in parallel prevention and rescue operations, the existence of such parallel orders has so far not been proven, whereas mounting overwhelming evidence points in the opposite direction. i.e. that the Greek authorities follow a policy of prevention.

7. Finally, in the light of the above it is stressed that the classification of a judgment under enhanced supervision would be most beneficial for all actors involved; the data that has been presented and the analysis of the case as set out above, combined with the absence of a State action plan 6 months after the judgment has become final and nine months after it was issued, only confirm the complexity of the issue; it is clear that a multi-tiered coordinated response is needed; it is also clear that an appropriate monitoring mechanism with adequate safeguards should be put in place in order to prevent similar violations; Greece should take action to deal with the negative image that it projects as a result of consistent and well corroborated disquieting reports; the allegations in these reports are widespread and (as proven by the State's lack of engagement with them) uncontested.
8. The fact that, as stated in HLHR's initial submission, the criminal proceedings of the case have not been reopened at the domestic level constitutes further evidence of Greece's failure to tackle the underlying structural problems. Article 43 para 6 of the Code of Penal Procedure has not been followed and, therefore, the *Safi* judgment has not been complied with.
9. In this light of all the above, it is clear that *Safi* should be placed under enhanced supervision. This will result in close cooperation between the CoMM and the Greek Government, including civil society, as the document on outstanding issues concerning the practical modalities of the twin track approach points out. This should

⁵ <https://www.makthes.gr/theodorikakos-apotrepsame-260-000-paranomoyis-metanastes-to-2022-na-mpoyn-sti-chora-628757>

help Greece deal effectively with the serious problems underlying the violations in *Safi*.