



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF SAFI AND OTHERS v. GREECE

(Application no. 5418/15)

JUDGMENT

Art 2 (procedural) • Boat sinking fatal to some refugees on board not effectively investigated by national authorities • No examination of content of refugees' statements before inclusion in case file despite very serious shortcomings • Insufficient involvement of applicants in proceedings • Failure to pursue other obvious lines of inquiry

Art 2 (substantive) • Positive obligations • Life • Specific oversights and delays by national authorities in conducting and organising rescue of refugees • Coastguards' obligation of means not of result to rescue anyone in danger at sea • Difficult and speedy decisions needing to be made by the captain and crew of State vessels, generally at captain's discretion, when rescuing people at sea, prompted by overriding endeavour to secure right to life of persons in danger

Art 3 (substantive) • Degrading treatment • Refugees brought from capsized boat to Greek island body-searched after being ordered by law enforcement personnel to undress together as a group in front of at least thirteen people

STRASBOURG

7 July 2022

FINAL

07/10/2022

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Safi and Others v. Greece,

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Marko Bošnjak, *President*,

Péter Paczolay,

Krzysztof Wojtyczek,

Alena Poláčková,

Erik Wennerström,

Raffaele Sabato,

Ioannis Ktistakis, *judges*,

and Renata Degener, *Section Registrar*,

Having deliberated in private on 5 November 2019 and 14 June 2022,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 5418/15) against the Hellenic Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by thirteen Afghan nationals, two Syrian nationals and one Palestinian national (“the applicants”), whose details are set out in the appendix, on 21 January 2015.

2. The applicants were represented by Ms M. Papamina, Mr K. Tsitselikis, Ms I.-M. Tzeferakou, Ms K. Papapantoleon, Ms I. Kourtovik, Mr V. Papadopoulos, Ms E. Spathana, Ms V. Tsipoura and Mr P. Christopoulos, lawyers practising in Athens and Thessaloniki. By a letter dated 3 April 2016, Mr V. Papadopoulos informed the Court that he no longer represented the applicants. The Greek Government (“the Government”) were represented by their Agent’s delegates, Ms S. Charitaki, Legal Counsellor at the State Legal Council, and Ms A. Magrippi, Legal Representative at the State Legal Council.

3. The applicants complained, in particular, of a violation of Articles 2, 3 and 13 of the Convention.

4. The Government were given notice of the application on 22 February 2016.

INTRODUCTION

5. The application concerns the sinking of a boat in the morning of 20 January 2014 in the Aegean Sea, off the island of Farmakonisi, causing the death of eleven people.

THE FACTS

CIRCUMSTANCES OF THE CASE

6. In view of the number of applicants, the Court will for practical reasons refer to them by the number they have been attributed in the appendix to the present judgment, while taking into account each individual's specific circumstances.

7. The facts of the case, as submitted by the parties, may be summarised as follows.

A. Background to the case

8. On 20 January 2014 a fishing boat carrying twenty-seven foreign nationals sank in the Aegean Sea, off the island of Farmakonisi. The incident caused the death of some of the applicants' family members, namely the wife and four children (Nazparwar Esakhil, Noman Safi, Mohammad Safi, Hanifa Safi and Malalai Safi) of the applicant designated by number 1 in the appendix, the wife and three children (Maleka Azimi, Narges Ahmadi, Mohebal Irahman Ahmadi and Muslim Ahmadi) of the applicant designated by number 2 in the appendix – applicant number 2's wife and three children also being the mother, sister and two brothers of the applicants designated by numbers 4 and 5 – and the wife and child (Elaha Azizi and Behzad Azizi) of the applicant designated by number 7 in the appendix.

B. The events of 20 January 2014

1. The applicants' version

9. The applicants described the events of 20 January 2014 as follows. The boat had sunk because a coastguard vessel had attempted to tow it back towards the Turkish coast at very high speed. The coastguards had made significant omissions during the rescue operation, which had contributed to the death of the first three applicants' family members.

10. In the evening of 19 January 2014 the applicants and their family members boarded a Turkish fishing boat, the *Conzuru*, on the Turkish coast with the aim of sailing to the Greek coast. The fishing boat entered Greek territorial waters early in the morning of 20 January 2014 after travelling for one hour and thirty minutes and was sailing very close to the shore. The women and children, including the applicant designated by number 10 in the appendix and her son, who was a minor at the relevant time (the applicant designated by number 15 in the appendix), together with the applicant designated by number 2 in the appendix, were in the boat's cabin. The other applicants were on the deck.

11. The boat's engine then stopped working and the vessel began to drift. According to the meteorological service and the institute of oceanography, winds were blowing from the south-east at force four to five on the Beaufort scale. Waves were also coming from the south-east, reaching heights of 0.7 metres on average and up to 1.2 metres.

12. The coastguard patrol vessel (*λιμενικό καταδιωκτικό σκάφος*) PLS 136 ("the PLS 136"), which had a crew of four, arrived at the scene and approached the fishing boat as part of the joint European operation Poseidon 2014, run by the European Border and Coast Guard Agency (Frontex). The coastguards asked the people on board the fishing boat to return to Turkey and fired a shot into the air. The PLS 136 performed identification manoeuvres (*αναγνωριστικές κινήσεις*) around the fishing boat before pulling alongside it (*το πλευρίσε*). Two coastguards boarded the boat and, weapons in hand, ordered the individuals on the boat to sit on the deck. At that moment, and for the remainder of the operation, those individuals asked for help by shouting to the coastguards that there were women and children on board, showing them two children (the applicant designated by number 15 in the appendix and one of the children of the applicant designated by number 1 in the appendix, who ultimately died) who were in the boat's cabin, in order to make the crew of the coastguard vessel understand that there were genuinely women and children on board. One of the coastguards tied a 10-metre rope to a fitting on the fishing boat's bow (*πρωραία δέστρα*). The PLS 136 then made two attempts to tow the fishing boat towards the Turkish coast, away from the shore of the island of Farmakonisi. During both attempts the PLS 136 was travelling at high speed, causing the bow of the fishing boat to rise up and water to flow in over the sides of the deck and at the level of the stern (*η εισροή στο πρυμναίο μέρος του καταστρώματος αυτού υδάτων από τις πλευρές*). There had been no water in the boat before the towing began.

13. During the first towing attempt, which lasted at least fifteen minutes, the fitting on the fishing boat's bow being used to secure the rope was torn off, owing to (a) the short length of the tow rope; (b) the abrupt start and sudden changes in speed while towing; (c) poor control over the engine speed and the water spray from the PLS 136 as it attempted to maintain a lower towing speed; and (d) the fact that the tow rope was not horizontal, which caused it to pull awkwardly (*σύνθετη καταπόνηση της δέστρας*). After the fishing boat's bow fitting had been torn off, the PLS 136 once again drew near to the boat in question. The two coastguards reboarded the PLS 136. Remaining there, they threw the same 10-metre rope to the applicant designated by number 14 in the appendix and ordered him to attach it to the fishing boat, specifically to the bow bulwark (*πρωραία ρέλια*). The applicant designated by number 14 in the appendix did as ordered.

14. The applicants asked for help, once again showing the coastguards the applicant designated by number 8 in the appendix, who at the relevant time was only fifteen months old. The second towing attempt began, at high speed

and involving dangerous manoeuvres. It did not last as long as the first attempt. The fishing boat tilted backwards because of how it was being towed, the short length of the rope and the fact that the bow fitting had been torn off. The boat continued to take on water, which the applicants attempted to bail out using a small container. The applicants then shouted for help so that the PLS 136 would stop and once again showed the coastguards the applicant designated by number 8 in the appendix, begging them to take him on board their vessel. The PLS 136 stopped and drew near to the fishing boat, which was still attached to the coastguard vessel by the tow rope and was tilting backwards. The applicants asked for help several times. Some exited the cabin, namely the applicant designated by number 10 in the appendix with her son (the applicant designated by number 15), the applicant designated by number 2 in the appendix, his wife, M.A., and their child, A.I.M. One of the coastguards then cut the tow rope. The fishing boat immediately capsized. The individuals who had been outside the cabin went overboard and were at risk of drowning while the others – that is, the women and children – were trapped inside the cabin.

15. The fishing boat had taken on water because of how it had been towed and in particular because of the short length of the rope, the lifting of the bow, the coastguard vessel's wake and the fact that the bow fitting had been torn off. The water flooding into the boat had triggered a free-surface effect (*ελεύθερη επιφάνεια*) both on the deck and in the hull and cabin. Combined with the wave conditions and the boat's high centre of gravity (owing to the fact that all its occupants were on the deck and to the upward pull of the tow rope), these circumstances had inevitably led the boat to capsize.

16. Referring to their statements to the public prosecutor at the Piraeus Naval Court ("the Naval Court") and to the investigating judge at the Kos Criminal Court of First Instance, the applicants indicated the following. The crew of the PLS 136 did not throw them lifejackets or other life-saving equipment and took no action to rescue the fishing boat's occupants. In some cases, they actually prevented people who had fallen overboard from climbing on board the PLS 136. Despite the difficulties, the applicants managed to board the coastguard vessel while the fishing boat's other occupants (the family members of the applicants designated by numbers 1, 2, 4, 5 and 7 in the appendix) drowned. In particular, the wife and child of the applicant designated by number 2 in the appendix (respectively the mother and brother of the applicants designated by numbers 4 and 5 in the appendix) drowned before their eyes. The applicant designated by number 14 in the appendix, who was on board the coastguard vessel at the relevant time, dived into the water to try to rescue those drowning, but was unsuccessful.

17. On 20 January 2014 at 2.13 a.m. the crew of the PLS 136 telephoned the national search and rescue coordination centre (*Εθνικό Κέντρο Συντονισμού Έρευνας και Διάσωσης* – "the national coordination centre") to inform them of the following situation: "at location ... spotted a half-

submerged A/K [the fishing boat] with around thirty passengers, fifteen people have been rescued and [we are] recovering the remaining [individuals], some of whom [are] trapped inside the boat”.

18. According to the extract of the event log, the national coordination centre was only informed of the operation after the boat had sunk and the survivors had been recovered. There were no electronic recordings to provide objective information on the operation. The location indicated by the crew of the PLS 136 to the national coordination centre as where the boat had sunk was not corroborated by any electronic recordings or radar data.

19. At 2.16 a.m. the PLS 136 communicated the following information to the national coordination centre: “... serious problem in the engine room (*μηχανοστάσιο*), possible fire, cannot enter the engine room and [there are] fifteen to sixteen rescued individuals on the deck. The A/K is submerged and there may be people trapped inside, but all the [individuals] found at the surface have been recovered. The PLS 136 cannot stay for safety reasons and is heading to Farmakonisi”.

20. At 2.21 a.m. nearby ships received the word to head immediately to the area where the boat had sunk. At 2.25 a.m. an international distress signal was sent out. A series of actions were then ordered to rescue the victims of the boat sinking. At 2.30 a.m. the PLS 136 berthed at the port of Farmakonisi with the survivors on board.

21. At 3.32 a.m., one hour after the sinking, the first ship arrived at the scene. At 3.50 a.m. the Greek authorities informed the Turkish national search and rescue coordination centre of the incident. At 8.12 a.m., six hours after the sinking, the Leros Port Authority sent the public prosecutor at the Kos Criminal Court of First Instance a report entitled “Rescue of sixteen illegal migrants and search operation to locate twelve missing people in the maritime region of the island of Farmakonisi”. The report mentioned that the fishing boat had been spotted by the PLS 136 at 1.25 a.m.

22. At 4.10 p.m. the PLS 136 issued the following statement: “Twelve people (nine children and three women) missing, none wearing lifejackets, the two lifebuoys have been deployed” (Appendix 25).

23. At 4.40 p.m. the applicants were transferred to the island of Leros. At 4.48 p.m. and 4.55 p.m. the Turkish national search and rescue coordination centre informed the Greek national coordination centre that a Turkish coastguard vessel had spotted and recovered the bodies of a boy and a woman. At 9.45 p.m. the Leros Maritime Authority sent the public prosecutor at the Kos Criminal Court of First Instance a “corrected version” of the report of 8.12 a.m. with some amendments. In particular, according to the 9.45 p.m. report, the fishing boat had been spotted not at 1.25 a.m. but at 2 a.m., it had been carrying an unknown number of individuals, the towing had begun at 2.10 a.m. and around 2.15 a.m. the boat’s occupants had moved around, two of them – a woman and a child – had fallen overboard and the boat had then

sunk. That report provided the same coordinates for where the fishing boat had been located and where it had sunk.

24. Lastly, the applicants indicated that the shipping minister at the relevant time had given an interview to a journalist in October 2013, stating: “The first thing we do is to tell the Turkish authorities to come and find them and get them ... if they have not crossed the border or, in any event, to put them back on the Turkish side”. According to the applicants, he had also said that the coastguard had already arrested around 7,000 individuals and that “... we [had] prevented [a large number of migrants from reaching Greece]”.

2. The Government’s version

25. The Government referred to the facts as described in judgment no. 19/2015 of the three-member Dodecanese Criminal Court of Appeal (see paragraph 58 below), order no. 18/2015 of the Chamber of the Naval Court (see paragraph 79 below), decision no. 263/2014 of the Naval Court prosecutor (see paragraph 69 below) and order no. 2153/2014 of the Piraeus Military Court prosecutor (see paragraph 83 below).

26. The Government described the events in issue as follows.

27. On 20 January 2014 between 1.40 a.m. and 1.45 a.m. N.B., a PLS 136 crew member, telephoned K.G., a class II captain who was responsible for “coordinating and managing illegal immigration incidents in the Aegean Sea” and worked in the coastguard’s maritime-border protection division, to inform him that the PLS 136 had sped off to identify and inspect a “suspicious target” detected by the Farmakonisi military base. On reaching the boat in question, 1.5 nautical miles from the Farmakonisi coast, the crew of the PLS 136 observed that it was a 9-metre-long engine-powered wooden fishing boat named *Conzuru*, equipped with a metal structure and a cabin and carrying twenty-seven migrants on board, including three women and nine children.

28. The number of individuals on board exceeded the maximum permitted capacity and the weather conditions were unfavourable (wind of force five on the Beaufort scale and heavy swell). The fishing boat was in a state of disrepair and unseaworthy as there was no life-saving equipment, no safety equipment and no navigation lights apart from the side lights. In view of this information, K.G. ordered N.B. to take the fishing boat and its occupants to safety at the port of Farmakonisi.

29. The PLS 136 then began to tow the fishing boat. Crew members O.M. and I.T. boarded the boat and attached a rope to a stable point on the bow. Using this rope, they began towing the boat at a low speed (around 4 nautical miles per hour) towards the north-east of the island of Farmakonisi in order to protect the vessels from the danger of the heavy swell. The fishing boat’s occupants began to panic because of the small capacity of their vessel and the strong waves, causing the boat to capsize. Its occupants then found themselves in the sea.

30. At 2.13 a.m. the crew of the PLS 136 reported the location of the half-submerged boat to the national coordination centre and informed it that there were around thirty individuals on board, fifteen of whom it said had already been rescued, and that the crew were in the process of recovering the remaining individuals, some of whom were thought to be trapped inside the cabin.

31. At 2.16 a.m. the captain of the PLS 136 again contacted the national coordination centre and reported that the fishing boat had sunk, probably with people trapped inside the cabin, that the PLS 136 had a serious problem in the engine room on account of smoke probably caused by a fire and that the crew could not enter the engine room because of the rescued individuals on the deck. The captain of the PLS 136 considered that, for safety reasons, they should head towards Farmakonisi as all the individuals found at the water's surface had, he believed, been recovered. The PLS 136 recovered sixteen individuals. Those individuals said that twelve people were missing.

32. At 2.25 a.m. the national coordination centre sent a "Mayday Relay" distress call via coast radio station Olympia Radio so that ships sailing in the area were aware of the situation and could quickly make their way to the scene to assist the victims. It also informed the Turkish national search and rescue coordination centre so that search operations could be conducted simultaneously in Turkish waters. Search operations to locate the boat, any survivors or bodies continued under the coordination of the Greek national coordination centre until all reasonable hope of finding and rescuing survivors had passed. The national coordination centre then mobilised all rescue services available in the region, sending sea and air resources to the scene, namely a rescue boat (N/G 512) and a coastguard vessel (PLS 616), both belonging to the Leros Maritime Authority; a navy vessel; a coastguard vessel (PLS 613) belonging to the Kalymnos Maritime Authority; two Super Puma helicopters from Chios and Rhodes; and a coastguard helicopter. In particular, at 2.29 a.m. the national coordination centre requested the assistance of an air-force helicopter, which arrived at the scene at 3.52 a.m. At 2.45 a.m. it requested the use of a navy vessel. At 2.46 a.m. it dispatched the Kos Maritime Authority's PLS 616 to the scene. The PLS 616 was the first to arrive at the scene, at 3.32 a.m.

33. The PLS 136 did not have an automatic identification system (AIS), which meant that the national coordination centre was unable to track its exact position on a map in real time. However, it is clear from the positions reported by the PLS 136's captain to the national coordination centre at 2.13 a.m. and at 2.16 a.m., and the fact that the incident evolved into a search and rescue operation, that the PLS 136 was heading east, that is, towards Farmakonisi.

C. The events of 20 January 2014 after the applicants' arrival on Farmakonisi

1. The applicants' version

34. The applicants presented the events of 20 January 2014, after their arrival on Farmakonisi, as follows. The applicants designated by numbers 1, 3, 4, 6, 7, 9 and 11 in the appendix were kicked and shoved by two coastguards. The survivors of the boat sinking (with the exception of the applicants designated by numbers 10, 14 and 15 in the appendix) were immediately taken to an open-air basketball court and strip-searched in front of the other survivors and a group of soldiers. They were asked to bend over and turn around while they were allegedly still naked. The applicants designated by numbers 10 and 14 in the appendix were body-searched by the coastguards in an enclosed area, without the respect they felt such a situation deserved. During their stay on Farmakonisi, the applicants had no contact with the outside world.

2. The Government's version

35. The Government described the events of 20 January 2014, after the applicants' arrival on Farmakonisi, as follows. At 2.30 a.m. the applicants disembarked from the PLS 136 on Farmakonisi and were received by eight members of the Farmakonisi military-base personnel, who led them to that facility. There, the applicants, with the exception of those designated by numbers 10 and 15 in the appendix, were subjected to a body search and their personal belongings were registered (with the exception of the money they had with them). Each applicant underwent a preventive medical examination (a check for fever and any injuries along with a stethoscope examination) inside a shipping container. The applicants designated by numbers 10, 14 and 15 in the appendix were examined in the base's medical office. During the examinations, K.A., a military doctor, did not observe any sign of ill-treatment. A coastguard special forces unit was also stationed on Farmakonisi. According to Sergeant E.C., K.P. from that team was the person who slapped the applicant designated by number 11 in the appendix when the applicants did not respond when asked who the fishing boat's captain was. The number of slaps and the duration of the incident in issue, however, are unknown. None of the applicants raised the issue of the coastguards' responsibility in their boat's sinking.

3. Facts not in dispute

36. At 3.30 p.m. the applicants were transferred to Leros.

37. On 20, 21 and 22 January 2014 they provided witness statements as part of an investigation (*προανάκριση*) launched by the Leros coastguard of its own motion into the causes of the accident. According to the Government,

the applicant designated by number 14 was assigned an English-speaking interpreter because the other applicants had indicated that he understood English. For the other applicants, in the Government's submissions, H.S. and R.R. – who had told the authorities that they were Afghan nationals – acted as interpreters because there were no others available on the island. The Government stated that the applicants had not told the coastguards that interpreters were needed and that the coastguards had not been in a position to realise that themselves. The applicants thus provided witness statements. The Government pointed out that the applicants had made no accusations in their statements against the coastguard or any other State body. They further asserted that the applicants had identified the applicant designated by number 11 in the appendix as the captain of the fishing boat.

38. On 21 January 2014 the applicants met with representatives of the United Nations High Commissioner for Refugees (UNHCR). The applicants stated that they had given them their version of the events. In a press release published on that same day, the UNHCR stated: "According to accounts from the survivors, the coastguard vessel towing their boat was heading towards the Turkish coast at high speed when the tragic accident took place in rough seas (*εν μέσω θαλασσοταραχής*). The same witnesses say the people were shouting for help, as there was a large number of children on board".

39. On 22 January 2014 the decision ordering the applicants' expulsion was suspended and the applicants were released. The Afghan applicants received documents informing them that they had to leave the country within thirty days. The applicants designated by numbers 9 and 16 in the appendix received documents informing them that they had to leave the country within six months. According to the applicants, their identity information in those documents was incorrect because of the lack of appropriate interpreting. The validity of those documents was subsequently extended in Athens.

40. On 23 January 2014 the applicants arrived in Piraeus and held a press conference to give their version of events.

41. On 25 January 2014 a heavy object was discovered at sea using a trawl net, but it sank before it could be recovered. According to the applicants, the location of the object was different from that given for their sunken boat.

42. On 27 January 2014 the UNHCR sent the Ministry of Shipping a document containing the statements it had gathered.

43. On 29 January 2014 the director of the national coordination centre informed the relevant committee of the Greek Parliament of the event in issue. He stated that at 1.45 a.m. on 20 January 2014 the PLS 136 had received information from the Farmakonisi military base that a stationary boat had been detected on the radar. The PLS 136 had approached the boat and begun to tow it towards the island of Farmakonisi at a low speed, making two attempts. The passengers had moved to one side of the boat, which had caused it to capsize. The coastguards had subsequently had to cut the rope.

44. On 27 January 2014 the Greek Council for Refugees sent a fax to recipients including the Ministry of Shipping and the Aegean, the Maritime Authority headquarters, the national cooperation centre and the Leros Maritime Authority, requesting a search for the bodies of the missing individuals. It also asked for information on the measures taken thus far in that connection.

45. On 29 January 2014 the investigating judge at the Kos Criminal Court of First Instance ordered the retrieval and expert examination of the fishing boat and the retrieval of the bodies as part of the proceedings against the applicant designated by number 11 in the appendix (see paragraph 55 et seq. below).

46. On 5 February 2014 the body of a minor was found in the Samos maritime region. On 18 March 2014 it was identified as that of the daughter of the applicant designated by number 1 in the appendix. A death certificate was issued that same day.

47. On 6 February 2014 the fishing boat was found in a location that, according to the applicants, was different from that given for the sinking. The applicants submitted that the two locations were 1,111 metres apart and that it was impossible for the fishing boat to have moved that far in sixteen days. They inferred from this that the location indicated as where the boat had sunk had been inaccurate and that the related report was not credible.

48. On 7, 17 and 19 February 2014 five bodies, three bodies and one body, respectively, were recovered from the sea by the coastguard underwater missions unit (*Μονάδα Υποβρυχίων Αποστολών Λιμενικού Σώματος*). In the meantime, work to recover the fishing boat was suspended because of the weather conditions.

49. On 18 February 2014 the fishing boat and remaining bodies were recovered from the sea. An expert examination was ordered. According to the applicants, it was noted that in ten days – that is, from 7 February 2014 when a buoy had been attached to the wreck to 17 February 2014 – the buoy and therefore the wreck had moved by between 50 and 80 metres.

50. On 11 March 2014 a forensic report and DNA testing identified the bodies of the children of the applicant designated by number 2 in the appendix – who was also the brother and sister of the applicants designated by numbers 4 and 5 in the appendix –, the bodies of the children of the applicant designated by number 1 in the appendix, the body of the wife of the applicant designated by number 1 in the appendix and the bodies of the wife and the son of the applicant designated by number 7 in the appendix.

51. On 28 March 2014 the death certificates were issued.

D. The criminal proceedings*1. The proceedings relating to the events of 20 January 2014*

52. On 20 and 22 January 2014 the four PLS 136 crew members provided witness statements as part of an investigation into the events in issue. They indicated that two towing attempts had been made and that the fishing boat had capsized because of the sudden movements of those on board.

53. On 20, 21 and 22 January 2014 the applicants designated by numbers 1, 4, 5, 7, 8, 10, 12, 14 and 15 in the appendix provided witness statements to the maritime authorities as part of a spontaneous investigation into illegal entry and illegal transfer of people into Greece. According to those applicants, no certified interpreters working in a language they understood had taken part in the proceedings. The applicants indicated that two people who did not speak Greek and did not know how to read or write had acted as uncertified interpreters. They further stated that one of those two people spoke Urdu and the other Pashto, and that the latter individual had acted as an interpreter for the Farsi-speaking applicants. In their statements of 22 January 2014 the applicants designated by numbers 1, 5, 8, 10 and 12 in the appendix had affirmed that the boat had sunk because of the sudden movements of those on board and had thanked the coastguards for having rescued them. The applicants concerned denied having made the above-mentioned statements and challenged the accuracy of their content.

54. On an unspecified date the applicant designated by number 5 identified the bodies recovered by the Turkish authorities as the remains of the wife of the applicant designated by number 2, who had also been the mother of the applicants designated by numbers 4 and 5, and the remains of the son of the applicant designated by number 2, who had also been the brother of the applicants designated by numbers 4 and 5.

2. The proceedings against the applicant designated by number 11 in the appendix

55. On 20 January 2014 the applicant designated by number 11, who was a minor at the relevant time, was arrested. He was suspected, in particular, of trafficking and endangerment in his capacity as captain of the fishing boat.

56. On 22 January 2014 the public prosecutor at the Kos Criminal Court of First Instance brought criminal charges against the applicant designated by number 11 in the appendix for “illegal trafficking of third-country nationals causing [their] death” and for illegal entry into Greece – conduct covered by Articles 83 § 1 (a) and 88 § 1 (b), (c) and (d) of Law no. 3386/2005. The applicant was remanded in custody.

57. On 24 January 2014 that applicant argued his case and denied the accusations against him.

58. On 5 February 2015 the three-member Dodecanese Criminal Court of Appeal sentenced the applicant designated by number 11 in the appendix to 145 years' imprisonment (twenty-five years of which had been enforceable) and a fine of 570,500 euros (EUR), without suspension, for illegal trafficking of third-country nationals for profit causing death and for illegal entry into Greece (judgment no. 19/2015). In particular, it found that the applicant in question had been the captain of the fishing boat and that his actions had resulted in the death of two people by negligence.

59. The applicant in question appealed on that same day. The case was still pending at the stage of the exchange of observations.

60. On 19 June 2017 the five-member Dodecanese Criminal Court of Appeal imposed on the applicant designated by number 11 in the appendix an overall sentence of twenty-nine years' imprisonment and a fine of EUR 14,000 for illegal trafficking of third-country nationals (judgment no. 69/2017). The applicant's prison sentence was converted into a fine of EUR 5 per day of detention. The Dodecanese Criminal Court of Appeal held that the offence of illegal entry into Greece had become time-barred.

61. That judgment described the events of 20 January 2014 as follows:

"... it has not been shown that the death of the refugees being transported was caused by the conditions in which the defendant had carried out the transporting, nor that there is a causal link between the defendant's act of transporting the above-mentioned third-country nationals in the aforementioned conditions and their deaths, in so far as their deaths were not caused by the transport or the conditions thereof but [occurred] later, while the boat was being inspected and towed ..., owing to the weather conditions and the sudden movement of the individuals on board the boat to a single place [on that vessel]. The exact cause of the drowning of twelve of the boat's occupants (which had nothing to do with the conduct of the coastguards, who had come to inspect and to assist) was that, when some of the boat's occupants fell overboard, all the others gathered together on that side (of the boat), which caused the boat to capsize and ultimately sink with the individuals on board. [The drowning of twelve individuals on board the boat was also due] to the fact that, at the relevant time, most of the boat's occupants were in the inside cabin, that they did not know how to swim and that they did not have lifejackets. For that reason, the aggravating circumstance ... (causing death) cannot apply in the case of the defendant. ... Furthermore, it has not been shown that the defendant performed this act for profit, as no sum of money capable of proving a financial transaction took place with the boat occupants has been found ..."

62. No appeal was lodged against judgment no. 69/2017. The case file does not disclose the subsequent developments in the case.

3. The proceedings against the coastguards

63. On 24 January 2014 the public prosecutor at the Kos Criminal Court of First Instance sent the Naval Court prosecutor copies of the case file so that the latter could investigate whether the coastguards involved in handling the incident in issue had been criminally liable in any way.

64. The Naval Court prosecutor ordered an investigation that same day.

65. On various dates the applicants, the PLS 136's crew, coastguards, military personnel stationed on the island of Farmakonisi, members of the coastguard special forces unit stationed on Farmakonisi, coastguards stationed at the Leros Maritime Authority and the interpreters who had taken part in the Leros investigation provided witness statements.

66. On 7 and 20 February 2014 the Naval Court prosecutor ordered a primary and supplementary expert examination of the PLS 136 and the fishing boat.

67. On 30 April 2014 the public prosecutor at the Kos Criminal Court of First Instance sent to the Naval Court prosecutor the case file on the applicant designated by number 11 in the appendix.

68. On various dates the applicants asked the Naval Court prosecutor, among other people, to order the retrieval of the fishing boat 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. The applicants claimed that only their requests to retrieve the fishing boat and appoint an expert had been granted.

69. On 27 June 2014, in decision no. 263/2014, the Naval Court prosecutor ordered the discontinuance of the proceedings concerning the offences of endangerment, boat sinking and physical injury as provided for in Articles 306, 277, 278 and 308 of the Criminal Code. In particular, the Naval Court prosecutor noted that the applicants' statements of 20, 21 and 22 January 2014 had been "coherent, concise and consistent" (*"ομόρροπες, σύντομες και αλληλοεπικαλυπτόμενες κατά περιεχόμενο"*), that the applicants had made no allegations in their statements that the coastguards had been responsible for the boat sinking and that they had said they had been grateful to the coastguards for saving them from certain death. The prosecutor presented this version of events and pointed out that it had been broadly in line with that of the coastguards. He indicated that, after the applicants had arrived in Piraeus, they had changed their version of the conditions and causes of the sinking and of how the coastguards involved had handled the situation and that, in their new statements, they had blamed the coastguards for causing the sinking of the boat and the death of their family members. The prosecutor presented that version of events and the applicants' allegations concerning the interpreters present for their statements of 20, 21 and 22 January 2014. In particular, he indicated that coastguard vessels patrolled the maritime border in order to "spot [vessels] in a timely manner and prevent/anticipate any attempts to enter [Greece] illegally". He further stated that, in some cases, when a target arriving from Turkey but still in that country's territorial waters approached the Greek coast, the Greek coordination and research centre would inform its Turkish counterpart so that the latter could pick up the vessel in question. However, according to the prosecutor, when such a vessel was detected in Greek territorial waters, the coastguard vessels on patrol were

responsible for arresting the crew and recovering any passengers so they could be taken to the nearest port authority. According to the prosecutor, “when a person [fell] overboard while such an operation [was] taking place, the operation automatically [became] a search and rescue operation”. He further stated that, in those conditions, “there [was] no practice of push-backs in the sense of a procedure of forcing back or towing such vessels towards Turkish territorial waters, because that could pose a threat ... both to the vessels involved and to their occupants” and that, in some cases, the boat occupants would destroy the plastic trim around their vessels so that the operation would turn into a search and rescue mission. Consequently, the prosecutor submitted, towing was a rare procedure and, in any event, one only performed at the full discretion of the captain of the coastguard vessel after an assessment of all the – typically complex – parameters and with a fundamental emphasis on people’s safety.

70. The prosecutor first added that the credibility of the applicants’ version had been undermined by the fact that the doctor who had examined them had not found any sign of ill-treatment, nor had they complained of any such treatment. Second, he noted that the area surrounding the fitting on the boat’s bow had remained relatively water-tight after the fitting itself had been torn off, because of a cavity intended for storing ropes. That fact had made it less likely that the torn-off fitting had been responsible for the boat taking on an increasing amount of water and more likely that the inflow of water had been due to the “general problems in the fishing boat’s construction” described in the expert report. Third, the prosecutor attached particular importance to the fact that, according to the statement of G., chief officer, once the fishing boat had been spotted, the captain of the PLS 136 had been ordered to “take [the passengers] to safety on Farmakonisi ...”. He noted that “from the outset, that order [had] set the scope of the coastguards’ intervention and any deviation therefrom, as the product and result of any action taken on their own initiative, [could not have been] persuasively and ... logically explained and [had not been] compatible with the hierarchical structure and the relationship of authority between superiors and those placed under their command (*σχέσεις υπηρεσιακής επιβολής ανώτερου προς κατώτερο*) that [had characterised] an organisation such as the coastguard, with its military character and corresponding functional aspect”. Fourth, the prosecutor pointed out that there had been discrepancies between the statements of the Afghan nationals, on the one hand, who had submitted that the crew of the PLS 136 had actively prevented them from coming on board their vessel for rescue, and those of the Syrian nationals, on the other, who had not claimed to have observed any such behaviour by the coastguards.

71. The prosecutor considered that, in any event, assessing each aspect of the two versions of events separately, comparing them, highlighting any discrepancies and drawing a final conclusion on the merits of each was secondary and unnecessary. That was because he considered that the

applicants' version had been based on the assumption that the fishing boat had been towed towards the Turkish coast at high speed for at least fifteen minutes and that, on account of that towing, the boat had taken on water, causing it to capsize and sink and resulting in the death of several individuals on board. The prosecutor considered, however, that that assumption was incompatible with the version presented in the military personnel's statements, which could be considered trustworthy and objective because they were not from either party to the proceedings. The prosecutor concluded that "the emergence of that basic structural opposition" ("η ανάδειξη αυτής της βασικής δομικής αντίθεσης") made it impossible to accept the applicants' version of events and rendered any consideration of the particulars of those allegations unnecessary and of no use. He further stated that the expert report had aligned with and corroborated the coastguard's version.

72. In that same decision criminal proceedings were instituted and an investigation (κύρια ανάκριση) ordered into the criminal liability of the Leros Maritime Authority personnel who had taken part in the investigation of 20 to 22 January 2014. In particular, an investigation was ordered into how the applicants' statements had been taken and the exact interpreting provided during those proceedings (offences of repeated misrepresentations and repeated breaches of duty).

73. On 23 July 2014 the public prosecutor at the Naval Court of Appeal (αναθεωρητικό δικαστήριο) upheld the discontinuance of the case. The applicants were subsequently able to consult copies of the case file. The Greek Council for Refugees, which had been representing the applicants, commissioned an expert, who examined the case file and issued a report on 17 January 2015.

4. The proceedings against interpreters H.S. and R.R. relating to the applicants' statements on 20, 21 and 22 January 2014

74. On 13 February 2014 the public prosecutor at the Kos Criminal Court drew up a bill of indictment against H.S., who had been engaged as an interpreter when the applicants had given their statements on 20, 21 and 22 January 2014, for perjury committed in the course of interpreting, false testimony without an oath and falsification of certificates (Articles 220, 225 § 2 and 226 § 1 and 2 of the Criminal Code).

75. During an expert examination on 7 March 2014 H.S. failed to understand texts read out in Dari and Pashto but understood those read out in Urdu. R.R., on the other hand, understood texts read out in Dari and Urdu and also understood those read out in Pashto very well.

76. On 27 June 2014 the Piraeus Naval Court prosecutor sent the case file to the public prosecutor at the Kos Criminal Court of First Instance. He specified that H.S. and R.R., who had been engaged as interpreters when the applicants had given their statements on 20, 21 and 22 January 2014, were suspected of committing perjury in the course of interpreting.

77. In judgment no. 478/2015 of 26 September 2015 the Kos Criminal Court acquitted H.S. The defendant had submitted, *inter alia*, that he was a Pakistani national, that the maritime authorities had requested an Afghan interpreter, that Urdu and Farsi were two very different languages and that the coastguard had registered him as an Afghan national. The court found that the defendant did not speak the applicants' language.

5. *The proceedings relating to the applicants' allegations against coastguards S.M., K.P., P.-E.C. and E.V. in their statements of 20, 21 and 22 January 2014*

78. On 27 June 2014 the Naval Court prosecutor ordered an investigation (*κύρια ανάκριση*) to be opened, in particular into S.M. and K.P. for repeated misrepresentations and breaches of duty, P.-E.C. for misrepresentation and perjury committed in the course of interpreting and E.V. for misrepresentation.

79. On 20 July 2015 the coastguards were acquitted by order no. 18/2015. No serious evidence of the offences was found, particularly with regard to malicious intent, as the defendants "[had been] aware of the inaccuracy of the interpreting because of the inadequacy of the interpreters" ("*τελούσαν σε γνώση της ανακρίβειας της διερμηνείας λόγω ανεπάρκειας των διερμηνέων*").

6. *The proceedings against the military personnel alleged to have subjected the applicants to ill-treatment after their arrival on Farmakonisi*

80. On 4 February 2014 the public prosecutor at the Athens Military Court ordered a preliminary investigation (*προκαταρκτική εξέταση*) into the applicants' allegations that they had been subjected to ill-treatment on Farmakonisi. On 13 and 17 February 2014 the applicants designated by numbers 3, 4, 5, 6, 7, 14 and 16 in the appendix provided witness statements. They complained of the ill-treatment to which they had been subjected by "soldiers", whom they identified as such because they had worn, they claimed, "clothes that looked like the clothes [worn in] the army". On various dates the applicants designated by numbers 1, 2, 3, 6, 7, 8, 9, 10, 12, 13, 14 and 16 in the appendix stated their intention to join the criminal proceedings as civil parties and requested the sum of EUR 44 each.

81. On 17 and 21 February 2014 K.A., a doctor on military service, G.G., a captain, G.C., a sergeant, and E.C., a sergeant, all of whom had been on the island of Farmakonisi on 20 January 2014, provided witness statements.

82. On 20 March 2014 the applicants applied to join the proceedings before the Piraeus Naval Court as civil parties, *inter alia* because of the "inhuman and degrading treatment [within the meaning] of Articles 137A § 3 of the Criminal Code and Article 3 of the Convention ... [that they had]

suffered at the hands of the coastguards ... during their arrest, their body searches and their detention on Farmakonisi ...”.

83. By order no. 2153/2014 of 21 March 2014 the proceedings concerning the military personnel’s criminal responsibility were discontinued. The relevant prosecutor held that the military personnel had committed no offences against the applicants and had not even had any physical contact with them. He further stated that the military personnel had not taken part in the body searches and had only provided security at the port of Farmakonisi and subsequently at the military base. He pointed out that there were indications that the coastguards had committed offences and that the applicants’ statements and the expert report had already been sent to the Piraeus Naval Court prosecutor.

84. On 16 April 2014 the Piraeus Naval Court prosecutor asked the governor of Avlonas Prison to take a statement from the applicant designated by number 11 in the appendix regarding the above-mentioned allegations.

85. On 17 April 2014 the applicant designated by number 11 in the appendix provided a witness statement.

86. On 27 June 2014 the Piraeus Naval Court prosecutor ordered the discontinuance of the proceedings concerning the offences of endangerment, boat sinking and physical injury (Articles 306, 277, 278 and 308 of the Criminal Code) (see paragraph 69 above).

87. On 23 July 2014 the public prosecutor at the Naval Court of Appeal upheld the discontinuance of the case (see paragraph 73 above).

II. RELEVANT DOMESTIC AND INTERNATIONAL LEGAL FRAMEWORK AND PRACTICE

88. The relevant domestic and international legal framework and practice in the present case are described in the judgments *Hirsi Jamaa and Others v. Italy* [GC], no. 27765/09, §§ 24-32, ECHR 2012; *Tsalikidis and Others v. Greece*, no. 73974/14, § 34, 16 November 2017; and *Sarwari and Others v. Greece*, no. 38089/12, § 60, 11 April 2019.

89. Article 98 § 2 of the 1982 United Nations Convention on the Law of the Sea (UNCLOS) provides:

“Every coastal State shall promote the establishment, operation and maintenance of an adequate and effective search and rescue service regarding safety on and over the sea and, where circumstances so require, by way of mutual regional arrangements co-operate with neighbouring States for this purpose.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 2 AND 13 OF THE CONVENTION

90. Relying on Article 2 of the Convention, the applicants complained that, on account of the actions and/or omissions of the coastguards, their lives had been put in danger when the boat on which they had been travelling on 20 January 2014 had sunk off the island of Farmakonisi. Some of the applicants also complained about the death of their family members on that occasion. Relying on Article 2 of the Convention under its procedural head, the applicants alleged that the administrative and judicial investigation conducted in order to identify those responsible for the fatal accident had been inadequate. Under Article 13 of the Convention, they submitted that they had no effective domestic remedy by which to raise their complaint of a breach of Article 2.

91. The Court reiterates that it is master of the characterisation to be given in law to the facts of the case. It considers that the applicants' allegations should be examined solely under Article 2 of the Convention, the relevant part of which reads:

“1. Everyone's right to life shall be protected by law. ...”

92. The Court will examine the applicants' complaints first under the procedural head of Article 2 of the Convention and second under the substantive head of that Article.

A. Effectiveness of the national authorities' investigations

1. Admissibility

93. The Government submitted that, in so far as the applicant designated by number 11 in the appendix was concerned, the Court should find an abuse of the right of application. They pointed out that this applicant had already been convicted for the death of some of the boat's occupants and that, if no aggravating circumstance was found against him, he could still request that the Piraeus Naval Court reopen the case.

94. The Government further submitted that the applicant designated by number 11 in the appendix could not claim to be the victim of a violation of Articles 2 and 13 of the Convention given, first, that the proceedings against him were still pending before the domestic courts and, second, that he had not applied to join the proceedings before the Piraeus Naval Court as a civil party. With regard to the applicants designated by numbers 1, 2, 8, 9, 10, 11, 12, 13 and 15 in the appendix, the Government pointed out that, at least according to the case file, they had not applied to join the proceedings before the Military Court as civil parties.

95. The Government also argued that domestic remedies had not been exhausted. First, they pointed out that the proceedings were still pending before the domestic courts, that the national authorities had opened an investigation of their own motion, that the applicants had not appeared to give evidence as defence witnesses at the trial of the applicant designated by number 11 in the appendix and that the expert report they had submitted to the Court had not been presented to the Piraeus Naval Court prosecutor. Second, the Government held that the applicants could still, pursuant to Article 43 § 5 of the Code of Criminal Procedure, request that the Piraeus Naval Court and the Military Court reopen the case. In that connection, the Government emphasised that the report by the applicants' expert had not been submitted to the Piraeus Naval Court prosecutor and that, furthermore, the applicants' claim that the report did not amount to "new evidence" was hypothetical and had affected the judgment of the judicial authorities. The Government also pointed out that there had been cases where the prosecutor at the Naval Court of Appeal had not upheld the Naval Court prosecutor's decision and had decided to bring criminal proceedings in accordance with Article 43 § 3 of the Code of Criminal Procedure.

96. Third, the Government stated that the applicants had not brought an action for damages against the State. They claimed that such a remedy would have enabled the applicants to obtain compensation and, through the court's reasoning on civil liability, to establish the legal and factual basis for having the case reopened. The Government argued that the Court, in its case-law, had previously found that its role in the context of rescue operations had not been to investigate the individual responsibility of those who had planned and executed the operation but rather to rule on whether the State as a whole had complied with its international obligations. They advanced that, in the present case, the only issue being examined was whether all reasonably expected measures had been taken during the disputed incident to minimise the threat to the applicants' lives. They further stated that the applicants were raising the matter of the State's liability in general and complaining of failures in the planning and execution of the rescue operation. In the Government's view, an action for damages would have been an effective remedy for establishing this liability. In addition, they pointed out that the applicants were claiming large sums of money before the Court in respect of just satisfaction – sums that could never be awarded by criminal courts. In doing so, argued the Government, the applicants were seeking to circumvent the proceedings before the civil courts.

97. Fourth, the Government affirmed that the applicants had not brought a complaint against the prosecutors for misuse of authority or a related action for damages (*αγωγή κακοδικίας*), despite arguing that the military courts had not been impartial.

98. The applicants submitted that the three-member Rhodes Criminal Court of Appeal had not had jurisdiction to rule on the coastguards'

responsibility and that only the military courts were competent in that respect. They claimed that the outcome of the proceedings against the applicant designated by number 11 in the appendix had not decisively settled the issue of whether the coastguards had borne responsibility. Such a possibility could not be excluded, they argued, because the lives of those on board the fishing boat had become the responsibility solely of the State from the moment the coastguards had taken charge of them.

99. Concerning the Government's argument that the applicants should have brought an action for damages against the State, the applicants affirmed that they had attempted to have an effective investigation opened into the events in issue and to have those responsible punished – an outcome that would have had special significance for them. They added that any civil proceedings seeking only to award compensation and not to identify and punish those responsible would not have amounted to appropriate redress.

100. With regard to the option they had of requesting that the Naval Court reopen the case, the applicants pointed out that, even assuming such an application were admitted, it would not be able to remedy the failings of the previous investigation. They added that cases were reopened rarely in practice, and only when new evidence came to light after the case had been discontinued. In the present case, they argued, the decision regarding the criminal liability of the applicant designated by number 11 in the appendix did not amount to new evidence, as the existence of criminal proceedings against him had already been known at the time when the case had been discontinued.

101. The Court observes that some of the Government's objections actually concern the exhaustion of domestic remedies. In this connection, it reiterates that the rule of exhaustion of domestic remedies is intended to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to the Court (see, among many other authorities, *Remli v. France*, 23 April 1996, § 33, *Reports of Judgments and Decisions* 1996-II, and *Selmouni v. France* [GC], no. 25803/94, § 74, ECHR 1999-V). That rule is based on the assumption, reflected in Article 13 of the Convention – with which it has a close affinity –, that there is an effective domestic remedy available in respect of the alleged breach of an individual's Convention rights (see *Kudła v. Poland* [GC], no. 30210/96, § 152, ECHR 2000-XI).

102. Article 35 § 1 of the Convention provides for a distribution of the burden of proof. When the respondent Government claim non-exhaustion of domestic remedies, they must satisfy the Court that the remedy to which they are referring was an effective one available in theory and in practice at the relevant time, that is to say, that it was accessible, was one which was capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success (see *Akdivar and Others v. Turkey*,

16 September 1996, § 68, *Reports* 1996-IV, and *Sejdovic v. Italy* [GC], no. 56581/00, § 46, ECHR 2006-II).

103. First, the Court observes that Article 105 of the Introductory Law to the Civil Code is a cross-cutting provision of Greek law that applies to many situations. When an action is brought on the basis of that Article, the courts examine as a subsidiary issue whether the authorities have committed an unlawful act and, if so, award the claimant a sum in respect of non-pecuniary damage.

104. The Court notes that the Government did not provide examples of judgments in which applicants had been awarded damages on account of acts or omissions by the authorities in similar situations. It is therefore not convinced that any such action for damages would have a reasonable prospect of success or in the present case would have offered appropriate redress at the relevant time. This observation in no way prejudices the Court's position should the case-law of the domestic courts with respect to the application of the above-cited Article 105 subsequently evolve to take into account situations such as those in issue.

105. Notwithstanding the fact that the applicants did not make use of the remedies suggested by the Government, the Court considers that, in the light of the domestic case-law to date, their complaint cannot be dismissed for non-exhaustion of domestic remedies. It thus dismisses the Government's objection in this regard.

106. Second, the Court notes that neither the complaint against the prosecutors for misuse of authority nor the related action for damages were such as to remedy the alleged failures of the criminal proceedings concerning the circumstances of the events in issue (see *Gjikondi and Others v. Greece*, no. 17249/10, § 89 and 90, 21 December 2017).

107. Accordingly, the Court concludes that the objections raised by the Government in this respect must be dismissed.

108. The Court considers that the Government's remaining objections concerning both the non-exhaustion of domestic remedies and the lack of victim status are closely linked to the substance of the applicants' complaint under the procedural head of Article 2 of the Convention. It thus decides to join them to the merits.

Conclusion

109. The Court notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

2. *Merits*

(a) **The parties' submissions**

(i) *The applicants*

110. The applicants called into question the impartiality of the Military Court because it was, they submitted, under the authority of the Ministry of Defence rather than the Ministry of Justice. They advanced that the Piraeus Naval Court prosecutor had discontinued the case without conducting a thorough examination, of either their allegations or the causes of the sinking, or gathering the necessary evidence.

111. The applicants submitted that it had not been possible for them to lodge an effective appeal against the Piraeus Naval Court prosecutor's decision to discontinue the case, or to have the prosecutor at the Military Court of Appeal conduct a thorough examination of the case despite their applications to join the proceedings as civil parties. They contended that the examination of the case had not satisfied the requirements of Article 2 of the Convention, because the appointed experts had not interviewed them, had had only the coastguards' version of events and had considered that version to be "self-evident and a truism". They stated that the prosecutor had based his decision on decontextualised information from the report, namely the state of the fishing boat and the specific characteristics of the two vessels. The expert report they had submitted, they claimed, amounted to further evidence that the case had not been examined properly. The applicants also stated that they had not been granted leave to request access to the case file before the case was discontinued, or to submit their report to the authorities.

112. In the applicants' view, given the discrepancies between the two versions of events and the lack of objective evidence (particularly the fact that the expert had taken for granted that there had been no electronic record of the events), the authorities should have conducted an additional investigation instead of discontinuing the case. The applicants argued that the prosecutor had considered it an established fact that there had been no push-back and that the coastguards had received the order to take the fishing boat's occupants to Farmakonisi, concluding that, as no push-back had taken place, "it [had been] unnecessary and of no use to further examine [all the] individual aspects of the allegations". They also submitted that the prosecutor had drawn exclusively on the officials' statements while dismissing theirs as untrustworthy, and had accepted the statements the applicants had given on the island of Leros despite the lack of appropriate interpreting and the criminal proceedings instigated against the port officers in that respect. In addition, the applicants stated that the UNHCR staff members who had met them after the sinking had not been asked to give witness statements. Furthermore, the prosecutor had overlooked the fact that the coastguards' statements had been contradictory, had not looked into why the national coordination centre had not been informed of the situation until after the boat

had sunk and had taken into consideration only the regulatory framework for “the protection of national borders and illegal immigration”, not the applicable principles and rules of international law.

(ii) The Government

113. The Government submitted that independent and impartial bodies had taken all necessary investigative measures to shed light on the case. They pointed out in this connection that the military prosecutors and judges were independent of the executive and performed their duties similarly to ordinary prosecutors and judges. The investigations had been conducted in a timely and equitable manner and the prosecutors concerned had been competent to examine the case thoroughly and to institute criminal proceedings against the relevant parties. The investigation had been very thorough, statements had been taken from all witnesses, autopsies had been performed to establish the causes of death and both the bodies and the military personnel and coastguards indicated by the applicants had been identified. Furthermore, said the Government, an investigation had been launched of the authorities’ own motion, in which the prosecutor had asked the experts not only to answer the specific questions that he had put to them, but also to include in their report any item likely to contribute to the comprehensiveness of the investigation. Experts, the Government stated, were required to come to their conclusions based on their knowledge and should not be influenced by witness statements. In the present case, the experts had not given greater weight to the coastguards’ version but had freely assessed all the scientific observations. As civil parties to the proceedings the applicants had not been entitled to appoint experts and there had been no obligation to enable them to do so under Article 2 of the Convention. According to the case-law of the Court of Cassation, there was nothing contrary to Article 6 of the Convention in limiting the civil party’s involvement in an investigation, and Article 6 § 2 and procedural economy required that the civil party “not exercise all the rights granted to it after criminal proceedings have been instigated”. The Government also submitted that access to classified military information could be restricted on national security grounds. In addition, following thorough investigations, the prosecutors had found no serious indication that the military and coastguard personnel involved were guilty. Moreover, after the Naval Court prosecutor and the Athens Military Court prosecutor had discontinued the case, the prosecutors at the Court of Appeal would also have examined the case file of their own motion.

114. The Government pointed out that the expert report submitted to the Court by the applicants was inadmissible because it had not been produced before the Naval Court prosecutor. The Government submitted a report to the Court in which it was pointed out that migrant and refugee rescue operations were especially difficult, particularly for the following reasons: the people being rescued are in boats with little or no rescue equipment, they do not

follow the coastguards' orders during the rescue operations, they panic and they often move to the sides of the boats, causing them to capsize. According to the same report, boat occupants destroy their vessels or jump overboard to trigger a rescue operation, and they are often disoriented because the incidents take place at night, in challenging weather conditions and in unfamiliar regions, with highly stressful factors at play.

(b) The Court's assessment

(i) General principles

115. According to the Court's well-established case-law, where there has been a serious or potentially deadly injury or human lives have been lost in circumstances potentially engaging the responsibility of the State, Article 2 of the Convention requires the State to ensure, by all means at its disposal, an adequate response – judicial or otherwise – so that the legislative and administrative framework set up to protect the right to life is properly implemented and any breaches of that right are repressed and punished (see, among many other authorities, *Öneryıldız v. Turkey* [GC], no. 48939/99, § 91, ECHR 2004-XII; *Dodov v. Bulgaria*, no. 59548/00, § 83, 17 January 2008; *Budayeva and Others v. Russia*, nos. 15339/02 and 4 others, § 138, ECHR 2008; *Kalender v. Turkey*, no. 4314/02, § 51, 15 December 2009; and *Banel v. Lithuania*, no. 14326/11, § 66, 18 June 2013) and to provide appropriate redress to the victim (see, for example, *Ciechońska v. Poland*, no. 19776/04, § 67, 14 June 2011, and *İlbeyi Kemaloğlu and Meriye Kemaloğlu v. Turkey*, no. 19986/06, § 39, 10 April 2012).

116. The Court considers it appropriate to specify that compliance with the procedural requirement of Article 2 of the Convention is assessed on the basis of several essential parameters: the adequacy of the investigative measures, the promptness of the investigation, the involvement of the deceased person's family and the independence of the investigation. These elements are inter-related and each of them, taken separately, does not amount to an end in itself, as is the case in respect of the independence requirement of Article 6 of the Convention. They are criteria which, taken jointly, enable the degree of effectiveness of the investigation to be assessed. It is in relation to this purpose of an effective investigation that any issues, including that of independence, must be assessed (see *Mustafa Tunç and Fecire Tunç v. Turkey* [GC], no. 24014/05, § 225, 14 April 2015).

117. In order to be “effective”, as this expression is to be understood in the context of Article 2 of the Convention, an investigation into a death potentially engaging the responsibility of a Contracting Party in respect of that provision must firstly be adequate. This means that it must be capable of leading to the identification and – if appropriate – punishment of those responsible (see *Armani Da Silva v. the United Kingdom* [GC], no. 5878/08, § 233, 30 March 2016). The authorities must have taken the reasonable steps

available to them to secure the evidence concerning the incident. Any deficiency in the investigation which undermines its ability to identify the perpetrator(s) will risk falling foul of this standard of effectiveness (see *Tahsin Acar v. Turkey* [GC], no. 26307/95, § 223, ECHR 2004-III).

118. The Court would point out that, in its judgments in cases where State agents were alleged to have been responsible for a person's death, it has specified that the above-mentioned obligation was not one of result, but one of means. The authorities must thus have taken the reasonable steps available to them to secure the evidence concerning the incident, including, *inter alia*, eyewitness testimony and forensic evidence (see *Anguelova v. Bulgaria*, no. 38361/97, § 139, ECHR 2002-IV; *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 113, ECHR 2005-VII; and *Ognyanova and Choban v. Bulgaria*, no. 46317/99, § 105, 23 February 2006).

119. What form of investigation will achieve those purposes may vary in different circumstances. However, whatever mode is employed, the authorities must act of their own motion once the matter has come to their attention. They cannot leave it to the initiative of the next-of-kin either to lodge a formal complaint or to request particular lines of inquiry or investigative procedures (see *İlhan v. Turkey* [GC], no. 22277/93, § 63, ECHR 2000-VII, and *Nachova and Others*, cited above, § 111).

120. A requirement of promptness and reasonable expedition is implicit in this context. It is crucial for the investigation to be prompt in cases of deaths in contentious situations, as the passage of time will inevitably erode the amount and quality of the evidence available and the appearance of a lack of diligence will cast doubt on the good faith of the investigative efforts, as well as drag out the ordeal for the family of the deceased (see *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 86, ECHR 2002-II).

(ii) *Application of those principles to the present case*

121. The Court observes that criminal proceedings were brought against the coastguards involved in the events in question. Those proceedings could in principle have elucidated the circumstances of the case, established the facts and led to the punishment of any persons found liable.

122. It remains to be seen whether the proceedings in question fulfilled the requirements of Article 2 of the Convention.

123. First, the Court observes that the applicants designated by numbers 1, 4, 5, 7, 8, 10, 12, 14 and 15 in the appendix provided witness statements for the first time on 20, 21 and 22 January 2014. It notes that, according to the applicants, there were interpreting problems during the taking of their statements: the records of their statements did not reflect their true content, and they had never said that the boat had sunk as a result of the sudden movement of those on board. The Court also notes that proceedings were brought against H.S. and R.R., who had acted as interpreters during the taking of those statements; they were charged with perjury committed in the

course of interpreting. The case file before the Court does not indicate the outcome of R.R.'s case. However, on 26 September 2015 the Kos Criminal Court acquitted H.S., finding that he did not speak the applicants' language (see paragraph 77 above). While the decision of the Naval Court prosecutor had already discontinued the case on 27 June 2014, the authorities were put on notice of the serious interpreting problems on 23 January 2014, when the applicants held a press conference following their arrival in Piraeus.

124. The Court cannot but observe that, despite the very serious flaws in the content of those statements, they continued to form an integral part of the case until its discontinuance by the Piraeus Naval Court prosecutor. It should be noted that, in decision no. 263/2014, the prosecutor took these statements into account and in particular observed that they were "coherent, concise and consistent", concluding that the applicants had not made any allegations therein about the coastguards' responsibility in the sinking. The prosecutor also took into consideration the fact that, after the applicants had arrived in Piraeus, they had changed their version of events with regard to the conditions and the causes of the sinking and to how the coastguards had managed the situation. The prosecutor did not, however, explain the discrepancies between the two versions of the accounts or draw conclusions regarding this divergence. The Court further observes that the Government, in their submissions to it, indicated that the applicants had made no accusations against the coastguards or any other State body in their statements. It takes the view that, once the authorities had been put on notice of the applicants' allegations regarding the flaws cited above, they should at least have investigated them before including the statements in the case file.

125. Second, the Court reiterates that, in all cases, the next-of-kin of the victim must be involved in the procedure to the extent necessary to safeguard his or her legitimate interests, but that it cannot, however, be regarded as an automatic requirement under Article 2 of the Convention that a victim or a victim's next-of-kin be granted access to the investigation file as it goes along. In addition, Article 2 of the Convention does not impose a duty on the investigating authorities to satisfy every request for a particular investigative measure made by a victim or a victim's relative in the course of an investigation (see *Ramsahai and Others v. the Netherlands* [GC], no. 52391/99, §§ 347-348, ECHR 2007-II).

126. In this connection, the Court observes that the applicants asked the Piraeus Naval Court prosecutor to have the fishing boat retrieved and examined 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 (see paragraph 68 above). Only the first two of those requests were accepted by the prosecutor. While the principle of confidentiality of proceedings for the period prior to the suspects' prosecution could form a valid basis for rejecting the other requests, the Court cannot but note that there were acutely complex aspects

of the case to which only the authorities had been privy. It is highly doubtful that the applicants were able to participate adequately in the proceedings – which concerned very serious allegations – without the recordings that they had requested, as it was precisely that aspect which was the crux of the case.

127. Third, the Court notes that, in discontinuing the case, the prosecutor simply observed that “there [was] no practice of push-backs in the sense of a procedure of forcing back or towing ... towards Turkish territorial waters ...”. The prosecutor further stated that it would be “unnecessary and of no use” to have regard to the particulars of the applicants’ allegations, since their account of the incident had rested on the premise that their boat had been under tow towards the Turkish coast, which, on his reading and appraisal of the evidence, could not have been the case (see paragraph 71 above). The Court notes that, according to the applicants, Greece’s shipping minister at the relevant time had stated that the Greek authorities had “put [migrants] back on the Turkish side”, and that the coastguard had prevented a large number of migrants from reaching Greece compared with the 7,000 who had been arrested (see paragraph 24 above). The applicants also put forward other allegations, which the prosecutor did not look into. In particular, they complained that the entire operation in question had not been organised and conducted in such a way as to ensure the protection of their and their family members’ right to life, that the coordination and search centre had not been apprised of the situation and that the provisions of the relevant international instruments had not been complied with. In the Court’s view, failure to pursue those obvious lines of inquiry undermined the investigation’s ability to elucidate the circumstances of the sinking (see, *mutatis mutandis*, *Mustafa Tunç and Fecire Tunç*, cited above, § 175).

(iii) Conclusion

128. In view of the foregoing, the Court considers it unnecessary to address the other alleged shortcomings in the proceedings in issue. Given the facts set out above, it dismisses the Government’s objections regarding the lack of victim status and the failure to exhaust domestic remedies (see paragraph 108 above) and finds a violation of Article 2 of the Convention under its procedural head in respect of all the applicants.

B. The positive obligations to protect life within the meaning of Article 2 of the Convention

1. Admissibility

129. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. *Merits*

(a) **The parties' submissions**

(i) *The applicants*

130. The applicants argued that, according to the relevant international law, the Greek authorities had an obligation to conduct search and rescue operations at sea. They were required, *inter alia*, to develop the legal framework and to set up a search and rescue centre with the power to receive the necessary information and coordinate procedures in relation to search and rescue operations. The Greek State had long conducted such operations in the area defined by Article 2 of Law no. 1844/1989, the Chicago Convention on International Civil Aviation, the regional plans of the International Civil Aviation Organization (ICAO) and Regulation 15 of the International Convention for the Safety of Life at Sea (SOLAS).

131. The applicants argued that the coastguards, through their acts and omissions, neither rescued nor safely transferred the boat's occupants. On the contrary, their acts and omissions had caused the fishing boat to sink, endangered their lives and resulted in the death of their family members. Despite the fact that the authorities had recognised the events in issue as a rescue incident, they argued, the rescue procedures and protocols as provided for by Greek and international law had not been followed.

132. In particular, the applicants alleged that the fishing boat had capsized while it had been under the full control of the coastguards, whom they claim had been responsible for their safety, that the fishing boat had not taken on any water until the coastguards had taken charge of the fishing boat, and that the boat had sunk while it was being towed. The applicants advanced that, in the present case, the incident had been an attempt to push them back to Turkey, which would explain why the national coordination centre had not been informed but the maritime-border protection division had been. According to the applicants, the fact that push-backs had been systematic at the relevant time was corroborated by reports produced by international organisations.

133. It was the applicants' view that, regardless of whether the operation in issue had been a push-back or an attempt to transfer them to Farmakonisi, national and international obligations relating to rescue at sea had not been met. The applicants further stated that there was no electronic recording or record of the exact position or route of the PLS 136, the duration of the operation or the telephone communications, because the PLS 136 had not had an automatic identification system and no radar in the region had made a recording. According to the applicants, the lack of any such recordings undermined the credibility of the Government's version of events and cast doubt on the accuracy of the reported positions of where the fishing boat had been located and had sunk. In that connection, the applicants indicated that the positions of the first location of the fishing boat and the sinking were the

same, whereas the position where the sinking had taken place and its location were unrealistic (*απέχουν εξωπραγματικά*). In their view, the fact that there was no objective recording of those positions was in itself a breach of the rescue obligation and had furthermore hindered the search and rescue of the missing boat occupants as well as the subsequent locating of their bodies in a timely manner.

134. The applicants also indicated that the PLS 136 was not a rescue boat but rather a high-speed pursuit craft and that it was unsuited for rescue operations because it lacked rescue equipment such as lifejackets and appropriate tow ropes. Furthermore, they claimed that the crew of the PLS 136 had no relevant expertise and that the towing had continued despite the fact that the first attempt to tow the fishing boat had failed and the bow fitting had been torn off, exposing the boat to even more serious danger. The applicants indicated that the towing method used in the present case had not been standard industry practice, which would not have involved the use of a 10-metre rope, much less a rope with no elasticity. They argued that a weight should have been hung in the middle of the rope to absorb the shocks, but that had not been the case. They submitted that, because of the poor towing method, the fishing boat had tilted backwards and then the weather conditions and the wake of the PLS 136 had caused water to flood into the boat. The inappropriateness of the towing method could also be seen, the applicants argued, by the fact that the bow fitting used to secure the rope had been torn off, which had caused the boat to take on more water. They said that despite the fact that the first towing attempt had failed, that the bow fitting had been torn off, that water had entered the boat and that there had been a hole in the vessel, a second towing attempt had been made, only without the presence of the two coastguards on the fishing boat, as they had reboarded the PLS 136 in the meantime. Before the second towing attempt had begun, they added, no measures had been taken to protect the lives of the boat's occupants, communication had not been established with the national coordination centre and no calls for urgent assistance had been sent to other vessels.

135. The applicants submitted that the fishing boat was stationary when it had been located by the Farmakonisi military base. They stated that the exact time the boat had been located was not indicated in the Government's submissions but claimed that, according to official documents, that event had taken place at either 12.35 a.m., 1.25 a.m., 1.45 a.m. or 2 a.m. The applicants further stated that their boat had already been in an emergency situation and had in particular been in distress at sea when the coastguard vessel had approached it at 2 a.m. According to the applicants, it was at that moment that the coastguards had realised that the number of people on board exceeded the maximum permitted capacity, that the boat was only small, that the weather conditions were poor, with strong swell in particular, that the fishing boat's engine was not running and that the boat occupants were calling for help. The applicants alleged that, after taking this information into consideration, K.G.,

the captain on duty at the maritime-border protection division, had ordered the crew of the PLS 136 to tow the boat towards Farmakonisi. They further advanced that the crew of the PLS 136 had known before they had started towing that there were twenty-seven people on board the boat, including three women and nine children. They also submitted that, as the Government admitted, the national coordination centre – the search and rescue authority in the event of distress at sea – had only been informed at 2.13 a.m., that is, after the fishing boat had sunk. They further claimed that, according to the relevant international rules, the national coordination centre should have immediately been informed of the situation so that an operation could have been launched in line with international principles and rules. In their view, the Government’s argument that the intervention had only become a rescue operation once the boat occupants had gone overboard had no legal or logical basis and violated search and rescue legislation.

136. The applicants also affirmed that some coastguards had admitted in their statements that the boat occupants had been exposed to significant risk. According to those statements, they claimed, the national coordination centre was informed only if a boat sank, not when it was in danger, and that the coastguards’ strategy was to transfer people in distress at sea onto their vessel. The applicants further submitted that, in the present case, other vessels had only been called to assist once the fishing boat had sunk and a helicopter only asked to intervene 45 minutes after the sinking.

137. The applicants argued in addition that, once the fishing boat had capsized, the authorities had not had appropriate equipment to rescue its occupants and had not taken the necessary steps to rescue those who had already gone overboard. They claimed to have survived only thanks to a combination of luck and their own efforts, unlike their family members who had drowned.

138. The applicants considered that the Government’s version of events confirmed their allegations that the coastguards had been responsible for the sinking, had put their lives at risk and had caused the death of their family members. In that connection, they referred to the report by the expert they had appointed.

139. The applicants concluded that, even if one accepted the Government’s affirmation that the coastguards had not known that there were women and children in the fishing boat’s cabin and that no attempt to push back the boat’s occupants had been made, the operation as a whole had been inadequate.

(ii) The Government

140. The Government stated that the undisputed facts were as follows: (a) the lives of the people on the fishing boat had already been placed in danger – before they had entered into Greece’s territorial waters and been intercepted by the coastguards – by the situation of the vessel, the number of

people it had been carrying and the lack of any life-saving equipment on board; (b) the crew of the PLS 136 had begun a maritime-border control operation, which had officially turned into a rescue operation (of which the national coordination centre had been informed) when an individual had gone overboard; in practice, the rescue operation had actually begun once the coastguards had appraised the situation and started towing the boat; (c) the crew of the PLS 136 had transported the applicants to the island of Farmakonisi; (d) the applicants' family members had died, in most cases because they had been trapped inside the fishing boat's cabin; and (e) three of the applicants had stated under oath that the applicant designated by number 11 in the appendix had been the captain of the fishing boat, but that applicant had denied the allegation, claiming that the captain had been of Afghan origin and that the Afghan applicants had agreed to blame him because he was Syrian.

141. The Government's version of events differed from that of the applicants as to the remaining facts. The Government stated that those facts had been established by the domestic courts and that, pursuant to the principle of subsidiarity, they could not be called into question. In any event, the Government denied the existence of an operating plan that required endangering the lives of individuals such as the applicants and their family members instead of performing search and rescue operations in accordance with international law.

142. The Government added that there was nothing in the case file that called into question the findings of the domestic courts and would lead the Court to depart from them. In that connection, they submitted that the three-member Dodecanese Criminal Court of Appeal had not been bound by the discontinuance decisions of the Naval and Military Courts when it had ruled on the guilt of the applicant designated by number 11 in the appendix. The Government considered, however, that that court had had jurisdiction to examine, as a subsidiary issue, whether another individual had endangered the lives of the applicants and their family members and whether such danger had caused the death of those family members. It followed, they argued, that although the criminal courts which ruled on the criminal liability of the applicant designated by number 11 had been independent and lacked jurisdiction to rule on the coastguards' responsibility, they would have acquitted that applicant of the aggravating circumstance referred to in Article 88 § 1 (c) and (d) of Law no. 3386/2005 had there been any evidence to suggest that the coastguards were in fact responsible, on account of the doubt to which such an inference would have given rise. The Government argued that, on the contrary, the three-member Dodecanese Criminal Court of Appeal had found that the negligence of the applicant designated by number 11 in the appendix had been the sole cause of the deaths in the present case, lending support to the decision to discontinue the proceedings against the coastguards.

143. The Government considered that the European and domestic legal framework, with regard both to the sanction for breaching the right to life and to coastguards' actions during maritime-border control operations, satisfied all the requirements of Article 2 of the Convention. In particular, they pointed out that that framework guaranteed the supremacy of compliance with the right to life and the dismissal of coastguards in the event of a conviction. All that remained, according to the Government, was to determine whether the appropriate provisions had been properly applied in the present case.

144. In that connection, the Government pointed out that the present case was substantially different from those previously heard by the Court because, they argued, it did not concern a rescue operation during which State bodies had used force, as had been the case in *Tagayeva and Others v. Russia* (nos. 26562/07 and 6 others, 13 April 2017) and *Makaratzis v. Greece* ([GC], no. 50385/99, ECHR 2004-XI), nor did it concern a life-threatening risk or deaths in a sphere of exclusive State responsibility, as had been the case in *Nencheva and Others v. Bulgaria* (no. 48609/06, 18 June 2013). For that reason, it was the Government's view that the specific circumstances of the present case needed to be examined, looking in particular at whether there was a causal link between the operation conducted by the authorities, on the one hand, and the risk to the applicants' lives and the death of their family members, on the other.

145. In that connection, the Government argued that there was no such causal link. They submitted that the decisive issue in the present case was the degree of State involvement in the emergence of the risk to the applicants' lives and in the death of their family members. They argued that there was no such involvement, meaning the State could not be held responsible for having breached Article 2 of the Convention under its substantive head. Furthermore, in any event, the coastguards had made their way to the scene in a timely manner, before the deadly incident had taken place. In the Government's opinion, the applicants and their family members had already put themselves in danger before they had entered Greek territorial waters and been intercepted by the coastguards. After the fishing boat had been located, the coastguards had coordinated with their headquarters to make decisions to address the incident, working in difficult weather conditions, at night and – given the applicants' situation – in urgent circumstances. It followed, they argued, that the operation had been planned and that the applicants' allegations that the PLS 136's crew had acted with malicious intent, endangered their lives and caused the death of their family members were not corroborated either by the findings of the domestic courts or by the fact that the PLS 136's crew had rescued the applicants and taken them to Farmakonisi. The Government conceded that the coastguards' final decision, made within a matter of minutes, to tow the fishing boat with the equipment they had at their disposal – that is, ropes –, knowing that they could not bring the boat occupants on board the PLS 136 because it was not a rescue vessel,

and the fact that the fishing boat had subsequently capsized and sunk, “aroused reasonable suspicions of negligence in the design and execution of the operation”. However, the Government argued, the same exceptional circumstances (urgency, weather conditions, lack of other rescue equipment) could demonstrate that the method chosen for executing the operation had been reasonable and that the operation itself had taken place without any delay and within the margin of appreciation afforded to States when planning such operations based on the resources available to them. The Government advanced that it was, in fact, impossible to say what would have become of the applicants and their family members if the coastguard vessel had not reached the scene when it did and if, instead of performing the disputed towing, it had waited for rescue equipment that would have enabled the fishing boat to be towed more safely or the boat occupants to be transferred to another vessel.

146. The Government observed that, given the daily occurrence of boat sinkings in the Mediterranean, safely rescuing all the fishing boat’s occupants had been a priority, but one with little chance of success. Furthermore, it did not follow that the relevant authorities had shown negligence when executing the operation. Rather, the Government argued, it was the individuals who had brought the fishing boat’s occupants on board an unseaworthy vessel, in the weather conditions at the relevant time and with no rescue equipment, who had put their lives at risk.

147. Lastly, the Government took the view that it was not possible to find, beyond reasonable doubt, that the State, by its acts or omissions and without any error of judgment or an oversight, had been decisively involved in or bore responsibility for endangering the applicants’ lives and causing the death of their family members.

(b) The Court’s assessment

148. The Court would observe that the paramount question in the present case is whether the authorities in this particular situation acted in such a way as to safeguard the lives of the applicants and their family members and to make the lives of those individuals sufficiently and adequately their prime concern.

(i) General principles

149. The Court reiterates that the first sentence of Article 2 § 1 of the Convention enjoins the State not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction (see *L.C.B. v. the United Kingdom*, 9 June 1998, § 36, *Reports* 1998-III; *Osman v. the United Kingdom*, 28 October 1998, § 115, *Reports* 1998-VIII; and *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 130, ECHR 2014).

150. The scope of the obligation to take appropriate steps to safeguard life must nevertheless be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities, as not every claimed risk to life can entail for the authorities a Convention requirement to take operational measures to prevent that risk from materialising (see *Kurt v. Austria* [GC], no. 62903/15, §§ 158-160, 15 June 2021). For a positive obligation to arise in this connection, it must be established that the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk (see *Amaç and Okkan v. Turkey*, nos. 54179/00 and 54176/00, § 46, 20 November 2007; see also, *mutatis mutandis*, *Osman*, cited above, §§ 116 and 121, and, *mutatis mutandis*, *Paul and Audrey Edwards*, cited above, § 55). Any findings in this respect can only be reached in the light of all the specific circumstances of any particular case (see *Opuz v. Turkey*, no. 33401/02, § 130, ECHR 2009).

151. The Court has thus ruled that States have a positive obligation to adopt and comply with regulations to protect citizens in the public-health sphere (see *Calvelli and Ciglio v. Italy* [GC], no. 32967/96, § 49, ECHR 2002-I, and *Vo v. France* [GC], no. 53924/00, § 89, ECHR 2004-VIII) and in the context of dangerous activities (see *Öneryıldız v. Turkey* [GC], no. 48939/99, §§ 89-90, 30 November 2004) or risky activities. It has also dealt with cases in which the national authorities were alleged to have breached safety regulations (see *Öneryıldız*, cited above; *Bône v. France* (dec.), no. 69869/01, 1 March 2005, concerning safety on board a train; and *Pereira Henriques v. Luxembourg*, no. 60255/00, 9 May 2006, concerning safety measures on a construction site).

152. In keeping with the importance of Article 2 of the Convention in a democratic society, the Court must subject allegations of a breach of this provision to the most careful scrutiny, taking into consideration not only the actions of the agents of the State but also all the surrounding circumstances, including such matters as the planning and control of the actions under examination (see, *mutatis mutandis*, *McCann and Others v. the United Kingdom*, 27 September 1995, § 150, Series A no. 324, and *Makaratzis*, cited above, § 59). In keeping with the importance of Article 2 in a democratic society, the Court must, in making its assessment, subject deprivations of life to the most careful scrutiny, particularly where deliberate lethal force is used, taking into consideration not only the actions of the agents of the State who actually administer the force but also all the surrounding circumstances including such matters as the planning and control of the actions under examination (see *McCann and Others*, cited above, § 150).

153. The Court reiterates its case-law whereby, to establish the alleged facts, it adopts the standard of proof “beyond reasonable doubt” but adds that such proof may follow from the coexistence of sufficiently strong, clear and

concordant inferences or of similar unrebutted presumptions of fact (see *Labita v. Italy* [GC], no. 26772/95, § 121, ECHR 2000-IV).

(ii) *Application of those principles to the present case*

154. At the outset, the Court points out that the Piraeus Naval Court prosecutor discontinued the case in so far as it concerned the offences of endangerment, boat sinking and physical injury, which had allegedly been committed by the coastguards (see paragraphs 69-71 above).

155. Having regard to its findings under the procedural head of Article 2 of the Convention, the Court considers that there is insufficient evidence in the present case to establish some of the impugned facts beyond reasonable doubt. In particular, the Court is not in a position to make findings concerning a number of specific details of the operation on 20 January 2014, or to determine whether there was an attempted push-back of the applicants towards the Turkish coast. In this connection, it would point out, however, that this inability stems largely from the lack of a thorough and effective investigation by the national authorities (see *B.S. v. Spain*, no. 47159/08, § 55, 24 July 2012; *Lopata v. Russia*, no. 72250/01, § 125, 13 July 2010; and *Gharibashvili v. Georgia*, no. 11830/03, § 57, 29 July 2008).

156. However, the Court observes that some of the facts surrounding the incident of 20 January 2014 are not in dispute between the parties or have been put beyond question by the material in the case file and the decisions of the domestic courts. It will therefore examine this complaint under Article 2 of the Convention with reference to those facts.

157. The Court emphasises that, admittedly, State agents – coastguards in the present case – cannot be expected to effect the successful rescue of everyone imperilled at sea, especially as their obligation in the present case was one of means, not one of result. The Court thus recognises that on arriving at the scene the coastguards had a range of options as to the actions they could take. However, those actions need to be looked at in the particular context of the operation in question.

158. The Court notes that the captain and crew of a State vessel involved in the rescue of persons at sea must often have to make difficult and speedy decisions as part of such operations and that such decisions are, as a rule, at the captain's discretion. At the same time, it nonetheless has to be shown that such decisions are prompted by the overriding endeavour to secure the right to life of the persons in danger.

159. In that regard the Court notes, first, that on arriving at the scene the crew of the PLS 136 were able to gain a precise picture of the fishing boat's situation, including its condition and the fact that there were women and children on board. In point of fact, according to the Government, it was precisely because of the condition of the fishing boat, which was in a state of disrepair and unseaworthy, and the number of individuals on board, being in excess of the maximum permitted capacity, as well as the poor weather

conditions, that K.G. ordered N.B. “to tow the fishing boat to the safety of Farmakonisi”.

160. The Court further observes that, after the PLS 136 had arrived at the scene and the authorities had noted that the boat occupants needed to be taken to safety, how the authorities intended to transport the applicants to safety using the PLS 136, a high-speed pursuit craft unequipped for rescue operations, remains unexplained. The Court also observes that at no point did the coastguards consider the possibility of requesting additional assistance, and that the competent authorities did not receive word that they needed to send a vessel better suited for rescue work to the scene. According to the applicants’ allegations, it had not been possible to distribute lifejackets to those on board the fishing boat beforehand, because none were available on the PLS 136.

161. The Court notes that the first towing attempt was thwarted when the fitting on the boat’s bow that was being used to secure the rope tore free. Even on the assumption that, as the Government maintained, the fishing boat capsized as a result of the sudden and panicked movements of those on board, the Court cannot but observe that such panic was foreseeable in the circumstances. Nonetheless, the coastguards attempted to tow the boat a second time. The Government did not explain why they had persisted with the second towing attempt, despite the fact that panic had been observed the first time round.

162. This aspect of the case is closely connected with the following observation: the coordination and search centre was not apprised of the incident until 2.13 a.m., by which time the fishing boat had already become half-submerged. At 2.16 a.m. it had sunk completely, with some of the applicants’ family members trapped in the cabin. In this connection, the Court emphasises the paramount importance of the time factor in such situations: every minute counts and may have a critical impact on the rescue effort, as drowning occurs in a matter of minutes. However, it is not for the Court to speculate as to whether the victims would have survived had the national coordination centre been alerted sooner.

163. In addition, the Court notes that a “Mayday Relay” distress call for nearby vessels to make haste to the scene was not transmitted until 2.25 a.m., twelve minutes after the coastguard had belatedly informed the rescue coordination centre of the emergency. What is more, the dispatch and arrival of available rescue resources were also considerably delayed: the helicopter requested by the national coordination centre at 2.29 a.m. did not arrive at the scene until 3.52 a.m.; the provision of a naval vessel was not requested by the national coordination centre until 2.45 a.m. and the first coastguard vessel, the PLS 616, did not arrive at the scene until 3.32 a.m.

164. The Court naturally does not overlook the fact that, as the Government submitted, at the time when the applicants and their family members made their attempt to reach Greece, seaborne refugee arrivals were

on the rise. It reiterates in this connection that, considering the difficulty of the task that fell to the maritime authorities in such circumstances, the unpredictability of human conduct and the operational choices that had to be made in terms of priorities and resources, the scope of the national authorities' positive obligation must be interpreted in a way which does not impose an impossible burden on them (see, *mutatis mutandis*, *Nicolae Virgiliu Tănase v. Romania* [GC], no. 41720/13, § 136, 25 June 2019, and *Choreftakis and Choreftaki v. Greece*, no. 46846/08, § 46, 17 January 2012). That said, the Court notes that the Government provided no explanation for the specific oversights and delays that had occurred in the present case. The Government did not claim, for example, that on the day of the incident more appropriate rescue resources had been unavailable because of a considerable influx of refugees necessitating their engagement elsewhere.

165. The Court notes the Government's submission that the lives of the people on the fishing boat had already been placed in danger – before they entered into Greece's territorial waters and were intercepted by the coastguards – by the situation of the vessel, the number of people it had been carrying and the lack of any life-saving equipment on board. In this connection, the Court reiterates that Article 2 of the Convention cannot be interpreted as guaranteeing every individual an absolute level of security in any activity in which the right to life may be at stake, in particular where the person concerned bears a degree of responsibility for the accident whereby he or she was exposed to an unjustified risk (see *Molie v. Romania* (dec.), no. 13754/02, § 44, 1 September 2009; *Koseva v. Bulgaria* (dec.), no. 6414/02, 22 June 2010; *Gökdemir v. Turkey* (dec.), no. 66309/09, § 17, 19 May 2015; and *Çakmak v. Turkey* (dec.), no. 34872/09, 21 November 2017). The Court notes that, in the present case, serious questions arise as to the conduct and organisation of the operation (see *Makaratzis*, cited above, §§ 56-72).

166. Having carefully considered the foregoing, the Court finds that the Greek authorities did not do all that could reasonably have been expected of them in order to afford the applicants and their family members the level of protection required by Article 2 of the Convention.

167. The Court therefore finds a violation of Article 2 of the Convention in respect of all the applicants.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

168. Relying on Article 3 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 Article in question provides:

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

A. Admissibility

169. The Government submitted that as the applicant designated by number 11 in the appendix had not applied to join the proceedings as a civil party, he had not exhausted all domestic remedies. The Government also stated that, based on the case file, the applicants designated by numbers 1, 2, 8, 9, 10, 11, 12, 13 and 15 in the appendix did not appear to have applied to join the proceedings before the Military Court as civil parties. The Government further pointed out that the applicants had not challenged the alleged discrepancies between their statements concerning their treatment after their arrival on Farmakonisi.

1. *The applicant designated by number 11 in the appendix*

170. With regard to the applicant designated by number 11 in the appendix, the Court notes that it is unnecessary to rule on the Government's objection of failure to exhaust domestic remedies, because it considers that the complaint under Article 3 is inadmissible in the present case on the following grounds.

171. The Court reiterates that the object of the six-month time-limit under Article 35 § 1 is to promote legal certainty, by ensuring that cases raising issues under the Convention may be dealt with in a reasonable time and that past decisions are not continually open to challenge. It marks out the temporal limits of supervision carried out by the organs of the Convention and signals to both individuals and the authorities the period beyond which such supervision is no longer possible (see, among other authorities, *Walker v. the United Kingdom* (dec.), no. 34979/97, ECHR 2000-I).

172. As a rule, the six-month period runs from the date of the final decision in the process of exhaustion of domestic remedies. However, where it is clear from the outset that no effective remedy is available to the applicant, the period runs from the date of the acts or measures complained of, or from the date of knowledge of that act or its effect on or prejudice to the applicant (see *Dennis and Others v. the United Kingdom* (dec.), no. 76573/01, 2 July 2002). In addition, Article 35 § 1 cannot be interpreted in a manner which would require an applicant to inform the Court of his or her complaint before his or her position in connection with the matter has been finally settled at the domestic level. Accordingly, where an applicant avails him- or herself of an apparently existing remedy and only subsequently becomes aware of circumstances which render the remedy ineffective, it may be appropriate to take the start of the six-month period as the date when the applicant first became or ought to have become aware of those circumstances (see *Edwards v. the United Kingdom* (dec.), no. 46477/99, 7 June 2001).

173. Consequently, applicants are expected to take steps to keep track of an investigation's progress, or lack thereof, and to lodge their applications with due expedition once they are, or should have become, aware of the lack

of any effective criminal investigation (see *Bulut and Yavuz v. Turkey* (dec.), no. 73065/01, 28 May 2002, and *Bayram and Yıldırım v. Turkey* (dec.), no. 38587/97, ECHR 2002-III).

174. The Court also reiterates that compliance with the six-month time-limit is a matter which goes to the Court's jurisdiction and which it is not prevented from examining of its own motion (see *Sabri Güneş v. Turkey* [GC], no. 27396/06, § 29, 29 June 2012).

175. In the present case, the Court notes that the applicant designated by number 11 in the appendix did not lodge any complaints alleging ill-treatment. It observes that all the applicants called into question the impartiality of the Military Court and argued that the prosecutor had not conducted a thorough examination of their allegations (see paragraph 110 above). There is no explanation as to why the applicant designated by number 11 in the appendix did not apply to the Court within six months of the events in issue.

176. Considering that the application was lodged on 21 January 2015, the Court considers that it must be declared inadmissible as being out of time in respect of the applicant designated by number 11, pursuant to Article 35 §§ 1 and 4 of the Convention.

2. *The applicants designated by numbers 10, 14 and 15 in the appendix*

177. The Court notes that, according to the allegations, the applicants designated by numbers 10 and 14 in the appendix were body-searched in the presence of the applicant designated by number 15 in the appendix, who was slightly older than one at the relevant time, in an enclosed area, by men belonging to the coastguard, without the respect they felt such a situation required.

178. The Court notes that the allegations of the above-mentioned applicants are vague and lack evidential support.

179. It follows that this part of the application is manifestly ill-founded and must be declared inadmissible, pursuant to Article 35 §§ 3 and 4 of the Convention.

3. *The applicants designated by numbers 1 to 9, 12, 13 and 16 in the appendix*

180. The Court also notes that on 20 March 2014 all the applicants except the one designated by number 11 in the appendix applied to join the proceedings before the Piraeus Naval Court as civil parties, *inter alia* because of the "inhuman and degrading treatment [within the meaning] of Articles 137A § 3 of the Criminal Code and Article 3 of the Convention ... [that they had allegedly] suffered at the hands of the coastguards ... during their arrest, their body search and their detention on Farmakonisi ..." (see

paragraph 82 above). It follows that the Government's objection must be dismissed in so far as it concerns these applicants.

181. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and that it is not inadmissible on any other grounds in respect of the above-mentioned applicants. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicants

182. The applicants argued that the treatment to which they had allegedly been subjected after they arrived on Farmakonisi was inhuman and degrading. They submitted that on arrival there they had been deprived of their liberty and that their arrest and detention had been recorded. They stated that the authorities did not deny that they had been strip-searched in plain sight. They asked the Court to take into account the fact that they were refugees in a vulnerable situation, that they had just survived a boat sinking, that some of them had lost family members and that they had been in a state of pain, suffering and shock. Given those circumstances, they argued that the strip-search to which they had been subjected had shown a lack of respect for their mourning and for the pain of having lost loved ones, had been an insult to them and their dignity and had heightened their feelings of pain and suffering. They further stated that the Government had made no submissions regarding the need for the body search and that international rules required survivors of boat sinkings to be treated with respect.

(b) The Government

183. The Government submitted that the applicants had not been placed in detention or subjected to violence or other ill-treatment. They further stated that there were discrepancies in the applicants' statements regarding their alleged ill-treatment, with eight of the applicants saying that the crew of the PLS 136 had not mistreated them, while five others had alleged that the coastguards had hit some of the boat occupants during their transfer to Farmakonisi and one had claimed that the coastguards had hit him. Regarding the applicants' treatment after their arrival on Farmakonisi, the Government submitted that eight of the applicants had claimed to have been kicked by soldiers during the journey to the Farmakonisi military base, one had said that a soldier had hit him on the foot and another had claimed to have been hit in the face. The Government indicated that some of the applicants had subsequently amended their statements: one had told the Military Court that the soldiers had not kicked them but had insulted them; another had told that same court that he did not know whether someone had been hit. With regard

to the body search, the Government stated that the applicants “[had] not assess[ed] it in specific terms”. They further declared that the allegations of ill-treatment had been the subject of two sets of proceedings – before the Naval Court and the Military Court – and that neither had resulted in prosecution. Lastly, the Government submitted that the applicants had shown no visible signs of ill-treatment, meaning that a forensic medical examination had not been able to confirm their allegations. It followed, according to the Government, that it could not be proved beyond reasonable doubt that the applicants had been subjected to ill-treatment.

2. *The Court’s assessment*

(a) Preliminary remarks

184. The Court notes at the outset that the applicants complained only about the body search conducted after their arrival on Farmakonisi. It will therefore confine its examination to whether the search was conducted in a manner that amounted to inhuman and degrading treatment in breach of Article 3 of the Convention.

(b) General principles

185. The Court reiterates at the outset that Article 3 of the Convention enshrines one of the most fundamental values of democratic society. It prohibits in absolute terms torture and inhuman or degrading treatment or punishment, irrespective of the conduct of the person concerned, even in the most difficult circumstances, such as the fight against terrorism and organised crime.

186. Ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is, in the nature of things, relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim, etc. Treatment has thus been held by the Court to be “inhuman” because, *inter alia*, it was premeditated, was applied for hours at a stretch and caused either actual bodily injury or intense physical and mental suffering, and also “degrading” because it was such as to arouse in the victims feelings of fear, anguish and inferiority capable of humiliating and debasing them. In order for a punishment or treatment to be “inhuman” or “degrading”, the suffering or humiliation involved must in any event go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment (see *Bouyid v. Belgium* [GC], no. 23380/09, §§ 86-87, ECHR 2015).

187. Measures depriving persons of their liberty inevitably involve an element of suffering and humiliation. Although this is an unavoidable state of affairs which, in itself as such, does not infringe Article 3 of the

Convention, that provision nevertheless requires the State to ensure that all prisoners are detained in conditions which are compatible with respect for their human dignity, that the manner of their detention does not subject them to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in such a measure and that, given the practical demands of imprisonment, their health and well-being are adequately secured; furthermore, the measures taken in connection with the detention must also be necessary to attain the legitimate aim pursued (see *Ramirez Sanchez v. France* [GC], no. 59450/00, § 119, ECHR 2006-IX).

188. Conditions of detention – including the procedure by which prisoners are required to undergo searches – may entail treatment contrary to Article 3 of the Convention, as may a single strip-search (see *Frérot v. France*, no. 70204/01, § 36, 12 June 2007; *Valašinas v. Lithuania*, no. 44558/98, ECHR 2001-VIII; *Iwańczuk v. Poland*, no. 25196/94, 15 November 2001; *Yankov v. Bulgaria*, no. 39084/97, § 110, ECHR 2003-XII; and *Lyalyakin v. Russia*, no. 31305/09, § 75, 12 March 2015).

189. Where, as in the present case, an individual claims to have been subjected to inhuman or degrading treatment on account of searches in detention, the Court may need to examine how such searches were conducted in the light of the applicable framework on deprivation of liberty in order to take into account the cumulative effects of the conditions of detention on the individual (see *Van der Ven v. the Netherlands*, no. 50901/99, §§ 49 and 62-63, ECHR 2003-II).

190. With regard to the specific issue of strip-searches of prisoners, the Court has no difficulty in accepting that a person obliged to submit to treatment of this nature might view that procedure in itself as undermining his or her privacy and dignity, particularly where the measure involves undressing in front of others, and even more so where he or she has to place him- or herself in embarrassing positions (see *Frérot*, cited above).

191. Systematic full-body searches that are neither required nor justified by security concerns may make prisoners feel that they are being subjected to arbitrary measures. The combination of that feeling of arbitrariness, the feelings of inferiority and anxiety often associated with it, and the feeling of a serious affront to dignity prompted by the obligation to undress in front of another person and submit to a visual inspection of the anus, may result in a degree of humiliation exceeding the – unavoidable and hence tolerable – level that strip-searches of prisoners inevitably involve (*ibid.*, § 47, and *Khider v. France*, no. 39364/05, § 127, 9 July 2009).

192. Such treatment is not illegitimate *per se*. Body searches, including full-body ones, can sometimes be necessary to keep prisons – and the prisoner in question – safe, to maintain order or to prevent criminal offences (see *Francesco Schiavone v. Italy* (dec.), no. 65039/01, 13 November 2007, and *Ciupercescu v. Romania*, no. 35555/03, § 116, 15 June 2010). Nevertheless,

while strip-searches may be “necessary” to achieve one of those aims, they must also be conducted in an “appropriate manner”, so that the prisoner’s suffering or humiliation does not go beyond the inevitable element of suffering or humiliation connected with this form of legitimate treatment. Otherwise, they will infringe Article 3 of the Convention. It is also self-evident that the greater the invasion of the privacy of a prisoner being strip-searched (particularly where the procedure involves having to undress in front of others, and even more so where the prisoner has to adopt embarrassing positions), the greater the caution required (see *Frérot*, cited above, § 38).

(c) Application of those principles to the present case

193. The Court notes at the outset that, as shown in the case file, the applicants designated by numbers 1 to 9, 12, 13 and 16 in the appendix were not free to move about after arriving on Farmakonisi. While they were not placed in detention, they were under the control of the authorities and therefore had to follow the instructions of law enforcement personnel. The Court observes that the facts in issue are not disputed by the parties. The Government merely pointed out that the applicants had not assessed the search in specific terms. The Court also notes that the Naval Court prosecutor does not appear to have examined this aspect of the facts, despite the applicants’ having complained of it in their applications to join the proceedings as civil parties. It remains to be determined whether the way the search was conducted satisfied the requirements of Article 3 of the Convention, with particular consideration given to the context.

194. The Court notes that the search took place as follows: the survivors of the sunken boat (with the exception of the applicants designated by numbers 10, 14 and 15 in the appendix) were taken to an open-air basketball court, ordered to undress and subjected to a body search in front of the other survivors and a group of soldiers. They were asked to bend over and turn around.

195. The Court observes that 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. The applicants had been neither arrested as part of criminal proceedings brought against them nor accused of committing an offence. Moreover, the Government did not indicate that there had been any suspicion that the applicants were armed or posed a threat to the security forces’ safety. On the contrary, as the Government and the domestic courts conceded, the applicants on arriving in Farmakonisi were exhausted, shocked by the events and worried about the fate of their family members.

196. As to the conditions in which the body search took place, the Court observes that the applicants were made to undress together as a group, each in front of at least thirteen people. The Court is mindful that the applicants were in an exceedingly vulnerable position, having just survived a sinking at

sea and the loss of some of their loved ones. They were under an extreme amount of stress – of that there is no doubt – and already in the throes of intense pain and grief.

197. Having regard to all the foregoing considerations, it cannot be said in the present case that the body searches of the above-mentioned applicants, conducted in such conditions, were duly warranted by a compelling security need or a need to prevent disorder or crime. In the Court's view, the body searches were capable of prompting in the applicants a feeling of arbitrariness, inferiority and anxiety resulting in a degree of humiliation exceeding the – unavoidable and hence tolerable – level that strip-searches inevitably involve (see *Frérot*, cited above, § 47).

198. The Court concludes that the search that the applicants designated by numbers 1 to 9, 12, 13 and 16 in the appendix underwent in such circumstances amounted to degrading treatment within the meaning of Article 3 of the Convention. There has therefore been a violation of that Article in respect of the applicants concerned.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

199. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

200. The applicants claimed the following sums in respect of alleged non-pecuniary damage: 300,000 euros (EUR) for the applicant designated by number 1 in the appendix; EUR 200,000 for each of the applicants designated by numbers 2, 4, 5 and 7 in the appendix; and EUR 15,000 for each of the remaining applicants. They requested that any sums awarded to them be paid directly into their representatives' bank accounts.

201. The Government considered the amounts claimed excessive and unjustified on account, first, of the specific circumstances of the case and, second, of Greece's current financial position. They submitted that the finding of a violation would constitute sufficient just satisfaction. They also asked the Court to reject the applicants' request to pay the sums awarded into their representatives' bank accounts.

202. In respect of non-pecuniary damage, the Court awards EUR 100,000 to the applicant designated by number 1 in the appendix (who lost his wife and four children – see paragraph 8 above); EUR 80,000 jointly to the applicant designated by number 2 in the appendix (who lost his wife and three children) and the applicants designated by numbers 4 and 5 (who lost their

mother, sister and two brothers); and EUR 40,000 to the applicant designated by number 7 in the appendix (who lost his wife and a child). The Court awards EUR 10,000 to each of the remaining applicants.

B. Costs and expenses

203. The applicants also claimed EUR 2,500 for the costs and expenses incurred in the proceedings before the Court. They stated that they had reached an agreement with their counsel concerning their fees. They requested that any sums awarded to them be paid directly into their representatives' bank accounts.

204. The Government cast doubt on whether the costs in question had actually been incurred, had necessarily been incurred and were also reasonable. They also submitted that the sum claimed was excessive, particularly given that there had been no hearing.

205. In the present case, the Court notes that the applicants have not provided details of the costs claimed and therefore rejects the claim in this respect.

C. Default interest

206. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Joins to the merits* some of the preliminary objections regarding the exhaustion of domestic remedies and the preliminary objections concerning the applicants' victim status, as raised by the Government, and rejects those objections;
2. *Declares* admissible the complaint under Article 2 of the Convention in respect of all the applicants and the complaint under Article 3 of the Convention in respect of the applicants designated by numbers 1 to 9, 12, 13 and 16 in the appendix, and the remainder of the application inadmissible;
3. *Holds* that there has been a violation of Article 2 of the Convention under its procedural head;
4. *Holds* that there has been a violation of Article 2 of the Convention on account of a failure to fulfil the positive obligation under that Article;

5. *Holds* that there has been a violation of Article 3 of the Convention, as the applicants designated by numbers 1 to 9, 12, 13 and 16 were subjected to degrading treatment;
6. *Holds*
 - (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts: EUR 100,000 (one hundred thousand euros) to the applicant designated by number 1 in the appendix; EUR 80,000 (eighty thousand euros) jointly to the applicants designated by numbers 2, 4 and 5 in the appendix; EUR 40,000 (forty thousand euros) to the applicant designated by number 7; and EUR 10,000 (ten thousand euros) to each of the remaining applicants; plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
7. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in French, and notified in writing on 7 July 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Renata Degener
Registrar

Marko Bošnjak
President

APPENDIX

No.	Name	Date of birth	Nationality
1.	Ehsanullah Safi	03/04/1975	Afghan
2.	Fada Mohamad Ahmadi	21/03/1962	Afghan
3.	Mirwais Ahmadi	23/07/1996	Afghan
4.	Mujib Al Rahman Ahmadi	06/08/1995	Afghan
5.	Omar Sayam Ahmadi	02/12/1997	Afghan
6.	Ziarmal Ahmed	01/01/1997	Afghan
7.	Abdulsabor Azizi	11/01/1985	Afghan
8.	Jawid Estanikzai	10/01/1998	Afghan
9.	Ali Fayyad	02/06/1979	Palestinian
10.	Zora Hazmohamad	19/01/1996	Afghan
11.	Kalab Hsran	01/01/1994	Syrian
12.	Barialai Kaderi	15/04/1996	Afghan
13.	Mohammad Rahhem Karemzai	01/01/1994	Afghan
14.	Khaiber Raheme	01/01/1988	Afghan
15.	Yousif Raheme	29/10/2012	Afghan
16.	Mohammad Shtiwi	26/08/1996	Syrian