

**BACKGROUND BRIEFING ON THE INVESTIGATION INTO THE FARMAKONISI
BOAT WRECK OF 20.1.2014**

Athens, 31 July 2014

Background

During the early hours of 20.1.2014, off the coast of Farmakonisi island, within Greek waters and close to the border line, a small boat capsized, which carried 27 refugees from Afghanistan and Syria, including 4 women and 9 children. The boat capsized and sank, while it was towed by a vessel of the Greek Coast Guard. The sinking resulted in the death of 11 persons (3 women and 8 children). The corpses of one woman and two children were found at sea and the rest of them in the cabin of the vessel, when it was lifted one month after its sinking.

During their immediate contact with the representatives of the UNHCR, which took place the following day on the island of Leros, the 16 refugees who survived reported that their boat had approached the Greek coastline when it came across the Coast Guard and that the towing of the boat by the coast guard was conducted towards Turkey, in two stages at high speeds and resulting in water entering the boat. They also reported that the rope which kept the boat connected with the Coast Guard vessel was cut by the Coast Guard officers, which resulted in the boat being capsized and in the death of 11 women and children and that the necessary rescue actions were not taken. They also complained about further acts of mistreatment against them after they reached the island of Farmakonisi.

The Coast Guard officers, on the contrary, have denied the complaints.

The Prosecutor of the Marine Court has ordered a preliminary investigation on this case, which has been extensively covered by the Press attracting international interest and has been dealt with by the Greek and the European Parliament. Our organisations have closely followed the case, supporting the victims in exercising their rights.

Archiving of the penal file

After a preliminary investigation led by the Prosecutor of Piraeus' Marine Court, the case was considered to be "manifestly ill-founded in substance" with regard to Articles 306 (exposure to risk), Article 277 (causing a shipwreck), Article 278 (causing a shipwreck by negligence) and Article 308 (bodily harm) of the Penal Code and the file was archived.

This meant that the investigation into the responsibility of the Greek coast guard for causing the boat to sink as well as for inflicting ill-treatment against the victims - as they had been accused of by the survivors - was stopped.

The decision to end the investigation was approved by the Prosecutor of the Military Court of Review, who has under the law the power to order a criminal prosecution.

The decision of Piraeus' Marine Court to close and archive the case and turn a blind eye to the accusations raised by the victims as well as their detailed testimonies concerning the facts of the case, undermines the right to judicial protection and overrides fundamental rights and guarantees that aim at protecting the victim in penal procedures.

A. The Prosecutor considered the allegations made by the survivors to be manifestly ill-founded on the basis of certain “givens”, that he derived exclusively from the statements provided by the coast guard and the military staff involved in the boat wreck as well as their superiors.

In particular, he accepted as a “given” the following

→ in general, **no pushbacks** take place

→ the Greek Coast Guard staff were ordered by their superiors to transfer the victims safe to Greek land. The Prosecutor refers to the order issued by the Directorate for the Protection of the Sea Borders which dealt with the case from the moment of interception until the final sinking of the boat. It must be pointed out however, that the mandate of this Directorate concerns only the “*protection of the national sea borders and the deterrence of illegal migration*”. It does **NOT** include rescue at sea, which is managed by the Joint Center for the Coordination of Research and Rescue (EKSED).

B. The Prosecutor considered the testimonies provided by the survivors to lack credibility. In his assessment he relied mainly on the statements provided by the coast guard and the military staff. In particular, the Prosecutor argued that the main allegation that the Coast Guard had towed the boat towards the Turkish coastline was “factually imprecise and evidentially not supported” and that there was therefore “no need or purpose to further investigate into the subsidiary aspects of these accusations”. He also relied on isolated data extracted from the technical report, which only focused on the ship worthiness and the specifications of the two boats.

However, the surviving victims have made the following crucial allegations with regard to the facts of the case as well as the responsibility of the Greek Coast Guard staff directly involved in the events and their superiors:

- The Prosecutor only examined and took into consideration the regulatory framework concerning “*the protection of the national sea borders and irregular migration*”, in other words the law concerning border patrolling and deterrence operations, which falls within the mandate of the Directorate for the Protection of Sea Borders. **The Prosecutor did not take at all into account the principles and rules of International Marine Law and the Law of the Seas** with regard to the duty to

protect human life at sea as well as the relevant rules of search and rescue at sea. (International Convention on Marine Search and Rescue, ratified by Greece with Law N. 1844/1989 and amended by Presidential Decree 201/2000, Decision A.920 (22) of the Committee of the International Maritime Organisation).

- The Prosecutor looked past a series of public statements and reports by international organisations and bodies, including the Council of Europe Commissioner for Human Rights, UNHCR, Amnesty International and ProAsyl who condemn the illegal pushback practices by the Greek Coast Guard; as well as formal statements made by the Minister of Marine, who has publicly approved of acts of deterrence.
- The Prosecutor also turned a blind eye to a number of grave contradictions and ambiguities in the statements provided by the coast guard and military personnel as well as the signal exchanges among the responsible authorities, as listed below:
 - The time of interception (it was recorded with a discrepancy of up to 1.30 hour: it was recorded as 00:35am, as 1:25am, as 1:45am and even as 02:00am).
 - The time of notification of the authorities involved in the event (the Joint Center for the Coordination of Research and Rescue (EKSED) was formally informed at 02:13am, namely at a time when the boat had already sunk, 16 people had already been collected and 3' minutes before the coast boat left the scene)
 - The time and sequence of events between 02:00am and 02:13am. (according to the Coast Guard, following events occurred within these 13 minutes: interception, identification, tying up, towing for at least 15 minutes, overturning of boat and collection of 15 survivors)
 - ambiguity about the source issuing the orders for the management of the event
 - The location from where the signal message was transmitted, since in all statements the location of interception and the location of the boatwreck are identical.
- The Prosecutor overlooked the fact that the Port Authorities of Leros had sent out two signals; the second one was supposed to be an accurate "revision" of the first one, but in practice it blatantly changed the time of events and factual description.
- The Prosecutor dismissed as unreliable the concrete testimonies of the surviving victims, which have been provided at their initial communication with UNHCR representatives, just the day after the tragic event, and before the completion of the proceedings and their statements to Port Authorities of Leros. According to these testimonies, the victims described thoroughly the criminally dangerous handlings by the Coast Guard, which caused the boat to sink and their families to drown unfairly.

- The Prosecutor accepted however as reliable the statements of the victims registered by the Port Authorities of Leros after the tragic event, even though no suitable interpreter was present, the procedural safeguards were inadequate and the same Prosecutor has already pressed charges against the Port officers that conducted the preliminary investigation for violation of duty and false certification.
- The Prosecutor dismissed for lacking credibility a statement provided by a sergeant of Farmakonisi, who described acts of violence against the survivors on Farmakonisi.
- The Prosecutor also made no reference to the cutting, by the coast guard, of the rope that was holding the boat - although stated to him by the coast guard - which caused the boat to sink, or the abandonment of the place by the coast guard just after this incident, though he spends many pages getting into other technical details and specificities surrounding the tragic night.
- The Prosecutor failed to take the necessary steps to collect evidence which are crucial for the investigation. He looked past the demands of the surviving victims to collect evidence about the communication and exchange of messages among the involved staff members and the electronic record of the location and course of the tow boats and to assess these data in combination. This evidence is thus in risk of being lost forever in the absence of a timely investigation.
- **The Prosecutor accepted undeniably that there was no electronic record of the events of that tragic night neither by the Coast Guard nor the Military.**

The available data both from the file of the case, the Prosecutor's reasoning as well as the Parliamentary Records of a Special Session that took place on 29.1.2014 leave no doubt that on 20.1.2014 near Farmakonisi an operation of "*border control*" took place, in other words of deterrence and pushback but not of rescue. **The competent Center for Rescue (EKSED) was only notified at 02:13am, after the boat had sunk and after the 16 survivors had boarded the boat of the Coast Guard. As a result, critical time was lost to save human lives. It cannot be emphasised enough that the Coast Guard staff were obliged to initiate the rescue operation and notify the Center for Rescue from the very first moment of interception of the boat, which, according to the coast guard, was drifted and had many people on board and under dangerous weather conditions, as the coast guard themselves described.**

The serious contradictions in the statements of the involved Coast Guard and Military staff and the mismatch between the times and the alleged course of events raises serious suspicions that their version of place, time and events is not true.

All rules on search and rescue have been violated.

11 LOST LIVES ASK FOR JUSTICE

