

## **Moderation: Dimitris Angelidis, Journalist**

### **Giorgos Tsarbopoulos, former Greece Representative, United Nations High Commissioner for Refugees**

I want to highlight two important issues and relate them to the current context. To mention those critical elements that raised awareness and kept attention on the case. First and foremost, the importance of our presence. The shipwreck took place in the early hours. A UNHCR unit and representative arrived on Leros to assist at noon on the same day, accompanied by two interpreters, one for Arabic and one for Farsi. This meant that, from the first day, we had interviews from people describing the incident in full clarity in their language. This is a solid basis on which everything else was set (...) Actions taken at the outset kept the case alive and on the agenda. A second main element is support from organisations, institutions, groups, volunteers on Leros, Piraeus and Athens

How did the Authorities react? (...) UNHCR was never summoned by the Prosecution to testify although it had collected the first testimonies from people and had transmitted them verbatim to the Minister a few days later with a request for an in-depth investigation. The judgment has come. Do they owe an apology? (...)

Regardless of whether an operation at sea borders is prevention, deflection or push back, the very element of sea borders, especially under problematic conditions, raises per se and by nature risks for human lives. The protection of human life takes priority and must be protected before one even speaks of protecting borders.

When there are allegations of violations of human rights or rules of international law, investigations must be in-depth and thorough, independent and going in all directions.

Who exposes Greece eventually? Those bringing testimonies of violations to the public eye and urging for investigations or those who deny everything and cause judgments such as last week's?

### **Maria Papamina, Lawyer, Legal Unit Coordinator, Greek Council for Refugees**

"Why is the Court's judgment important? One reason is the expectation from rule of law-abiding states to follow investigation routes and to shed light on the circumstances of allegations. The obvious, one would say. The Greek authorities did not do so, however. This is why Greece was condemned.

According to the ECtHR, inter alia:

- The initial statements of the survivors to the coastguard authorities should have not even been included in the criminal investigation file, since they were taken with the participation of interpreters who did not speak the same language as the survivors, let alone that the Prosecutor of the Piraeus Maritime Court considered them as being of utmost reliability, relying on these statements as well to close the case.
- In what regards the archiving of the case by the Prosecutor of the Piraeus Maritime Court, the ECtHR is of the opinion that the obvious avenues of investigation were not followed, and thus the possibility to shed light on the circumstances of the shipwreck was undermined, since the Prosecutor deemed it unnecessary to investigate all the claims of the survivors because, according to his admission, no refoulement was taking

place in Greece. It is precisely with respect to this point that the Court refers to the statement of the then Minister of Shipping, who was recorded saying "...we are sending them back somehow..." and also that, at the time, the coastguard authorities had prevented [the entry] of a significantly larger number of migrants than the 7,000 who were [officially] arrested upon entry.

Today, we hope that the obvious requirement of thorough and objective investigation will be followed in other allegations. The European Court has recently granted over 15 interim measures to mainly Syrian and Turkish refugees supported by GCR in the Evros region, who allege *inter alia* that they are informally arrested by Greek authorities, informally held in cells, subjected to violence and then brought to the riverbank and violently and forcibly returned to Turkey.

Greece should protect its borders as any other country BUT is also legally bound to perform rescues and to investigate whether people on its territory and within its jurisdiction are in need of international protection. That much is required by the legally binding principle of *non-refoulement*."

### **Eleni Spathana, Lawyer, Group of Lawyers for the Rights of Refugees and Migrants**

The Court reaffirms the obvious priority awarded to the protection of life. It therefore condemns Greece for breaching Article 2, deeming that the Greek authorities did not do what could reasonably be expected of them (...)

Evidence is very concrete. It includes deaths, an undeniable fact, the involvement of the Coast Guard in the operation, delays in activating rescue mechanisms, deficiencies in rescue and the lack of explanation thereof.

The description of the boat, as recorded in the testimonies of Coast Guard officers when they approached, falls within the category of boats in distress. Against this circumstance, mechanisms were not activated, a signal was not sent and an operation was led by an inadequate vessel – per the Coast Guard's statements – which had no equipment or life-jackets (...)

I will conclude with two reflections regarding the Court's ruling in relation to the current context. Not only the context of today but of that time too. Threats to national sovereignty re-emerge as a response to precisely those allegations and incidents. We should recall, as recently reaffirmed by the Ministry of Foreign Affairs, that search and rescue is by definition an exercise of national sovereignty. Such arguments cannot therefore be put forward. For the best way to safeguard presence at a border and area of jurisdiction – even beyond the competence zone – is to conduct search and rescue.

As regards the response of EU institutions, the situation as documented from different sides has not led to any process from institutions, despite very concrete, well-documented allegations before EU bodies. I recall the decree of March 2020 which not only suspends asylum but expressly orders *refoulement*. This is unprecedented and unacceptable. Regrettably, the promotion of the Pact entails a retreat of rights and the creation of grey areas at borders, and creates serious issues of compliance. I am afraid that this ruling, this condemnation is a foreshadowing of more deaths.

### **Marianna Tzeferakou, Lawyer, Refugee Support Aegean (RSA) / PRO ASYL**

The present case is the outcome of specific practices and policies, as well as of structural, systemic deficiencies and omissions in border management and protection. We recall that Coast Guard officers carrying out the operation received orders from the Border Control Directorate of the Ministry of Maritime Affairs which did not refer the case to the Rescue Coordination Centre and which refrained from instructing all necessary measures for the protection of the persons concerned.

As you know, push backs are policies and practices implemented to this day. They do not occur because some Coast Guard officers decided to tow a boat. Orders come from the political hierarchy.

The ECtHR has more pending cases regarding either push backs or cases with the same modus operandi, including cases of shootings or violence from Coast Guard officers.

All of these cases share the absence of effective investigation: the unwillingness of the prosecutors of the Piraeus Naval Court – competent for the Coast Guard – to investigate the substance of the allegations and to scrutinize the executive. We want to reiterate that this ruling is important and concerns not only the rights of refugees but all of us. It concerns democracy, the rule of law and the values of our society.

### **Ioanna Kourtovik, Lawyer, Network of Social Support to Refugees and Migrants**

We heard Mr Varvitsiotis [editor's note: Minister of Maritime Affairs at the time of the Farmakonisi shipwreck] in the statement using three times the term "illegal immigrants" while talking about refugees. And the first time the term was used, it was actually used in an exonerative manner. The one driving the boat was not an "illegal immigrant", but rather this "villain" who would be prosecuted and convicted to 20-25 years in prison [...]

This type of logic does not only represent his logic. Allow me to refer to the rationale of that period, which wanted deterrence to be brutal, barbaric. The chief of police was saying at the time the famous phrase "make their lives unlivable". We understand then why the people who were rescued from the shipwreck, who were dragged into squalid conditions after having lost their families in Farmakonisi, were subjected to abusive and brutal treatment, brutal physical searches, being stripped; another point on which Greece was convicted in the Decision we are discussing today. Likewise, Thanos Plevris, then advisor to the Minister of Health and now Minister of Health himself, was recorded saying in a video that "there can be no border security without losses, and to be clear, [I mean] if there are no dead people". It is no coincidence that we ended up having 11 dead people in the Farmakonisi incident.

Two points from my side:

The attitude of the justice system was one of complicity in this crime; a race to cover it up from the start. And I have to say that never or in very few cases has the Greek Justice System dared to [commence penal procedures] against uniformed personnel when [the latter] violate the law and fundamental human rights. The Greek Justice System considers that in doing so, it safeguards the prestige of the security forces, yet in doing so the prestige of the security forces

is highlighted as something more important to safeguard than the prestige of the Justice System. This is something that we must not accept!

Second and last point: it was mentioned by my colleagues that we will be once more accused of exposing our country during critical moments; of reinforcing, with our attitude and our words, the rhetoric against our country. We want to say that we love our country. We love it much more than those who lead people to their deaths; those who torture and humiliate people and remain unpunished and are sure to they will remain unpunished. We love our country more than those who cover up crimes and we believe that those who cover up crimes are the ones who expose the country. Those who are fighting the battle in the field, trying to save the people coming and those who are fighting a very unequal battle in the corridors of justice, they are the ones who honour the country. And that is what we have done so far; this what we will continue to do.

**Konstantinos Tsitselikis, Professor of Human Rights Law, University of Macedonia, Hellenic League for Human Rights**

The key implications of the case. The Strasbourg Court recognises the causal link between omissions of State bodies relating to the causing of a shipwreck and the death of 11 people.

The case is not closed: the file will reopen in the Greek courts to investigate and attribute criminal responsibility. Here we have not just push backs but kidnappings of refugees even in Athens or Thessaloniki, in the infamous black vans. What of the rule of law? Will there be accountability?

Political responsibility? Then Minister of Maritime Affairs and the Aegean had hastily declared that the shipwreck cannot “be the subject of silly exploitation” and that “illegal migrants carve holes on the boats themselves”. Miltiadis Varvitsiotis, now Deputy Minister of Foreign Affairs, acted contrary to every procedural norm mandating diligent and adequate investigation of potential responsibility of those involved, and encouraged impunity.

The criminal responsibility of State authorities is superseded by the need to prevent the arrival of refugees and migrants on Greek territory with any means. International and Greek law are selectively implemented, as deterrence practices prime as a political model and a blessing of the illegal means used, even where their effects are deadly.

**Karl Kopp, Head of European Affairs, PRO ASYL Foundation**

It's a very moving moment for us and the survivors to come together after more than eight years to honor this judgement and to honor the survivors. Finally, Justice.

There is a crisis of Rule of law in Greece. There is a climate of fear targeting lawyers and the society organizations. We have been experiencing an unprecedented escalation of pushbacks practices and brutality since March 2020.

European governments tolerate this violation of human rights and the Rule of law. The way forward for us is finding ways ending this culture of impunity.

**Azizi, survivor of shipwreck, lost his family**

“We respect the judgment and were pleased to hear about it. If they are punished, however, we will be happier. It is fortunate that everyone now knows it was not our fault but theirs. These people should never wear uniforms again so that they do not repeat such conduct.”

**Safi, survivor of shipwreck, lost his family**

“First of all, the Authorities’ view that they found us in the territorial waters of Turkey is a big lie. We were very close to the island, approximately 30-40m from Farmakonisi. The Authorities tried to push us back. I had said so to the Minister at the time.

What I lost will not be brought back. They took our clothes off. We were naked, wet. Are those our human rights? They then took us to the police station, took our depositions and told us to sign, though we had not understood. Like it was a big lie. Is this freedom of expression? Their conduct was inhuman.”