

Day 12: “The machinations of the defence”

12th Hearing, Women’s Section, Korydallos Prisons, Athens, 16 July 2015

1. Court access and suitability

As regards the public nature of the trial, the same conditions applied, given this sitting was held in the same, clearly unsuitable hall in Korydallos prison as the previous eleven hearings, rendering public access to the trial impossible. These restrictive circumstances continue despite the small number of individuals in attendance, giving rise to the suspicion that the trial is being conducted for the participants alone and not for the general public.

2. Presence and representation of the defendants

Fourteen out of the 69 defendants confirmed their presence at 9.09am. Efstathios Boukouras appeared in person at around 10am in order to deny the charges against him. Upon doing so, he left the courtroom before the hearing was over. Through their lawyers, the other defendants, including those who were not present, either denied the charges against them or lodged objections against the charges. Five defendants were absent and were not represented by their counsel. In general, the defence counsel’s presence seemed greatly reduced. Many absent lawyers were covered by their colleagues – counsel to other defendants – either for the entire hearing or until the former eventually turned up in court.

3. Court’s decision on the comment “The defendants are all members of the same political party”

After reading out the names of the defendants and their counsel, the presiding judge announced the court’s decision on a serious matter that had arisen at the previous hearing after certain comments were made by a member of the defence. In the process of filing of an objection on behalf of his client Ioannis Aggos, Giorgos Sotiropoulos had uttered the phrase “The defendants are all members of the same political party”. This sparked the immediate intervention of another defence counsel, Panagiotis Michalolias. As a result of his intervention, the statement was retracted and omitted from the court minutes. This provoked a strong reaction from the civil counsel, which walked out of the proceedings in protest. Only moments earlier, its request that audio recordings be made of the trial (a measure devised precisely for the purpose of dealing with such incidents) had been turned down by the court.

The court's decision on the matter, which was welcomed by the civil action, was that, despite the withdrawal of Mr Sotiropoulos's statement and despite the court's original denial of the civil action's request that it be included in the trial transcript, the statement in question would, after all, be entered into the court record. The presiding judge noted that, on the basis of article 140 paragraph 1 and article 141 paragraph 1 of the criminal code, the incident would be transcribed as follows: counsel for the defendant Ioannis Aggos raised his objection to the charges of participating in a criminal organisation brought against his client. He noted the absence of a material incentive, which, according to the Palermo Convention, is a precondition for an organisation to be treated as an organised criminal group. Citing article 29 of the Greek constitution guaranteeing the free functioning of political parties, he noted that "the defendants are all members of the same political party". Having made the statement, he proceeded to retract it.

After the presiding judge announced her decision, Andreas Tzelis, speaking on behalf of the entire civil counsel, said he wanted to reassure the court that he bore no grudge against the court clerk.

4. Further objections of the defence

a) A number of defence counsels (including the lawyer for Giorgos Roupakias), as well as the defendant Efstathios Boukouras personally, stated simply that they denied the charges brought against them. They raised no specific objections.

b) Other defence lawyers submitted objections in writing and elaborated on them orally, some simply referred to objections raised in previous hearing by their colleagues, while a number opted not to make individual statements during the course of the proceedings. Overall, the objections centred around calling for either the cessation of criminal prosecutions (on the grounds of the absence of a crime or because of the principle of *res judicata*) or the recognition of some invalid or unjustifiable steps taken by the prosecution before the trial itself (pertaining to the preliminary procedures, to the investigative stages or to the waiving of parliamentary immunity) that allegedly violated the rights of the defendants and, if upheld, would require an end to the trial and a return to the preliminary proceedings in order to rectify the errors. The majority of the lawyers, however, argued that the charges brought against their clients are characterised by vagueness and ambiguity, as shown in the subpoena and the indictment. They added that this is likely the result of the fact that this is a political prosecution staged by the then government with the support of the mass media. In

this way, they argued that the subpoenas based on the indictment are invalid and that, therefore, they should be redrafted and the defendants issued with new subpoenas.

For instance, Christoforos Tsagkas, counsel for Giorgos Germenis and Anastasios Michalaros, argued for the invalidity of the subpoena on the grounds that it neither includes a detailed description of the defendants' actions nor lists the characteristics of an organised group or its period of operation as required under article 187 on criminal organisations of the criminal code. He argued that even the matter of whether the criminal acts in question are attributable to the organisation, carried out with the participation of his clients, remains in question. Moreover, as regards the charge of directing a criminal organisation, the subpoena does not specify which assaults were allegedly ordered by Mr Germenis or in which ones he was involved.

Mr Katsiavos, counsel for Panagiotis Iliopoulos, argued for the invalidity of the subpoena on grounds that it is based on six acts, all of which were deemed "indicative". He stressed that this kind of vagueness and ambiguity will generate problems for the defence given it will be impossible for the accused and their lawyers to prepare a defence without knowing the precise grounds for the charges. He continued that the matter of when and where the organisation was founded, maintained and by whom is not specified anywhere. He concluded that if the allegation on the existence of the criminal organisation itself cannot be supported with evidence, then it follows that charges of participating in it are meaningless.

Dimitra Velentza, counsel to Ioannis Kazantzoglou, Elpidoforos Kalaritis and Aristotelis Chrysafitis, who was covering for many of her absent colleagues (they later endorsed her comments), made extensive reference to her written objection, reading from a document as she moved to submit it to the court. Following the protests of the civil counsel that the lawyer was breaching the principle of the oral nature of the trial, Ms Velentza accepted the presiding judge's suggestion that she be concise and not read from the written text that she intended to submit, given the law requires that verbal statements be succinct. As Ms Velentza continued, the prosecutor commented that she was hitting on central issues of the trial which do not concern the court at this stage.

She referred to irregularities and groundless provisions made by the prosecution and in the indictment, that began in the investigative stages of the trial – more specifically, the waiving of

privacy laws concerning the defendants' mobile phone communications. She suggested that these measures were sponsored by then political power, which had pushed the judiciary in this direction. She added that the applications to waive privacy laws were immediately accepted, on the basis of the argument that this was an urgent situation and that the case would otherwise be difficult to investigate.

Mr Kountouris, counsel for Giorgos Kalpitzis, noted that evident mistakes were made, given the name of his client is erroneously included in the organisation's lists, on Facebook, and on membership cards. He also claimed there was a factual error in that his client did not know that his communication with and participation in Golden Dawn was illegal. Here the presiding judge interrupted him, repeating a number of times that he was touching on core issues that should not preoccupy the court at this stage.

Ms Faliaridou, counsel for Ioannis Kastrinos, stated that the coroner's reports are vague in that speak only of light bodily harm and not of grievous bodily harm, which would be in keeping with the charge of homicidal intent brought against her client.

Counsel to Antonis Gregos referred to the ambiguity of the subpoena as regards the formation of the criminal organisation. Without knowing the place, time, structure and technical means, there is no evidence under the law that a permanent group, that engaged in planned activities, existed. He added that the simple statement in the indictment about the founding of an organisation that then morphed into a political party is a clearly underdeveloped allegation.

Nikos Roussopoulos, counsel for Ioannis Lagos, in turn referred to the above arguments in order to develop his case on the issue of the alleged vague nature of the criminal acts in the subpoena, in the indictment and in the approval granted by parliament to prosecute MPs. Mr Roussopoulos argued that prosecution was political in nature, making references to former citizen protection minister Nikos Dendias, to press reports of the period, and to certain journalists who insisted on suspects being remanded in custody and to explicit orders like "don't let anyone escape". With these references, Roussopoulos attempted to demonstrate that the principle of the presumption of innocence of the accused and of their right to a fair trial, as guaranteed by the European Convention on Human Rights (article 6), had been infringed in this case. He said information from the case file

had been leaked to journalists and published in the press before even he and his defendant were aware of them. He concluded by stating that the trial was the result of a political order from the then prime minister [Antonis Samaras], issued in a period in when Golden Dawn was ranked second in the opinion polls.

Mr Evagelatos, counsel for Dionysis Liakopoulos, asked that privacy laws be waived on his client's communication for the two-month period up to his his arrest in order to prove that he had no involvement or communication with any of his codefendants from Golden Dawn.

The objections that generated the most reaction from the civil counsel, the public, journalists and the court itself were those of Konstantina Poulia, counsel for Thomas Marias.

She began by asking the court to request the opinion of a forensic expert on the matter of whether the wounds suffered by Egyptian fisherman Abouzid Embarak were of sufficient scope, magnitude and type to be potentially fatal. At that point, the presiding judge asked, somewhat ironically, "do you mean now?", in a attempt to remind the lawyer that two years have passed since the attack and that tests would now be pointless. Ms Poulia moved on, in a consistently inflammatory tone, to demand that the court investigate the question of whether Mr Embarak had a valid residence permit at the time of the alleged criminal assault. The request triggered a strong response from civil counsel Thanasis Kampagiannis, who asked, "So if he did not have a permit, he [the defendant] had every right to hit him?" The presiding judge herself asked why the question was relevant. Ms Poulia's response was that it was very possible that Mr Embarak had deliberately filed a complaint in order to claim a residence permit, under the state's policy of protecting victims of racist violence until the completion of their court case.

Ms Paipai, counsel for Nikolaos Michos, referred the political nature of the prosecutions, demonstrated by the humiliation inflicted on the defendants through the restrictive measures imposed on them. She also said that there is not the slightest evidence (phone communications, text messages, computer files) against her client.

Following his lawyer's admonitions, the defendant Efstathios Boukouras himself stated that he denied the charges brought against him and that he was totally innocent. He began by saying that he

never subjected his own will to that of another and insisted that his actions were limited to the fulfilment of his parliamentary duties. When he began to elaborate, the presiding judge interrupted him, telling him that at this stage in the trial his denial of the charges was sufficient and that he would have the opportunity to elaborate his case when he took the stand.

Counsel to Ilias Panagiotaros, Mr Arvanitis, seconded his colleagues' objections and insisted that those witnesses and victims who claimed to have identified his client were lying. Mr Katsaros, counsel for Stavros Santorinaios, and Giorgos Stampelos's lawyer made similar points to Mr Arvanitis.

At this point the prosecutor stated that, as she would need some time to respond to the objections, she would reserve making any comment for the time being. The court took a short break so that Mr Spyridopoulos, counsel for Aristodimos Daskalakis, Giorgos Petrakis and Emmanouil Psylakis, could submit his objections. When the session resumed, Mr Spyridopoulos requested the cessation of the criminal prosecution of his clients under the principles of *lis pendens/res judicata*, that is, on the grounds that they have already been tried and sentenced by a three-member misdemeanour court in Rethymno, Crete, on the same charges and that their appeal is pending.

5. Civil action restates its request for audio recordings

At this point, shortly before the court adjourned to 21 July, civil counsel Andreas Tzelis reiterated the request that the court minutes be supplemented with audio recordings, given the court's previous decision on the matter was still provisional and could be changed if new conditions or new evidence, such as the incident involving Mr Sotiropoulos, required it. Though the presiding judge asked that the request be presented in brief, without reiterating the objections raised at the previous hearing, the prosecutor decided to stand firm on her proposal to reject the request for audio recordings to be made of the proceedings.

Counsel for the civil action took the floor and each lawyer developed their argument. Tensions mounted again when Vasilis Kapernaros, counsel for Nikolaos Kouzilos, asked that Mr Tzelis refrain from indulging in theatrical performances just as he was referring to the dangers, machinations and problems such as those that had arisen at the previous hearing.

Civil action counsel as a whole stood firm on the request for audio recordings, given that, according to Violetta Kougiatsou (counsel for Pavlos Fyssas' mother), it would help all those involved as it would not require them to commit the voluminous detail from the long case to memory. Moreover, she said, it would contribute in the search for the truth.

Takis Sapountzakis, counsel for the PAME trade unionists, said audio recordings of the proceedings would be something objectively useful for the defendants themselves and for both the defence and civil action counsel. There was some tension when his colleague Eleni Zafiriou spoke of the urgent need to record, word for word, the atrocities committed by the defendants.

Kostas Papadakis, counsel for Abouزيد Embarak, listed all the practical reasons behind the request, which included the danger of manipulation on the part of the defence, as demonstrated in the previous hearing. He paused to acknowledge the difficult position of the court clerk, adding that the latter is a human being and cannot be expected to perform like a tape recorder. He proceeded to state that given the much-discussed lack of publicity of the trial, the fact that the limited capacity of the courtroom does not allow the trial to have the exposure that it should, and that the requests for television and radio coverage of the trial have been denied, the prohibition on audio recordings as well would turn the proceedings into an "trial on the quiet". He added that the court needed to fulfil its responsibilities towards society.

Finally, his colleague Thanasis Kampagiannis stressed the crucial practical importance of making audio recordings for all aspects of the trial, and especially for the defendants and their lawyers, whom he asked to support the civil action's request in their capacity as upright professional lawyers. He referred back to the public statement once made by the purported leader of the criminal organisation Golden Dawn demanding television coverage of his trial. At this point, Mr Kapernaros, for the defence, intervened to state that the incident that took place at the previous hearing did not constitute a novel and critical development under the law as grounds to review the issue and for the civil counsel to reiterate its request. He stressed that Mr Sotiropoulos had every right to withdraw his objections and that the court was under no procedural obligation to record arguments and allegations; that remained the right of the speaker.

In this climate of tension, the presiding judge asked Mr Kontovazenitis, counsel for Anastasios Anadiotis, who was seated in the audience, if he wanted to add a verbal statement to the objection he had filed to the court in writing on the subject of the absence of financial incentives which, according to the Palermo Convention, is a prerequisite for a group to be considered a criminal organisation. Mr Kontovazenitis stated that he wished to retract his statement, as Mr Sotiropoulos had done.

The session then came to an abrupt end. The court's decision on the civil action's second request that audio recordings be made of the trial and on the prosecutor's proposal on the matter of the defence counsel's objections will be announced when the trial resumes at 9am on 21 July at the same venue.