

DAY 5: OBJECTIONS OF THE DEFENCE

5th Hearing, Women's Section, Korydallos Prison, Athens, 4 June 2015

2. Court access and suitability

As regards the public nature of the trial, the same conditions applied, given this session was held in the same, clearly unsuitable hall in Korydallos prison as the previous four, rendering public access to the trial impossible.

2. Presence and representation of the accused

Twenty-five (25) of the defendants were present; the rest were represented by their counsel.

3. The presiding judge's statements and prosecution proposals

Following the identification of the accused, the presiding judge stated that the decision on transferring the trial to a new venue was in the jurisdiction of the three-member judicial council of Athens Criminal Appeals Court. The presiding judge herself had submitted two requests for a transfer to the chairman of the council, only for them to be declined. She stated further that she has requested that the Chief of the Greek Police take the necessary security measures, given that, at least until September, the Golden Dawn trial and the trial of the Conspiracy of Fire Cells would be conducted in parallel. Moreover, she stressed that any further complaints or requests regarding the impact of the trial on students in a neighbouring school taking exams should be directed to the three-member administrative council of Athens Appeals Court, the body responsible for the trial venue.

The prosecutor then proposed that the court recognise the mother and sister of Pavlos Fyssas as civil parties, and allow them to register their grievances of psychological harm, particularly given that they had filed their request to participate in the trial as civil parties in the trial preliminaries.

The prosecutor also proposed that a request from the defendants that the restrictive measures imposed on them be either lifted or replaced be rejected for procedural reasons, stressing that the defendants would have the right to submit these requests only in the event of the postponement or

dropping of the trial. She proceeded to voice her reservations with regards to the legal recognition of civil parties at this stage in the trial. During the prosecutor's statement, the public complained that they could not hear what was being said. Some members of the defence counsel retorted that they were "did not care about journalists".

The presiding judge proceeded to announce the court's decision to admit the mother and sister of Pavlos Fyssas as civil parties. Following objections raised by the defendants and their counsel, who were allowed to voice their complaints in alphabetical order, the court refrained from responding to the two other issues raised by the prosecutor.

4. Objections to the civil action

All but two of the defence lawyers expressed their objections (both orally and in writing) to the involvement of civil parties in the investigation of charges of involvement in and or/direction of the criminal organization Popular Association–Golden Dawn" (under article 187 paragraph 1.3 of the Criminal Code).

The argument put forth by the defense counsel was that "the aforementioned article refers to offences committed against a public, state good (public order and safety) and not to an offense against individual rights, causing direct loss or damage to the victims", damage which, in their words, "is a precondition for allowing statements on behalf of civil parties". Many of the lawyers referred to jurisprudence and theories developed in recent years and to the explanatory memorandum of the Criminal Code. They added, furthermore, that the participation of private civil parties in a trial involving the above charges was a "legal pathway" to "popular action" (*actio popularis*) and amounts to an abuse of this right for publicity purposes. Other members of the defense counsel added that the documents submitted by civil action counsel were vague and did not prove a direct causal relationship between the defendants' involvement in the organization and the specific offenses (murder, breach of the public peace, etc.)

Following the statement of his lawyer, the defendant, Michail Avramis-Arvanitis MP claimed he had been wrongly deprived of the right to participate in Golden Dawn events and speeches. Given that this decision did not rest on any provisions in criminal law, it amounted to a judicial intervention in the legislative arena. He described the restrictions as "unconstitutional", given their impact on his

freedom of expression. He concluded by accusing the court of having been influenced by the political elite, and of thus “attributing collective rather than individual responsibility”.

Moreover, defense counsel for Giorgos Germanis MP stated that his client’s participation in or knowledge of the individual crimes in question is not evident in any of the documents submitted to the court. He added that his client had been put on trial solely on account of his political status, and not on the basis of criminal acts attributable to him.

Counsel for Ioannis Lagos MP, among others, added that many of the witnesses called by the civil parties had no connection to the criminal proceedings, and were summoned exclusively for political reasons. Counsel referred to Mikis Theodorakis as an example.

Counsel for defendant Maria Thomas insisted that civil party representatives could not be a party to cases involving misdemeanours. She claimed that in cases regarding damage to property and breach of the public peace, the right to participate as a civil party was open to the owner of the good or property only, and not to a tenant or employee thereof.

Panagiotis Michalolias, counsel to Golden Dawn leader Nikos Michaloliakos, added that in this particular case, which is based on article 187 of the Criminal Code, there is no legitimate reason to involve civil parties given that no damaged person/good has been specified. Nor can it be said that the society as a whole suffered injury, as otherwise this would be an issue of “popular civil action”. The following speakers voiced their agreement with Michalolias’s position.

Counsel to Konstantinos Barbaroussis MP stated that the facts provided by the civil parties are vague and unspecific, as they lack the procedurally necessary proof that members of the criminal organization “agreed” to commit illegal acts.

Counsel to former MP Efstathios Boukouras stated, furthermore, that her client had no contact or relationship to the alleged perpetrators of the crimes and that no incidents had occurred in his constituency.

Counsel to Giorgos Roupakias did not object to the Fyssas family’s participation as a civil party in the charge of murder, adding that they “felt compassion” for them. However, he objected to the

admission of the remaining civil parties under article 187 of the Criminal Code for the reasons stated earlier by his colleagues.

Regarding the participation of other civil plaintiffs in the remaining charges, the lawyers of individuals accused of complicity in conducting criminal offences requested that civil parties be barred on the grounds that their clients cannot be proven to be at fault, that the indictment of the judicial council of the Court of Appeal does not implicate their defendants in ordering these crimes to be carried out, and that the indictment does not include incitement.

Regarding the requests that restrictive measures on the defendants be lifted or replaced, the defence counsel asked that “the interruption of the proceedings be deemed as a cancellation or postponement of the trial on the grounds that each hearing in not conducted within a regular timeframe”. They also requested that the court rule accordingly, so that all defendants can attend their trial.

At 3.40pm, before the defendants’ lawyers had finished listing their objections, the presiding judge announced the end of the sitting and called the remaining lawyers to submit their objections in writing and address them to the court secretary no later than Friday 5 June 2015. Meanwhile, the court announced its decision to deny the request that the restrictive measures on the defendants be lifted or replaced, on the grounds expressed by the prosecutor. Finally, the presiding judge announced the hearing schedule for June, July and up to early September.

The trial was adjourned until 10.30am on Monday 8 June 2015 to the same venue.