

DAY 7: The battle for the civil action

7th Hearing, Women's Section, Korydallos Prisons, Athens, 22 June 2015

1. Court access and suitability

With the exception of journalists, photographers and a few witnesses, it remains impossible for the public to access the courtroom, as the hall selected for the trial cannot accommodate anyone else.

2. Presence and representation of the accused

Eighteen of the defendants confirmed their presence; the rest were represented by their counsel.

3. Statements by counsel for the civil action

All civil party counsels requested the court allow them to participate in the trial of counts of participating in or directing a criminal organisation.

Counsel for the Fyssas family, Giorgos Maragkos, opened the discussion. He began by stating that although there was a clear intention to murder Pavlos Fyssas, the accused, Giorgos Roupakias, has given no explanation on who instructed him to commit the act. "We are dealing with a criminal organisation and its leaders; the case file includes records of phone calls and messages dating from the day of the murder. The civil action is not a vague or gratuitous addition to the proceedings; a request has been made on the basis of specific details. The participation of civil parties services a clear function: to support the prosecution and to reveal further facts. The evidence supports the admission of civil parties," he said.

At this point, members of the defence counsel protested that Mr Maragkos was drifting from the point and the presiding judge asked him to sum up and to limit himself to commenting on the issue of the civil action.

The floor was given to Andreas Tzelis, another counsel for the Fyssas family, who pointed to “a causal relation between the criminal organisation and the damage suffered by the victims, given that had it not been for the organisation’s leadership, there would have been no murder”. He concluded by asking, “how is it possible for 18 individuals to be tried as perpetrators when, according to the indictment, all of them received orders from the organisation’s leaders? This means I won’t be able to ask about their leaders or about the content of the phone calls and text messages exchanged between the perpetrators and their commanders.”

Representing Pavlos Fyssas’ mother, Violetta Kougiatsou stressed that, as the indictment makes evident, “had there been no criminal organisation, these offenses would not have taken place. Members received orders which they then carried out.” Counsel for Pavlos Fyssas’ sister, Irini Papadopoulou, added that “according to article 187 (on criminal organisations) of the Criminal Code, the commission of specific offences does not require the initiative of all the members, given that the will of each member is subordinate to that of the leader; intention becomes deceit from the moment an individual becomes part of the organisation. [Pavlos] Fyssas’ murder was not carried out on the initiative of the perpetrators, but on the orders of the organisation’s leadership. They [those accused of murder] did not choose to leave the house at 11pm one night to kill someone on a whim.”

Chrysoula Pistioli, another counsel for the family, stressed that “the defendants knew each other; they assisted Roupakias. They were all connected to the organisation and acted within its structures. As far as the organisation’s higher echelons and its other members are concerned, we know for a fact that they communicated by telephone to issue orders, sanctions and, of course, express consent.”

The floor was then given to the defence counsel for the civil action being taken on behalf of the Egyptian fishermen attacked in Perama in 2012.

Dimitris Zotos began by stating that this is the most critical stage of the trial for the victims. He said Golden Dawn’s leadership has long forsaken its members in an attempt to

disassociate themselves from the crimes. Citing examples from case law and legal theory, he argued that article 187 not only applies to damage to the public good but also to the property and person of individuals. In the current case, the damage to the latter is evident and thus the victims must be permitted to participate in the trial as civil plaintiffs on the count relating to article 187 as well. He added that “the indictment contains assumptions about the organisation’s operational methods and scope. Those who attacked the Egyptian fishermen did not act of their own volition, but were part of a coordinated, collective initiative of the organisation. The article also contains provisions that are specific to the nature of the leadership’s involvement in the offenses. The “indictment specifically states that the attempted murder of Abouزيد Embarak was committed on the orders of the organisation’s leading figure”. At this point, Panagiotis Michalolias, counsel to Golden Dawn leader Nikos Michaloliakos, addressed Mr Zotos: “There is no mention of instigation here; you must be reading a difference indictment,” while other lawyers shouted, “don’t read out what the indictment implies, but what it refers to”. Mr Zotos proceeded to address the defence’s argument regarding “popular action”, responding that “the civil case hasn’t been brought by some random people”. Some commotion ensued among the defence counsel. Mr Zotos concluded by stating that the charges relating to the attack on the fishermen were upgraded from grievous bodily harm to attempted murder after the Fyssas murder, following the mobilisation of thousands of people. This claim was, again, met with outrage from the defence counsel.

Thanasis Kampagiannis, also for the fishermen, pointed out that counsel for the civil action is not asking that all foreigners and ideological rivals of the organisation participate as civil parties, but only those individuals who have suffered immediate damage as a result of the organisation’s criminal practices. He added that “the perpetrators and victims did not have any personal or economic feud between them. The victims were targeted simply because they were foreign, and a message had to be sent to all foreigners. There is overwhelming evidence in the case file and in the indictment demonstrating the responsibility of the organisation’s leadership. If my client’s case were to be brought before a Mixed Jury Court, then the instigators would also be on trial. My clients would have more rights in such a trial than they do in this one. In other words, the authorities have reduced my clients to second-class civil parties who cannot demand the prosecution of the instigators of the crimes.”

His colleague, Kostas Papadakis, reiterated the request that the trial be relocated to the Court of Appeal. He noted that the indictment directly links the assault on the fishermen with a Golden Dawn MP, Ioannis Lagos, and that it refers to speeches by Golden Dawn MPs praising the party branch in the Piraeus district of Nikea and its activities. He concluded that if civil parties are banned from charges pertaining to the criminal organisation, 41 defendants (including all those accused of membership in or direction of a criminal organisation) will not have to face a civil action. “The masterminds will be protected, and the blame laid solely on the executors,” he said. During the course of Mr Papadakis’ statement, several members of the defence counsel objected that he was dwelling too much on the thinking behind but not the actual indictment. The presiding judge called the court to order. Mr Papadakis asked, rhetorically, “if I had submitted my opinion in writing, how would my colleagues have reacted?” Finally, he requested the court to guarantee freedom of speech and make provisions for the safety of the victims as well as the defendants.

Kostas Skarmeas stated that there is no legal or case law impediment to the involvement of civil parties in cases relating to article 187 or on criminal activity. He added that “it may have been entirely by chance that the perpetrators found a man on the street and assaulted him. This does not, however, mean that they would not have done the same had they come across someone else.”

Counsel for the PAME trade unionists then took the floor. Theodoros Theodoropoulos cited examples from case law and legal theory in order to support his argument that civil parties can be admitted as participants to the trial of charges relating to the criminal organisation where specific offenses such as those contained in the indictment have been committed (that is, the Fyssas murder and the attacks on the fishermen and PAME members). He identified sections in the indictment that refer to the relationship and communication between the organisation’s members and its higher echelons in the period when the crimes were committed. Mr Michalolias, for the defence, objected that the counsel was referring to details drawn from the investigation. Mr Theodoropoulos

concluded by adding that “the crimes would not have occurred, they would not have crossed anyone’s mind, without the existence of the organisation”.

His colleague, Takis Sapoutzidakis, added that “according to the indictment, the nature of the organisation is such that it is appropriate to put it on trial under the provisions of article 187. The individual offenses occurred as a consequence of the organisation’s activities.”

At 2.50pm, the court was adjourned until 9am on Thursday 25 June 2015 in the same venue. The prosecutor proposed that the statements of the remaining civil action counsels be made together with those of the defence counsel, so that the court might reach a final decision on the matter.