

The Golden Dawn trial is a legitimate criminal case, not political persecution

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The trial of several members of the Greek political party Golden Dawn is set to resume on 7 May, with charges ranging from murder to participation in a criminal organisation. [Emmanuel Melissaris](#) writes on the legality of the trial and the accusation that it amounts to little more than the political persecution of the party. He argues that despite Golden Dawn's protestations, from a legal perspective the trial is a legitimate criminal prosecution.



The trial of Golden Dawn members [began in Athens](#) on 20 April in tumultuous fashion with Golden Dawn supporters assaulting and injuring witnesses for the prosecution and a mainstream daily newspaper [publicising witnesses' details](#). The trial was adjourned on procedural grounds (one of the defendants appeared without legal representation and the court had to appoint an advocate) and it resumes on 7 May.

Of the 69 defendants, many are charged as principal offenders or direct accomplices in a wide range of extremely serious crimes including murder, attempted murder, and serious assaults. The party leader as well as his close circle of high-ranking officials (including MPs) have been charged on the basis of Art.187 of the Greek Penal Code, which makes it a freestanding offence to set up or join and be a member of a long-term, structured criminal organisation of three or more members, which pursues the commission of a range of serious crimes.

This is a type of preparatory offence targeting the abstract endangerment of the public order by criminal organisations of the type that the article describes. It is therefore distinct from any type of complicity, i.e. the defendant participating in one way or another in the commission of the crime by the principal offender.

Golden Dawn supporters and sympathisers complain that this is not a prosecution for criminal offences but rather a political persecution. Two main arguments seem to be presented in support of this claim. First, that the law is applied abusively and, secondly, that the Art.187 charges amount to persecuting Golden Dawn members for their political beliefs. Neither argument stands up to scrutiny.

Is the Golden Dawn prosecution an abuse of the law?

A point of law that has been raised and is likely to be contested again in court is whether Art.187 applies to the facts of the case at all. The Act of Parliament (2928/2001) that amended Art.187 incorporated in domestic law the [Palermo United Nations Convention against Transnational Organized Crime](#). The Palermo Convention targets financial crime specifically and it requires that the criminal group aim at committing serious crimes "in order to obtain, directly or indirectly, a financial or other material benefit". One of the members of the judicial council, which issued the indictment against Golden Dawn, dissented on the grounds that Art.187 should be construed by reading in the financial benefit requirement. A corollary argument is that international law enjoys superiority over domestic law.

This interpretation of the law is unfounded. The letter of the law itself does not include the benefit requirement. This is not an oversight on the part of the drafters. According to its title the Act aims at "protecting citizens from culpable acts of criminal organisations" and the ministerial introductory report explicitly states that the scope of the Act is wider than that of the Palermo Convention because the basic demerit lies in the pursuit of the commission of serious offences and the risks that this poses and not in the ulterior motive of making financial gain.

Now, one might argue that despite this unequivocally expressed legislative intent, Art.187 suffers from substantive problems because preparation offences, which amount to criminalising little more than thoughts and

communications, are an affront to individuals' autonomy. There may be some philosophical merit to this argument but, in order for it to have any bearing in legal practice, it must have some foothold in law. In Greek law, this would be expressed as an unconstitutionality objection. It is impossible to go into the details of the issue here but I do not see any grounds on which Art.187 is in violation of any constitutional principle or right.

Finally, it is hard to see why the argument from the superiority of the Palermo Convention as a source of law over domestic legislation would come into the picture at all. Art.187 is not in contravention of the Palermo Convention; it incorporates it in domestic law, thus discharging Greece's duty to do so, but also goes further, which is entirely within the powers of the domestic legislator.

Are Golden Dawn members persecuted for their political beliefs?

Golden Dawn is a neo-Nazi party. They do not call themselves 'Nazi' but only because they consider the term historically specific to 1930s Germany. Neither do they call themselves National Socialist (which is nothing but the longer version of 'Nazi') any longer; they have rebranded themselves as simply 'nationalist'. This makes no substantive difference though, because their 'nationalism' refers to the same construction of the idea of Greece that animated the Nazi party. Labels aside, their theoretical foundations as well as their practices are brimming with racist (including fervent anti-Semitic) theses, claims about ethnic purity and a number of other positions echoing National Socialism.

Despite its ideological platform, Golden Dawn enjoys full legal recognition in Greek law as a political party and is in fact represented in Parliament after having seen a surge in electoral popularity over the past five years. The objection raised by Golden Dawn supporters is that criminal law is used as a way of side-stepping the constitutional recognition of the party and effectively outlawing it because of its political theses.

Political parties enjoy legal protection against their forceful dissolution even when they explicitly pursue the peaceful abolition of the political regime. They are not, however, afforded *absolute* protection. In this respect Greek law departs from German law, which explicitly excludes political parties from the scope of §129 StGB, after which Art.187 was largely modelled. There is therefore no legal obstacle in prosecuting a political party should it operate as a criminal organisation.

The next question is whether there is a freestanding criminal law reason for prosecuting Golden Dawn members and holding them accountable as members of a criminal organisation. Much depends on the construction of Art.187 and, in particular, the *mens rea* requirement of pursuing the commission of serious crimes. This is not the intention to commit a specific crime (such cases are governed by other criminal laws) nor is it required that each member of the group intend to participate in the commission of future offences in a way which would have been independently culpable (as a principal offender or an accomplice).

According to the Supreme Civil and Criminal Court (the [Areios Pagos](#)), it is required that each member subjects her or his will to the group. Therefore, the intention to pursue serious crimes consists of a general manifest preparedness that the crimes be committed. This reading is corroborated by the nature of the offence as one of abstract endangerment of the public order. The practical upshot of this is that even if the party leader and his close circle try to wash their hands of the crimes *actually* committed by party members lower down in the hierarchy – and they have indeed been trying to do so from the outset, hanging out to dry those prosecuted as principal offenders or accomplices to the crimes actually committed – they are not inculpated in relation to their participation in the criminal group.

In terms of the evidence required, this preparedness can be inferred from the endorsement of declarations of the group, participation in its military structure and military-style training camps and so forth. While it is not possible to go into fact-finding issues here, there nevertheless seems to be an abundance of well-documented evidence in that direction.

Therefore, the complaint that the prosecution amounts to a persecution for political beliefs is unsubstantiated. Golden Dawn members have properly been prosecuted as members of a criminal organisation, which pursued a gamut of very serious crimes.

A political dimension

Although, as has been demonstrated, the Golden Dawn prosecution is exclusively a criminal law issue and not a political persecution, there is of course a political dimension to the matter. Golden Dawn has never shied away from the view that democracy and most institutions of the constitutional state should be abolished. They have also openly advocated ethnic purity and the evacuation of foreigners from Greek territory. Realising this kind of programme would entail actions that fall foul of legality. The abolition of democracy is, necessarily, always violent.

But one does not have to go this far and develop a complex philosophical argument regarding legitimacy, democracy and violence. Golden Dawn's manifesto is premised, at the very least, on *a priori* denying certain parts of the population, both citizens and not, the right to be members of civil society and the political community. This exclusion is not only theoretical. It is *necessarily* manifested as the preparedness to exercise violence in order to physically exclude these segments of the population from the public sphere altogether. Therefore, Golden Dawn developed into a criminal organisation meeting the Art.187 description not because some of its members went rogue (this will be a line that they might use for the party to survive the conviction of its key officials) but because of its ideological foundations.

The legal order is based on the recognition of everyone as bearers of rights. Subjecting Golden Dawn to penal censure as a criminal organisation – which is, to repeat, independently justified as a matter of criminal law – is an indirect but firm institutional disapprobation of its undemocratic, violent disposition. It reaffirms the political community's commitment to democracy and the unequivocal rejection of Nazism and other similar ideological platforms.

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