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## Challenging the Far-Right in Greece: A Critical Assessment of the Legal Framework

### Abstract

This article critically assesses the legal tools of a criminal and civil nature available for challenging the far-right in Greece. This phenomenon is dominated by The Popular Association - Golden Dawn (*Λαϊκός Σύνδεσμος-Χρυσή Αυγή*) (Golden Dawn), a political party which has simultaneously acted as a violent movement, targeting immigrants, ethnic minorities, LGBT persons and anti-fascists.

## Introduction

Golden Dawn is a far-right party, the symbol of which resembles the Nazi swastika and whose rhetoric and activities are racist and discriminatory and, at times, violent. The party experienced a steep rise between 2009 and 2012, going from 20,000 votes<sup>1</sup> to 440,000 votes.<sup>2</sup> In 2015, it witnessed a slight drop, receiving approximately 380,000 votes<sup>3</sup> but still managed to jump from the fifth to third largest party in the Greek parliament.<sup>4</sup> Following the murder of anti-fascist musician Pavlos Fyssas by a Golden Dawn member in 2013, the leadership and some members of Golden Dawn are currently on trial for leading or participating in a criminal organisation. This article will critically assess the domestic legal framework that can be utilised to challenge far-right movements in Greece. It is beyond the scope of the present article to conduct a definitional investigation into the meaning and ingredients of the far-right. Instead, for purposes of the below discussion, the far-right is understood as a ‘political ideology or tendency based on ultranationalist ideas which tends to be directed against liberal democracy – although not necessarily directly or explicitly so.’<sup>5</sup> The paper’s analysis will assess all legislative means and methods that can directly or indirectly challenge the far-right in the framework of Greek civil and criminal law. As will be discussed hereinafter, relevant legislation has seldom been relied upon to challenge the far-right in Greece, a reality which has led to a state of impunity for the criminal activities of Golden Dawn.

## 1. The Far-Right in Greece: Context

### 1.1 Overview

The far-right in Greece is dominated by one extremist and violent group, Golden Dawn, who bears the characteristics of a violent subculture movement (albeit strictly organised and disciplined) and has the legal status of a registered political party, contesting elections and

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<sup>1</sup> Golden Dawn election results 2009: <<http://ekloges-prev.singularlogic.eu/v2009/pages/index.html>> [Accessed 1 November 2015]

<sup>2</sup> Golden Dawn election results 2012:- <[http://ekloges-prev.singularlogic.eu/v2012b/public/index.html#{"cls":"party","params":{"id":41}}](http://ekloges-prev.singularlogic.eu/v2012b/public/index.html#{)> [Accessed 1 November 2015]

<sup>3</sup> Golden Dawn election results: <[http://ekloges.ypes.gr/current/v/public/#{"cls":"party","params":{"id":41}}](http://ekloges.ypes.gr/current/v/public/#{)> [Accessed 1 November 2015]

<sup>4</sup> Greece election results 2015: <[http://ekloges.ypes.gr/current/v/public/#{"cls":"main","params":{}}](http://ekloges.ypes.gr/current/v/public/#{)> [Accessed 17 April 2015]

<sup>5</sup> Michael Minkenberg, ‘The Radical Right in Europe Today: Trends and Patterns in East and West’ in FriedrichEbert-Stiftung Forum Berlin: Nora Langenbacher & Britta Schellenberg, ‘Is Europe on the Right Path? Right-Wing Extremism and Right-Wing Populism in Europe’ (2011) 38

participating in the national and European parliaments. Although other parties came and went, with some demonstrating more extended success than others, for example LAOS (The Popular Orthodox Rally) such successes were short-lived. Golden Dawn, on the other hand, has remained on the subculture/street scene from the time of its inception and on the political scene with success since 2012. Golden Dawn uses violence to instill fear amongst its political opponents and those groups it considers to be ‘sub-humans.’<sup>6</sup> These predominantly include migrants, but also Roma, with incidences of violence against Muslim minorities in Thrace having been recorded. Golden Dawn has also carried out violence against persons belonging to the LGBTI community. Golden Dawn has hit squads composed of members with particular physical features, knowledge of martial arts and use of weapons, especially trained in hard conditions. They wear black clothes or clothes with military colours, with the logo of Golden Dawn, military boots and helmets with short or no hair. They possess weapons such as knives, iron bars and bats.<sup>7</sup> Unlike its electoral development which was slow and fractured, Golden Dawn’s use of violence became apparent more quickly, commencing in 1987 and becoming more systematic by 1992.<sup>8</sup> Essentially, up until the early 2000s, this party worked as a violent subculture working on the streets, remaining electorally marginalised. As noted in the introduction, its electoral reality drastically altered post-2009, a date that can be linked to the deep onset of the country’s financial and economic crisis. Along with parliamentary seats which have contributed to the rise in hate speech and xenophobic and racist policies and rhetoric on a political level, this party has dramatically deteriorated the daily existence, predominantly of migrants, but also of other groups such as ethnic minorities, through hate speech and hate crimes against them. This party’s rhetoric and activities went unfettered for a long period of time, up until the point one of its members murdered an ethnic Greek. Only at that point did the tables turn and did the State and its institutions decide, rather than ignoring and/or facilitating the activities of this party, to use the law against it. The trial of Golden Dawn and the State crack down directly correlated with a fall in hate crimes against vulnerable group. In the meanwhile, Κρυπτεία (Kriptia) is a new

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<sup>6</sup> In 2012, a Golden Dawn MP Eleni Zaroulia referred to migrants in Greece as ‘sub-humans who have invaded our country, with all kinds of diseases.’ The statement was made in the Greek Parliament

<sup>7</sup> Prosecutor’s Recommendation to the Appeals Council regarding the Prosecution of Golden Dawn members and Members of Parliament (15 October 2014) 42

<sup>8</sup> Dimitris Psaras, *The Black Bible of Golden Dawn: The Documented History and Action of a Nazi Group* (‘*Η Μαύρη Βίβλος της Χρυσής Αυγής, Ντοκουμέντα από την Ιστορία και τη Δράση Μιας Ναζιστικής Ομάδας*’) (1<sup>st</sup> edn. Polis 2012) 63

subculture movement in Greece which uses violence against migrants.<sup>9</sup> It calls itself a ‘national resistance organisation’<sup>10</sup> which pledges to ‘fight until the last illegal migrant is gone’<sup>11</sup> and to do so will use ‘relentless violence.’<sup>12</sup> There are little to no facts and figures on this new movement. The outcome of the unprecedented trial against Golden Dawn is still awaited. Also, in the event of the imprisonment of Members of Parliament and members and the dismantling of this party, it remains to be seen what the next day will bring for the far-right in Greece and, importantly for the State’s attitude and stance towards the far-right, considering the criminal activities of Golden Dawn on the one hand and the ultra-protection provided to the role of a political party in the national constitutional order on the other.

### *1.2 Golden Dawn’s Trial*

On 28 September 2013, eleven days after the murder of Pavlos Fyssas, the police arrested Members of Parliament and members of Golden Dawn on charges including the participation in or leadership of a criminal organisation. The Minister of Public Order and Protection of Citizens sent a document from the Greek police to the Supreme Court’s Prosecutor regarding the activities of Golden Dawn’s Members of Parliament. In this document, it was noted that their activities:

‘are not isolated incidents...they undermine the rule of law, offend human rights and human dignity, endanger public order and the internal security of the country, go against the democratic tradition and legal culture of the country as well as its obligations as they emanate from international and European human rights law.’<sup>13</sup>

Based on this, and following the instructions of the Supreme Court’s Prosecutor, a preliminary investigation was conducted by the Supreme Court to determine whether crimes had been conducted by supporters and members of the political party, particularly those related to leading

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<sup>9</sup> Nooz.gr: ‘Ομάδα “Κρυπτεία”: Θα χρησιμοποιήσουμε βία αλύπητα’ (Kriptia: ‘We will use violence relentlessly’ (28 November 2017) [www.nooz.gr/greece/1474522/omada-krypteia--tha-chrisimopoiisoyme-bia-alyypita](http://www.nooz.gr/greece/1474522/omada-krypteia--tha-chrisimopoiisoyme-bia-alyypita) [Accessed 5 October 2018].

<sup>10</sup> Ibid.

<sup>11</sup> Ibid.

<sup>12</sup> Ibid.

<sup>13</sup> Case 4003/173/315661/19-902913

or participating in a criminal organisation.<sup>14</sup> This investigation found that there were sufficient indications to justify the prosecution of the members/Members of Parliament of this organisation, particularly in relation to Article 187 of the Criminal Code.<sup>15</sup> This article, discussed further in section 4, punishes, with imprisonment of up to ten years whoever establishes or participates in a criminal organisation.<sup>16</sup> Following the preliminary investigation of the Supreme Court, two investigative judges were appointed to conduct a pre-trial investigation for purposes of requesting the Parliament to lift the immunity of Golden Dawn Members of Parliament, as set out by Article 62 of the constitution.<sup>17</sup> At the same time as the above procedure for lifting the immunity of the Members of Parliament, an investigative officer was appointed the task of investigating the crimes committed by members of the party including Pavlos Fyssas' murder,<sup>18</sup> attacks against PAME (All-Workers Militant Front) - (ΠΑΜΕ - Πανεργατικό Αγωνιστικό Μέτωπο, ΠΑΜΕ)<sup>19</sup> and attacks against Egyptian fishermen in Piraeus.<sup>20</sup> Subsequently, a Prosecutor made a recommendation to the Appeals Council<sup>21</sup> based on which the Council prosecuted all parliamentary members and other members of the party for offences such as those related to a criminal organisation and/or homicide. In the Prosecutor's Recommendation, all the known criminal activities conducted by Golden Dawn since 2008 are described. In total, this case has seventy-six defendants who are Members of Parliament and members of Golden Dawn. It must be noted that Greek law provides that pre-trial detention can occur for a time period of up to eighteen months and, since this time frame has been surpassed, all the defendants in the trial have now been released, with different forms of restrictions. For example, Roumpakias, the murderer of Pavlos Fyssas, is under house arrest whereas the leader of Golden Dawn must appear at a police station three times per month.<sup>22</sup>

The trial against Golden Dawn commenced on the 20<sup>th</sup> April 2015 and is still ongoing. The prosecution is seeking to demonstrate that Golden Dawn is a criminal organisation and that its

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<sup>14</sup> Case 413 a/28-9-2013

<sup>15</sup> Ibid.

<sup>16</sup> Article 187 (3) Criminal Code

<sup>17</sup> Case 490/29-9-2013

<sup>18</sup> Case 618/18-9-2013

<sup>19</sup> Case 625/27-9-2013

<sup>20</sup> Case 39/13-6/2012

<sup>21</sup> Article 187 of the Criminal Code provides that it is the Appeals Council which has the role of prosecuting persons for violations of this article

<sup>22</sup> Case 1247/2015

leadership and members are guilty of leading and/or participating in a criminal organisation, as prohibited by Article 187 of the Criminal Code. The State is viewing the criminal acts of its members and Members of Parliament as indicative and reflective of the criminality of Golden Dawn itself.<sup>23</sup> As noted in the Prosecutor's Recommendation, none of the party's Members of Parliament can argue 'convincingly that he/she was unaware of the party's criminal activities, which systematically and for a long period of time were being committed by and for the party.'<sup>24</sup> The victims of Golden Dawn's crimes and/or their relatives are part of the proceedings as a civil party in three cases, namely, the murder of Pavlos Fyssas, the attempted murder and attacks on Egyptian Fishermen and the attempted murder of PAME unionists. The prosecution will seek to prove that Golden Dawn consisted of about one thousand central cadres and about three to four hundred junior members, divided into cells of four or five members in all parts of Greece.

Following Fyssas' murder, the State mobilised itself, for the first time, against Golden Dawn, seeking to dismantle this group by looking at it through the lens of a criminal organisation, thereby attaching criminal responsibility to its leadership and members whilst simultaneously dismantling the organisation itself. It also prompted the police to conduct an investigation into its own members and their links to Golden Dawn, albeit with questionable results. An array of issues arise in relation to the trial, namely the temporal delay of instigating any form of proceedings against Golden Dawn as a violent and criminal entity, notwithstanding the role of the State as an indifferent bystander in allowing this party and its hit squad to spread terror on the streets, and the worrying connotation of the fact that the push factor for action emanated only following the murder of an ethnic Greek.

## 2. International and European Framework

Greece signed the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) in 1966 and ratified it, with no reservations, in 1970 through Legislative Decree 494/1970. It was the anti-racist Law 927/1979 (subsequently amended in

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<sup>23</sup> Look at, amongst others, Prosecutor's Recommendation to the Appeals Council regarding the Prosecution of Golden Dawn members and Members of Parliament (15 October 2014) 65

<sup>24</sup> Prosecutor's Recommendation to the Appeals Council regarding the Prosecution of Golden Dawn members and Members of Parliament (15 October 2014), 110: 'Ουδείς εκ των Βουλευτών του ως άνω πολιτικού κόμματος, είναι σε θέση να ισχυριστεί ευπροσώπως και με πειστικότητα ότι ήταν ανυποψίαστος για τις εγκληματικές πράξεις, οι οποίες εξακολούθητικά και επί μακρό χρονικό διάστημα διαπράττονταν εξ ονόματος και για λογαριασμό του κόμματος στο οποίο ανήκει'

2014) which sought to give effect to the ICERD. Greece did not make a declaration under Article 14 of the ICERD and, as such, victims of a violation cannot seek recourse to the competent Committee through the individual complaints procedure. This would have been particularly important for Greece given that, on a national level, the competent authorities were unwilling to use this tool as one of prevention, protection or punishment in the realm of far-right rhetoric and activities. In dealing with Golden Dawn, Article 4 which, *inter alia*, prohibits racist organisations and declares punishable by law racist violence and expression would have been a particularly useful tool, and in order to ensure that it is effectively implemented, States Parties ‘have not only to enact appropriate legislation but also to ensure that it is effectively enforced.’<sup>25</sup> However, this Convention has not been relied upon at all for challenging the far-right in Greece as illustrated by the fact that the State never considered Article 4 as a tool for challenging Golden Dawn. Article 1(4) of Law 927/1979 as amended by Law 4285/2014 holds that the establishment or participation in an organisation or league of persons of any form, which systematically seeks the perpetration of acts such as the incitement to, *inter alia*, discrimination which pose a danger to public order or constitute a threat to the life, liberty or physical integrity of the persons concerned, are to be prohibited. However, this is far from Article 4 of the ICERD which places no further requirement, other than the resulting individual or group harm against the victim or victims, without the prerequisite of other consequences such as public disorder. The reason for this discrepancy is that the same instrument, namely the anti-racist Law 927/1979, has been used to give effect both to the ICERD and the Framework Decision 2008/913/JHA. In relation to the prohibition of racist organisations, the former imposes no obligation as to, for example, the existence of an interlink between the organisation’s actions and public disorder whilst the latter does not tackle the prohibition of organisations *per se*, although it does refer to the responsibility of legal as well as natural entities. The national anti-racist law takes the necessity to prohibit hateful organisations, as this emanates from the ICERD, and intertwines the optional link established by the Framework Decision insofar as particular conduct may result in, for example, public disorder. It must be noted that, before the 2014 amendments to the anti-racist law, Article 1(2) of Law 927/1979 prohibited the leading of or participation in an organisation which pursues organised propaganda or activities of any kind pertaining to racial discrimination. As such, pre-

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<sup>25</sup> UN Committee on the Elimination of Racial Discrimination, General Recommendations No. 07 (1985) and No. 15 (1993)



2014 there were no restrictions of thresholds, making no requests for public disorder for example but, at the same time, offering a wider range of grounds upon which the law can be used.

Greece ratified the International Covenant on Civil and Political Rights (ICCPR) in 1997 with Law 2462/1997 with no reservations and with Greece recognising the competence of the Human Rights Committee to receive individual complaints. The European Convention on Human Rights (ECHR) was signed by Greece on 19 September 1974 and ratified on 20 September 1974 by Law 239/1953. This law was repealed following the departure of Greece from the Council of Europe. After the fall of the Junta, Greece became a member of the Council of Europe again and the Convention became part of national law for a second time in 1974 by Law 53/1974. Greece signed the Additional Protocol concerning the Criminalisation of Acts of a Racist and Xenophobic Nature committed through Computer Systems although it has not yet ratified this document. In the National Action Plan on Human Rights for the period 2014-2016, it was stated that the ratification of this Additional Protocol is a central objective for purposes of improving the current legislative framework.<sup>26</sup> No mention is made in the Action Plan of the ratification of Protocol 12 of the ECHR. In light of the above, the ICERD and the ICCPR which directly prohibit certain types of hateful rhetoric and activity and the ECHR which limits freedoms such as that of expression, assembly and association are part of national law. So, such ratifications allowed for the infiltration of militant democracy into the national legal system of this country, a doctrine which is also manifested in the State's constitution. More particularly, Article 5 therein provides for personal freedom insofar as this 'do not infringe the rights of others or violate the constitution or morals.'<sup>27</sup>

The relevant provisions were part of the legal system before the onset of the systematic criminality and dissemination of hateful rhetoric carried out and conducted by Golden Dawn. As such, it cannot be alleged that the country lacked in terms of legislation when it came to imposing criminal or other restrictive measures to the rhetoric and activities of groups such as Golden Dawn. Also, during this time, the country had the legislative capacity to prohibit Golden

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<sup>26</sup> Ministry of Justice - General Secretariat of Transparency and Human Rights: 'Human Rights National Action Plan 2014-2016' (*Δικαιώματα του Ανθρώπου – Εθνικό Σχέδιο Δράσης 2014-2016*) (2014)

<sup>27</sup> 'Ο καθένας έχει δικαίωμα να αναπτύσσει ελεύθερα την προσωπικότητά του και να συμμετέχει στην κοινωνική, οικονομική και πολιτική ζωή της Χώρας, εφόσον δεν προσβάλλει τα δικαιώματα των άλλων και δεν παραβιάζει το Σύνταγμα ή τα χρηστά ήθη.'

Dawn from further conducting its activities if it sought to interpret ‘organisations’ as contained in the ICERD and in the national legislation ratifying it, in a manner which also encompasses political organisations and namely political parties, especially those using the guise of a political party to perpetrate crime and violence and spread fear amongst the community. What becomes immediately apparent when considering public discussion on Golden Dawn and its criminal activities and, as noted by the Council of Europe Commissioner for Human Rights on the issue, is that such discussion appears to ‘ignore or not to take duly into account a number of relevant international and European human rights standards which legally bind Greece’<sup>28</sup> and can be used or could have been used all these years in which Golden Dawn has been carrying out its criminal activities and recited its hateful rhetoric with impunity.

### 3. National Legal Framework

#### *3.1 Freedom of Expression*

Freedom of expression is provided for in Article 14 of the constitution which is entitled ‘Freedom of the Press.’ Part 1 of this article holds that ‘every person may express and propagate his thoughts orally, in writing and through the press in compliance with the laws of the State.’<sup>29</sup> Parts 2 – 9 of the article focus solely on the press. Thus, the constitution essentially provides for free expression with the sole restriction being that such expression must comply with national laws. It is noteworthy that the freedom of expression constituted the basic reasoning put forth by those opposed to the 2014 amendments to the anti-racist law.<sup>30</sup> In addition to the freedom of expression having been cited several times as a reason for rejecting the 2014 amendments to the anti-racist law, this freedom has heavily marked the Supreme Court’s discussion of one of the few cases which occurred within the framework of the anti-racist law 927/1979, namely that against Constantinos Plevris<sup>31</sup> for the publishing of his book ‘Jews –The Whole Truth’ (Εβραίοι – Όλη η Αλήθεια’). In its judgement, the Court noted that Law 927/1979 must be interpreted restrictively and in light of the provisions of Article 14(1) and 16(1) of the constitution and Article 10 (1) of the ECHR, through which the freedom of expression is established as well as

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<sup>28</sup> Council of Europe Commissioner for Human Rights – Report on Greece, CommDH(2013)6, 6

<sup>29</sup> ‘Καθένας μπορεί να εκφράζει και να διαδίδει προφορικά, γραπτά και δια του τύπου τους στοχασμούς του τηρώντας τους νόμους του Κράτους.’

<sup>30</sup> Explanatory Report for amendments to Law 927/1979

<sup>31</sup> Case 3/2010

the freedom of art, science, research and teaching. The Court placed a tight restriction on the implementation of the anti-racist law, citing free expression as justification for such restrictions given the particular significance it attached to such freedoms. However, it did note that free expression must be exercised in light of the obligations which arise from, amongst others, Article 2 of the constitution on the obligation of the State to protect human value, a provision which also incorporates the need to respect the racial and ethnic origin of a person. However, the Court found Plevris not guilty, not due to the significance of free speech but, rather, that his book was directed against Zionists and not Jews and, so did not constitute a racial group.<sup>32</sup>

### 3.2 Freedom of Association

Article 12 of the Greek constitution provides that ‘Greeks shall have the right to form non-profit associations and unions, in compliance with the law, which, however, may never subject the exercise of this right to prior permission.’<sup>33</sup> Article 12(2) holds that an association may only be dissolved by a court judgement and, in part 3 holds that this also applies to unions of persons which do not constitute an association. What becomes clear is that this article does not aim to cover political parties as an entity given that these are covered by a separate article dedicated exclusively to political parties, demonstrating the significance which the Greek legal order places on such entities. Article 29 of the constitution provides that Greek citizens with the right to vote may establish and join political parties ‘the organization and activity of which must serve the free functioning of democratic government.’<sup>34</sup> Thus, the Greek constitution provides for the right to form and join political parties without making any direct reference to limitation grounds of this right. However, it does incorporate a qualification to this right, namely that political parties must serve the free functioning of a democratic State. The result of this approach is that the constitutional possibility of dismantling a political party is one of the controversial issues of Greek constitutional law, given that arguments can be put forth for either side. The Council of Europe Commissioner for Human Rights argues that this qualification could be ‘interpreted according to the principle of *effet utile* in a way that would give a practical meaning to the above

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<sup>32</sup> Case 913/2009

<sup>33</sup> Οι Έλληνες έχουν το δικαίωμα να συνιστούν ενώσεις και μη κερδοσκοπικά σωματεία, τηρώντας τους νόμους, που ποτέ όμως δεν μπορούν να εξαρτήσουν την άσκηση του δικαιώματος αυτού από προηγούμενη άδεια.

<sup>34</sup> Έλληνες πολίτες που έχουν το εκλογικό δικαίωμα μπορούν ελεύθερα να ιδρύουν και να συμμετέχουν σε πολιτικά κόμματα, που η οργάνωση και η δράση τους οφείλει να εξυπηρετεί την ελεύθερη λειτουργία του δημοκρατικού πολιτεύματος.

constitutional meanings.<sup>35</sup> The Commissioner recommended the adoption of relevant legislation or development of jurisprudence which would give effect to the aforementioned qualification and ‘restrict or prohibit, if necessary, a party for which ample evidence demonstrates that it does not serve the free functioning of democratic governance.’<sup>36</sup> In making this recommendation, the Commissioner reiterated that such measures would be in conformity with Greece’s obligations under Article 4 of the ICERD and Article 11 and Article 17 of the ECHR.<sup>37</sup> In its latest Concluding Observations to Greece, the Committee on the Elimination of All Forms of Racial Discrimination (CERD) recommended that the State Party ‘concretely ban neo-nazi groups from its territory.’<sup>38</sup> When confronted with the issue of Golden Dawn, the State habitually reiterated the absolutist position that the Greek constitutional order does not provide for the prohibition of political parties. This was notwithstanding the constitutional qualification of Article 29(1) and Greece’s international obligations. In adopting this approach, the country ignored its obligation to prohibit such an organisation (under the ICERD). It also ignored the fact that the freedom of association, as provided for by the ECHR, is not absolute and can be restricted, if such association, amongst others, damages the rights and freedoms of others. In brief, by retaining Article 29 and particularly part 1 therein without the necessary judicial interpretation and/or legislative developments *vis-à-vis* possibilities of dismantling a political party under certain circumstances, using provisions of supranational documents, the national legal order of this country is directly violating its obligations under the ICERD and goes against the meaning of Article 11 of the ECHR. As underlined in the pre-trial report, the requirement of Article 29 that political parties serve the free functioning of a democratic state means that an organisation such as Golden Dawn is not protected under Article 29.<sup>39</sup> This is because, under the guise of a political party, it has demonstrated its real objectives with the use of, amongst others, physical and armed violence and threats against life. The report further noted that the use of Article 29 for such purposes constitutes a violation of 25(3) of the constitution on the non-abuse of rights.<sup>40</sup> In

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<sup>35</sup> Council of Europe Commissioner for Human Rights – Report on Greece, CommDH(2013)6,8

<sup>36</sup> Ibid.

<sup>37</sup> Ibid. 9

<sup>38</sup> UN Committee on the Elimination of All Forms of Racial Discrimination: Concluding Observations – Greece, CERD/C/GRC/CO/19 (2009) 11

<sup>39</sup> Special Investigation Department: Athens Court of Appeal: Report to the President of the Greek Parliament regarding lifting the immunity of Golden Dawn Members of Parliament, Document Number 305. 19 February 2014, 20

<sup>40</sup> Ibid.11

light of this position, the pre-trial report found that it was legally possible to find members and leaders of a criminal organisation which posed as a political party guilty of offences under Article 187 of the Criminal Code. However, this should not imply that a political party can act unfettered and cause the destruction of democracy and the rights of others in a violent manner up until the point that it becomes a criminal organisation.

The above approach adopted by the Greek State towards the prohibition of political parties, resulted in a considerable weakness as it was unable to tackle effectively and dismantle, amongst others, far-right elements which organise themselves in the form of a political party. A few weeks after the June 2012 elections, the Council of Europe Commissioner of Human Rights held that, although Greek legislation does not clearly provide for the prohibition of political parties, Article 29(1) refers to the requirement that such parties must serve the free function of democratic government. He then posed a rhetorical question as to whether Golden Dawn serves the free functioning of democratic government.<sup>41</sup> However, it is imperative to ensure compatibility with international and European obligations and acknowledge the destructiveness of political parties such as Golden Dawn. The issue of banning Golden Dawn has been coming and going for several years now. The viewpoint adopted almost unequivocally by the Greek political system was that it was impossible to ban the party in its entirety given that the Greek constitutional order does not provide for the prohibition of political parties.<sup>42</sup> As a result of this certainty, each time a member of Golden Dawn was involved in the perpetration of a violent activity, the competent authorities avoided the investigation of the perpetrators' link to Golden Dawn and,<sup>43</sup> subsequently, the ramifications of this interrelationship on the status of Golden Dawn as a political party. On some occasions, relevant incidents carried out by Golden Dawn reached the parliament with the Ministry of Justice habitually condemning Nazism whilst systematically noting that an ideology cannot be persecuted but only actions.<sup>44</sup> The direct consequences of the State's stance was that, in the name of an absolute freedom to establish and participate in political parties, Golden Dawn was not dismantled which contributed to its violent

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<sup>41</sup> Dimitris Psaras, *The Black Bible of Golden Dawn: The Documented History of a Nazi Group* ('*Η Μαύρη Βίβλος της Χρυσής Αυγής, Ντοκουμέντα από την Ιστορία και τη Δράση μιας Ναζιστικής Ομάδας*) (1<sup>st</sup> edn. 2012 Polis) 445

<sup>42</sup> Dimitris Psaras, *'Golden Dawn before Justice'* ('*Η Χρυσή Αυγή Μπροστά στη Δικαιοσύνη*') (1<sup>st</sup> edn. Rosa Luxemburg Foundation 2014), 10

<sup>43</sup> Ibid.

<sup>44</sup> Ibid.

actions remaining unfettered. One of the few times the issue of banning Golden Dawn reached the parliament was in 1998. The Minister of Justice held that Golden Dawn is ‘clear fascism. And as fascism it is a murderous act, a murderous ideology against the State.’<sup>45</sup> However, he continued to note that care must be taken so that others do not say that ‘in Greece ideas are persecuted.’<sup>46</sup> Although an examination and discussion of the situation was instructed, this never took place. So, even in 1998, the State recognised the dangers posed by this party but never took constructive steps to move against it. Steps have also been taken by civil society in the realm of the party’s prohibition but, to no avail. In 2011, the Greek Helsinki Monitor filed a court claim requesting the District Attorney to commence procedures for banning Golden Dawn given that it violates Article 37.5 of Presidential Decree 96/5.6.2007 in combination with Article 29 (1) of the constitution. In the application, reference was made to the Nazi salutes of party members and references and photographs of the Nazi activity of Golden Dawn, but to no avail.

The reluctance of the Greek legal order directly to incorporate provisions, which would allow for the prohibition of political parties could potentially emanate from the country’s experience with hostility held against certain political parties. Greece has demonstrated a long-standing hostility to political parties with its peak being the prohibition of the ‘KKE - Communist Party of Greece’ (‘ΚΚΕ- Κουμμουνιστικό Κόμμα Ελλάδας’).<sup>47</sup> In fact, during ECRI’s most recent visit to Greece, many civil society organisations held that they would consider the banning of a political party ‘with suspicion’<sup>48</sup> During the drafting period of the 1975 constitution, there were deliberations as to the possibility of including a direct limitation to Article 29, prohibiting political parties which seek to overthrow the democratic order or endanger the territorial integrity of the country. However, this possibility was not accepted.<sup>49</sup> The temporal framework of this decision is significant given the particular sensitivity of the parties of the centre and the left to issues of prohibition given that the KKE had only recently been legalised.<sup>50</sup> It can, thus, be concluded that

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<sup>45</sup> Greek Parliament Official Minutes – deliberation 18/2/1998: ‘Είναι καθαρός φασισμός. Και ως φασισμός είναι δολοφονική πράξη, δολοφονική ιδεολογία εναντίον του πολιτεύματος.’

<sup>46</sup> Ibid.

<sup>47</sup> Nikolaos Mavrikas, *The Legal Personality of Political Parties as an Element of their Activities, Theory and Practice of Administrative Law* (Η Νομική Προσωπικότητα των Πολιτικών Κομμάτων ως στοιχείο Άσκησης της Δράσης τους.) (1<sup>st</sup> edn. Τεύχος 2011)

<sup>48</sup> European Commission against Racism and Intolerance: Report on Greece (24 February 2015) para. 26

<sup>49</sup> Dimitris Psaras, *Golden Dawn before Justice* (‘Η Χρυσή Αυγή Μπροστά στη Δικαιοσύνη’) (1<sup>st</sup> edn. Rosa Luxemburg Foundation 2014), 12

<sup>50</sup> Ibid.

the temporal setting in which the 1975 constitution was drafted, which is in force today, with amendments, played a great role in relation to the way in which the freedom to found and join political parties was comprehended and designed. However, the necessity for parties to serve the free functioning of democratic government is a clear qualification of this right, establishing, at least indirectly, a limitation to its exercise. In fact, it could be argued that Golden Dawn is in contravention of the non-abuse clause found in Article 25(3) of the constitution as it has exploited the provision on political parties to establish and run a violent organisation which carries out crimes relentlessly. The fact remains that had political will existed, this provision would be interpreted as above and Greece would have conformed to its international and European obligations which stipulate the necessity to prohibit racist parties and underline the limitation grounds of free association respectively. As noted by ECRI, ‘timely action’<sup>51</sup> should have been taken against such parties so as to ‘avoid an escalation of criminal activities.’<sup>52</sup> However, this was not done and, instead, Golden Dawn remained untouched for several years.

### *3.3 Freedom of Assembly*

Article 11 of the constitution provides that ‘Greeks shall have the right to assemble peaceably and unarmed.’<sup>53</sup> Article 1(2) of Law 794/1971 on Public Assemblies defines, for purposes of that law, a public assembly as a pre-organised event regarding the ideology or opinion of the participants or to the participation in lectures or in the manifestation of common requests. Article 1(3) holds that religious, commercial, entertainment or athletic assemblies do not fall within the framework of this law. Presidential Decree 141/1911 on the competences of the police force defines an assembly as a pre-arranged concentration of many people for the same reason for purposes of decision-making and common action. Article 11(2) of the constitution holds that the police may be present only at outdoor public assemblies and that such assemblies may be prohibited ‘by a reasoned police authority decision, in general if a serious threat to public security is imminent, and in a specific area, if a serious disturbance of social and economic life is threatened, as specified by law.’<sup>54</sup> Law 794/1971 on Public Assemblies provides for peaceful and

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<sup>51</sup> European Commission against Racism and Intolerance: Report on Greece (24 February 2015) para. 26

<sup>52</sup> European Commission against Racism and Intolerance: Report on Greece (24 February 2015) para. 26

<sup>53</sup> Οι Έλληνες έχουν το δικαίωμα να συνέρχονται ήσυχα και χωρίς όπλα.

<sup>54</sup> Μόνο στις δημόσιες υπαίθριες συναθροίσεις μπορεί να παρίσταται η αστυνομία. Οι υπαίθριες συναθροίσεις μπορούν να απαγορευτούν με αιτιολογημένη απόφαση της αστυνομικής αρχής, γενικά, αν εξαιτίας τους επίκειται

unarmed assembly.<sup>55</sup> This statute was passed during the years of the Junta but remains in force today. It has several unconstitutional provisions which are no longer valid. Article 1 (4) provides that this law is applicable only to pre-organised assemblies whilst the prohibition of instantaneous assemblies is incumbent on the free judgement of the police. The organiser of the assembly is also considered its president and this person must inform the police of the time and place of the assembly.<sup>56</sup> Article 6(1), therein, reiterates what is held in part 2 of Article 11 of the constitution, namely that the police may prohibit a public outdoor assembly if it is determined that there is an issue of endangering public order and security, insofar as preventing this cannot be achieved through softer police measures. Softer measures may include those provided in part 4 of the article and include a change of time or place of the assembly. Any restrictions to an assembly must be communicated to the president of the assembly at least eight hours before the assembly is to take place.<sup>57</sup> Further requirements that need to be met in order to hold an assembly are included in this article, such as certain prohibited areas where no assembly may take place, the maximum amount of persons that can take place in an assembly and the fact that assemblies may be made up only of persons on foot. Article 9 of this law provides for punishment in the form of imprisonment and a monetary fine if, amongst others, the organisers and/or members of the assembly do not inform the police of the assembly or they carry out an assembly which has been deemed prohibited or if they continue to carry out the assembly which the police has dismantled. Further, Article 171 of the Penal Code provides that whoever takes part in a prohibited public assembly is punished with imprisonment of up to six months or a monetary fine. Further, if the competent military or civil authority calls for the assembly to be dismantled and a participant of such an assembly does not follow such instructions after the third request, he or she is punished with imprisonment or a monetary fine. Article 189 of the Penal Code provides for the punishment of persons participating in violent assembly/ carrying out and/or inciting violent activities. Presidential Decree 141/1911 deals with the competences of the police in relation to dealing with assemblies, providing for issues such as the use of force and the distinction of public and private assemblies.

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σοβαρός κίνδυνος για τη δημόσια ασφάλεια, σε ορισμένη δε περιοχή, αν απειλείται σοβαρή διατάραξη της κοινωνικοοικονομικής ζωής, όπως νόμος ορίζει.

<sup>55</sup> Article 1.1 and Article 11 of Law 749/1971

<sup>56</sup> Article 3(4) Law 794/1971

<sup>57</sup> Article 5(5) Law 794/1971



Greece permits peaceful assemblies, limits the powers of the State to interfere in private assemblies and outlines the precise temporal and contextual frameworks in which the police may interfere with violent assemblies. Despite the legislative efficiency of this country in seeking to ensure the right to peaceful assemblies whilst seeking legitimacy and measure in relation to State interference, in its latest Concluding Observations, the CERD noted its concern regarding human rights violations committed by the police towards demonstrators and the lack of investigations into perpetrators. It noted that during demonstrations, groups of persons such as journalists and peaceful demonstrators were ‘threatened, intimidated and harassed by members of extremist groups such as Golden Dawn.’<sup>58</sup>

### *3.4 Non-Discrimination*

The Greek constitution contains a general non-discrimination clause in Article 5(2). This holds that ‘all persons living within the Greek territory shall enjoy full protection of their life, honour and liberty irrespective of nationality, race or language and of religious or political beliefs. Exceptions shall be permitted only in cases provided by international law.’<sup>59</sup> However, before the transposition of Directives 2000/78/EC and 2000/43/EC into the national legal system through Law 3304/2005 ‘on the application of the principle of equal treatment regardless of racial or ethnic origin, religious or other beliefs, disability, age or status,’ the anti-discrimination framework of this country was abstract, with the general non-discrimination provision of the constitution constituting the only source of law on the issue. As such, law 3304/2005 ‘fills a conspicuous lacuna in the Greek Legal System.’<sup>60</sup>

Article 1 of the Greek non-discrimination law holds that its purpose is the establishment of a general anti-discrimination framework in relation to racial or ethnic origin as well as an anti-discrimination framework in relation to other grounds such as religion, disability, age or status in relation to employment. Article 4 prohibits discrimination in relation to the ‘access to and supply of goods and services which are available to the public, including housing’ but only in respect of

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<sup>58</sup> UN Human Rights Committee Concluding Observations – Greece, CCPR/C/GRC/CO/2 (3 December 2015) 8

<sup>59</sup> Όλοι όσοι βρίσκονται στην Ελληνική Επικράτεια απολαμβάνουν την απόλυτη προστασία της ζωής, της τιμής και της ελευθερίας τους, χωρίς διάκριση εθνικότητας, φυλής, γλώσσας και θρησκευτικών ή πολιτικών πεποιθήσεων. Εξαιρέσεις επιτρέπονται στις περιπτώσεις που προβλέπει το διεθνές δίκαιο.

<sup>60</sup> European Network of Legal Experts in the Non-discrimination Field, Athanasios Theodoridis, ‘Report on Measures to Combat Discrimination – Directives 2000/43/EC and 2000/78/EC – Country Report 2013 – State of affairs up to 1<sup>st</sup> January 2014’ 8

race and ethnic origin, a minimum standard set out by the racial equality directive. Article 16.1 provides for criminal sanctions in the event of discrimination in the realm of accessing goods and services. This provision holds that ‘whoever violates the prohibition of discriminatory treatment on the grounds of ethnic or racial origin or religious or other beliefs, disability, age or sexual orientation, with respect to the supply of goods or the offer of services to the public is punished with six months’ imprisonment and a fine of 1000 – 1500 Euros.’ This law is applicable to the public and private spheres.<sup>61</sup>

Thus, taking into account the provisions of Article 4(1) and 16(1) in relation to non-discrimination when accessing goods and services, insofar as this discrimination is based on racial or ethnic origin, two issues pertaining to Golden Dawn may arise. Firstly, that there exists a national non-discrimination framework which may be used to punish the discriminatory activities of Golden Dawn, such as the soup kitchen and blood donations for Greeks only. Secondly, that, notwithstanding the countless number of such activities that have taken place even after the enforcement of the non-discrimination law, this law has not adequately been used for the collective activities of Golden Dawn. Instead, prosecution of such discrimination has occurred in two cases, only one of which could rely on the non-discrimination law, for reasons discussed below. Firstly, in 2013, a bus driver of a transport company of the city of Thessaloniki forced two passengers of African descent to get off the bus for no apparent reason. When the other passengers criticised this behaviour, the driver provocatively declared that he was a Golden Dawn supporter. An association, the *Nazi-Free Thessaloniki Assembly*, filed a complaint to the Organisation of Public Transportation of Thessaloniki. The case resulted in the intervention of the Misdemeanours Prosecutor of Thessaloniki who ordered a preliminary inquiry into the case. The court found the perpetrator guilty of denying access to services on racial grounds, holding that the bus driver’s conduct offended the victims’ dignity and created an intimidating, humiliating or offensive environment, without however referring to the term ‘harassment.’<sup>62</sup> It ordered his ten-month imprisonment suspended for three years and a fine of 1000 Euros.<sup>63</sup> This was the first time that Article 16, which provides for criminal penalties for discriminatory

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<sup>61</sup> Article 4(1) Law 3304/2005

<sup>62</sup> Hellenic League for Human Rights Press Release on the Conviction of the Bus Driver: <<http://www.hlhr.gr/?MDL=pages&SiteID=1027>> [Accessed 23 February 2016]

<sup>63</sup> *Ibid.*

behaviour in the supply of goods and services, was enforced, reflecting a nine year delay from the law's creation.<sup>64</sup> Secondly, in 2014, a Greek doctor and member of Golden Dawn posted a 'Jews not Welcome' sign outside his office and was subsequently arrested for inciting racial discrimination, in violation of anti-racist Law 972/1979.<sup>65</sup> This incident falls within the framework of Law 3004/2005 as the doctor, through his sign, ousted an entire ethnic and/or religious group from the provision of his services. However, the Prosecutor had to pursue this case in the realm of Law 972/1979 which can be instigated *ex officio*, due to the fact that there was no identified victim of the aforementioned conduct. Therefore, since a case cannot be brought before judicial bodies without a designated victim under the anti-discrimination law, the only path available in the realm of ethnic and racial discrimination is the anti-racist law. Thus, whilst there exists another option in the framework of supply of goods and services for persons discriminated against due to their race or ethnicity, even if no consenting victim is identified for purposes of a trial, no such alternative is available for the other groups protected by equal treatment legislation. So, the necessity of a consenting victim is a direct result of the provisions of the directives and not a deviation by the State from its European obligations. Either way, such characteristics of the law can be deemed to constitute shortcomings that directly affect the practical applicability and scope of the equal treatment framework of Member States which choose to apply the directives' provisions as minimally as possible.

#### 4. The Far-Right Movement and Criminal Law

##### *4.1 Law 927/1979 – Anti-Racist Legislation*

Law 927/1979 is the central piece of legislation which seeks to combat racism as manifested through speech and activities. It was amended in 2014 through Law 4285/2014<sup>66</sup> to harmonise national law with Framework Decision 2008/913 on combatting certain forms and expressions of racism and xenophobia by means of criminal law. The Greek legal system has had a piece of legislation tackling hateful speech and activities directed at racial and ethnic groups since 1979 and religious groups since 1984. This law was amended in 2014, with some of the amendments

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<sup>64</sup> To Vima: 'A Bus Driver Removed Two Migrants from the Bus' (12 April 2013) <<http://www.tovima.gr/society/article/?aid=507428>> [Accessed 23 August 2015]

<sup>65</sup> European network of Legal Experts in the Non-Discrimination Field: Prosecution of Golden Dawn Doctor (summary): <[http://www.equalitylaw.eu/index.php?option=com\\_edocman&task=document.viewdoc&id=1406&Itemid=295](http://www.equalitylaw.eu/index.php?option=com_edocman&task=document.viewdoc&id=1406&Itemid=295)> [Accessed 23 February 2016]

<sup>66</sup> Law amending Law 927/1979 and harmonisation with the Framework-Decision 2008/913/JHA of 28<sup>th</sup> November 2008 on Combatting Certain Forms and Expressions of Racism and Xenophobia by Means of Criminal Law

restricting the offences and creating higher thresholds. Although the law is ‘on punishing acts or activities aiming at racial discrimination,’ following the 2014 amendments, it incorporated grounds such as disability as a protected characteristic and therefore, deals with a broader range of issues, falling outside the framework of racial discrimination. The report on the law’s evaluation stated that the law was rarely implemented and deemed insufficient due to the serious challenges faced by the country in the particular temporal framework in which the amendments were being discussed. The report refers to issues such as the transition into a multicultural society and the equal protection of all persons regardless of characteristics such as physical or cultural ones. For these reasons, it was considered necessary to adopt a new and improved piece of legislation to tackle, in a more effective manner, manifestations of racist and xenophobic behaviour.<sup>67</sup> The explanatory report refers to the risk of violating the freedom of expression when seeking to criminalise racist and xenophobic manifestations and referred to provisions that should be followed including, *inter alia*, Articles 10, 14 and 17 of the ECHR.<sup>68</sup> The passing of the law came with ‘intense political controversy’<sup>69</sup> with different political parties putting forth different draft laws before agreeing upon the final version. The law has been condemned before and after its passing, mainly due to concerns over free expression, with a particular focus on Article 12. For example, Greek academics, in a written statement signed by one hundred and thirty nine academics, expressed their reservation to Article 2 at the stage of its deliberation.<sup>70</sup> In fact, during the deliberations on the bill, one of the arguments against its passing was that its provisions violate free speech, as reflected in the public deliberation on the law.<sup>71</sup> The way in which the State tackles the issue of free expression within the realm of the law under consideration becomes clear in its report following the public deliberation at the time when the amending law was a bill. It was noted that the protection of free expression is of utmost importance and gave an example of the type of behaviour punishable under the new law, namely the incitement to violence of a mob armed with bats and chains looking for victims which do not

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<sup>67</sup> Explanatory Report for the Proposed Law on Combatting Racism and Xenophobia, para.4

<sup>68</sup> Ibid. para.6

<sup>69</sup> FRA, ‘Racism, Discrimination, Intolerance and Extremism: Learning from Experiences in Greece and Hungary’ (2013) 12

<sup>70</sup> See for example statement made by academics: Greek Reporter: ‘Greek Academics against Anti-Racism Bill’ (3 September 2014) <<http://greece.greekreporter.com/2014/09/03/greek-academics-against-anti-racism-bill/#sthash.Ko5rxv0l.dpuf>> [Accessed 1 March 2016]

<sup>71</sup> Public Deliberation on amendment to Law 927/1979:<<http://www.opengov.gr/ministryofjustice/?p=1012>> [Accessed 2 March 2016]

conform with their racial, religious or cultural standards. However, this reflects the intention of the State to attach rather high thresholds to what is considered prohibited conduct under the law, underlining violence as a potential requirement.

Law 927/1979 includes provisions on the criminalisation of, *inter alia*, hate speech, including the denial of international war crimes such as genocide. Article 1 deals with the public incitement to violence, hatred or discrimination against a person or group of persons due to their race, colour, religion, status, ethnic origin, sexual orientation, gender identity or disability if this poses a danger to public order or constitutes a threat to the life, liberty or physical integrity of the person or persons. Article 1 does not refer to the grounds of language and citizenship. This is not a requirement of the Framework Decision but had been recommended by ECRI.<sup>72</sup> A person guilty of such an offence is punished with a prison sentence ranging from three months to three years and with a monetary fine of five thousand to twenty thousand euros. Part 2 of this article deals with damage to the property of persons on grounds of their protected characteristics insofar as this may cause harm to public order. A person found guilty under Article 1(2) receives the same punishment as that provided for in Article 1(1). If the incitement results in a criminal act, the punishment increases to imprisonment of at least six months and a monetary fine of fifteen to thirty thousand euros.<sup>73</sup> This is below what is provided for in the Framework Decision which holds, in Article 3(2), therein, that the aforementioned conduct should be punishable by criminal penalties of a maximum of between one and three years' imprisonment. In sum, the above provisions punish hate speech insofar as it incites, *inter alia*, violence against a person or damage to property. However, there is no definition in the national law of, for example, what is to constitute hatred, nor any qualification made as to whether definitions offered in the Framework Decision are adopted. As well as the above, Article 1(f) criminalises hateful organisations. More particularly, this provision holds that whoever creates or participates in an organisation or league of persons in any form, which pursues the systematic perpetuation of criminal activities as described in parts 1 and 2 of the same article (harm against persons and harm against property insofar as, *inter alia*, public order is disrupted) is punished with imprisonment of three months to three years and with a monetary fine of between five and twenty thousand Euros, insofar that this

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<sup>72</sup> European Commission against Racism and Intolerance: Report on Greece (24 February 2015) para. 12

<sup>73</sup> Article 1(3) Law 927/1979

is not punished more severely through another provision. Although the article on prohibited organisations incorporates the possibility of a higher punishment if one is available, the fact remains that the law gives the same punishment for an individual act which may incite hate as it does for an organised movement of persons who seek to incite hate, with the element of a group denoting an organised movement, systematic activities and, potentially, more serious consequences. Nevertheless, Article 1(4) on prohibited organisations is a significant tool to combat organised and semi-organised far-right movements. Article 1(2) of the old law prohibited the establishment and participation in organisations which promote propaganda or actions pertaining to racial discrimination. With the 2014 amendments, the relevant provision extends the range of target groups which are to be protected from prohibited organisations, clarifies that an organisation can take any form and, as such, one could assume it could take the form of a political party. The new provision holds that prohibited organisations are ones which systematically carry out the activities of parts 1 and 2 of the Article, with all the restrictions and qualifications that come with them, thereby narrowing the scope of this Article in that sense. Even though the prohibition of organisations promoting racial discrimination existed in the old law, this was never used to dismantle Golden Dawn and, given that the 2014 amendments entered into force following the State's crackdown on the party which commenced in 2013, the utility of this provision in the face of Golden Dawn is non-existent. Article 2 of the law deals with publicly condoning, trivialising or maliciously denying the existence or severity of international crimes such as genocide. The punishment for crimes that fall within this article are the same as those for Article 1 (1). Furthermore, Article 3 deals with jurisdiction when the forum used for communication is the internet and Article 4 provides for the responsibility of legal persons or a league of persons, two points which are new additions to the law following the 2014 amendments. Article 4 allows for the *ex officio* prosecution of crimes provided for in this law.<sup>74</sup> This is not a new provision as prosecution for racist crimes (not general hate crimes on the grounds provided for in the amended law) could be prosecuted *ex officio* since 2005.<sup>75</sup> However, as noted by the Ombudsperson, the power of *ex officio* prosecution has not been exercised by

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<sup>74</sup> *Ex officio* prosecution existed since 2001 and Article 39(4) of Law 2910/2001 on 'The Entry and Stay of Aliens in Greece. Acquisition of Greek Citizenship through Naturalisation and other Provisions'

<sup>75</sup> Law 3386/2005 on the Entry, Stay and Social Integration of Third Country Nationals in Greece, Article 71(4)

authorities.<sup>76</sup> What is conspicuously missing from this law is the provision on aiding and abetting the crimes described in Articles 1 and 2, as so required by the Framework Decision. Instead there are some general provisions in the Penal Code that could be relied on for such purposes. In light of the above, the 2014 amendments have brought both positive and negative aspects to the current anti-racist legal framework of the country. In some respects it offers more restrictive tools to the State to challenge the far-right as is the case, for example, with the necessity for there to be an issue of public order attached to expression which incites, *inter alia*, violence as it includes a wider array of protected characteristics, even though such characteristics would not habitually have been foreseen to fall within an anti-racist framework.

Since its inception in 1979, this law has seldom been relied upon to combat the offences found therein,<sup>77</sup> with biased conduct rarely being acknowledged as such by the police and/or the Courts. In fact in 2012, the Minister of Justice recognised that ‘few prosecutions for crimes regulated by Law 927/1979 have been initiated in recent years.’<sup>78</sup> This is particularly the case regarding the law as it stood before the 2014 amendments with the post-amendment period being too short to conclude upon its application, although some positive steps can be discerned, as discussed in section 4. However, assessing the implementation of the anti-racist law is a complex task given the lack of relevant statistics and the absence of a central hate crime database.<sup>79</sup> Around sixty law suits have been filed under the anti-racist law and almost all of these have come from the Greek Helsinki monitor but very few have resulted in a conviction. In relation to this law and Golden Dawn, in Case 65738/2014,<sup>80</sup> the Court found a member and parliamentary candidate of Golden Dawn guilty of inciting racial violence against migrants in the area of Agios Panteleimonas in front of a camera. He said that ‘we are ready to open the ovens... To make soaps. Not for the people...since we may fall ill...we will take their hair and will sell it at Monastiraki.’ These were some of the phrases he used to talk about migrants in the area. The Court recognised that these

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<sup>76</sup> Ombudsperson: ‘Special Report: The Phenomenon of Racist Violence in Greece and How it Can be Tackled’ (Το Φαινόμενο της Ρατσιστικής Βίας στην Ελλάδα και η Αντιμετώπισή του’) (September 2013)

<sup>77</sup>UN Committee on the Elimination of All Forms of Racial Discrimination Concluding Observations: Greece (14 September 2009) CERD/C/GRC/CO/16-19, 31, Fundamental Rights Agency, ‘Racism, Discrimination, Intolerance and Extremism: Learning from Experiences in Greece and Hungary’ (2013) 11

<sup>78</sup> Council of Europe Commissioner for Human Rights – Report on Greece, CommDH (2013) 6,7

<sup>79</sup> European Commission against Racism and Intolerance: Report on Greece (24 February 2015) para. 34

<sup>80</sup> Case 65738/2014

statements were exaggerations but held that they demonstrated his conviction publicly to provoke people to cause harm to immigrants. His racist motive was recognised and he was sentenced to one year of imprisonment under the anti-racist law.

As such, although there has been a legislative framework that could have been used against acts of the far-right since 1979, this has rarely been used to tackle far-right hate, with the Council of Europe Commissioner of Human Rights noting ‘the serious gap in training and awareness concerning anti-racism legislation and practice for police, prosecutors and judges.’<sup>81</sup> The investigation of bias at the stage in which a complaint is filed is of utmost importance since time and again it has been noted that bias motivation is not recorded by the police, even if they are confronted with a hate crime victim.<sup>82</sup> In relation to this, the Police Circular 7100/4/3 of 2006 is a useful tool for the adequate and effective investigation of such bias. The circular requires that the police investigate the motivation of a crime, collect relevant information and report hate crime incidents and record, amongst others, the racial, ethnic and religious groups of the victim where relevant. However, this Circular was not accompanied by training and other methods to ensure its implementation and, as noted by the Ombudsperson, it has remained unused.<sup>83</sup> So, as is the case with the anti-racist legislation, significant tools available to the State to challenge the far-right have remained unused.<sup>84</sup> In addition to the limitations that emanate from lack of awareness and expertise lies the lack of trust in law enforcement agencies, particularly amongst victims of hate crime which is a result of the incidents of ill treatment of migrants and Roma especially by law enforcement officials and, at the same time, the lack of adequate investigations into hate crime.<sup>85</sup> The lack of trust in the police also emanates from the ‘persistent and continuing allegations, some of which were officially investigated, of collusion between police officers and Golden Dawn.’<sup>86</sup> The link between the police and Golden Dawn is a serious issue

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<sup>81</sup>Council of Europe Commissioner for Human Rights – Report on Greece, CommDH(2013) 6,9

<sup>82</sup>Fundamental Rights Agency, ‘Racism, Discrimination, Intolerance and Extremism: Learning from Experiences in Greece and Hungary’ (2013) 11

<sup>83</sup>Ombudsperson: ‘Special Report: The Phenomenon of Racist Violence in Greece and How it Can be Tackled’ (Το Φαινόμενο της Ρατσιστικής Βίας στην Ελλάδα και η Αντιμετώπισή του’) (September 2013) 44

<sup>84</sup>Fundamental Rights Agency, ‘Racism, Discrimination, Intolerance and Extremism: Learning from Experiences in Greece and Hungary’ (2013) 12

<sup>85</sup> Council of Europe Commissioner for Human Rights – Report on Greece, CommDH(2013)6 11

<sup>86</sup> European Commission against Racism and Intolerance: Report on Greece (24 February 2015) para. 58, European Network of Legal Experts in the Non-Discrimination Field, Athanasios Theodoridis, ‘Report on Measures to Combat Discrimination – Directives 2000/43/EC and 2000/78/EC – Country Report 2013 – State of affairs up to 1<sup>st</sup> January 2014’ 133



that also arose during the onset of the party's trial. In addition, there have been several reports of the police requesting alleged victims of hate crimes to pay the amount of one hundred Euros for purposes of lodging their complaint. This practice went against the law given that Article 46 of the Code of Criminal Procedure requests that such a fee is to be paid for cases which are not prosecuted *ex officio*. Article 5 of the 2014 amending law incorporated a provision which directly excluded the payment of such fees for filing a hate crime complaint. Furthermore, up until 2014, national law placed undocumented migrants who were victims of hate crime at risk of detention and deportation. As a result, such migrants were reluctant to report the crime to the police or even to visit public health care services.<sup>87</sup> However, Ministerial Decision 30651 of 2014 allows for the issuance of a residence permit on humanitarian grounds to migrants who are victims of or key witnesses to hate crime and are valid until the case is closed or the final court judgement is passed.<sup>88</sup> For a permit to be issued, criminal proceedings must have been initiated. Although this is a positive step which develops the law in a manner in which it can provide enhanced protection to victims of hate crime and subsequently challenge the far-right, as argued by ECRI, it would have been more effective for there to be an 'automatic suspension of the deportation orders rather than leaving it to ministerial discretion.'<sup>89</sup> The victim of the attempted homicide in Pireaus by members of Golden Dawn (the Egyptian fishermen case), was the first person to receive a humanitarian permit under this provision.<sup>90</sup>

In light of the above, Greece has had anti-racist legislation since 1979 which renders criminally punishable rhetoric and activities which fall within the sphere of the far-right. This piece of legislation has undergone certain amendments since that time, bringing changes such as the incorporation of a religion protected characteristic and in 2014 underwent major changes for purposes of harmonising national law with the Council Framework Decision 2008/913/JHA. These amendments brought about several changes to the current law, broadening its scope in some respects, such as by incorporating a larger number of protected characteristics but also limiting it as is manifested in the necessary interrelation between hateful speech and public disorder. In addition, Greece recognised the need to crack down on hate crime, albeit not

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<sup>87</sup> Human Rights First 'We're not Nazis, but...The Rise of Hate Parties in Hungary and Greece and Why America should Care (August 2014) 97

<sup>88</sup> Ministerial Decision 30651 (5 June 2014)

<sup>89</sup> European Commission against Racism and Intolerance: Report on Greece (24 February 2015) para. 84

<sup>90</sup> Civil Action (Case files ABM Φ2013/3990, ABM Φ2012/979 and 979A) 15

directly recognising the correlation between such crimes and Golden Dawn. Such recognition is manifested in, for example, the 2006 Police Circular on bias motivation and in the establishment of regional departments in Athens and Thessaloniki and special units to tackle racist violence who have the duty to conduct investigations into racist crime, carry out an *ex officio* investigation and receive complaints in person or through a hotline.<sup>91</sup> However, there ‘is little evidence so far of their effectiveness.’<sup>92</sup> Moreover, the anti-racist legislation remains essentially used with some sporadic reliance on the law whilst other measures, such as the anti-racist units and the Police Circular on bias motivation, have not brought about a significant change or results. Moreover, there are real and practical obstacles, such as the link between the police and Golden Dawn, especially and more evidently before the latter’s trial, which prevented victims from filing complaints. Following the assessment of the anti-racist law which, *inter alia*, prohibits certain types of rhetoric and actions against particular groups as well as the establishment and participation of groups which seek to incite certain actions through their rhetoric, it is now necessary to consider further provisions of Greek criminal law that can be used to challenge the far-right, namely those pertaining to aggravation and sentencing.

#### 4.2 Aggravating, Sentencing and Hate Crimes

Since 2008, the aggravating circumstance of a crime has been incorporated into Article 79 (3) of the criminal law which provided (since 2008)<sup>93</sup> that carrying out an act of ethnic, racial, religious hatred or hatred based on the victim’s status constitutes an aggravating circumstance. Since 2013,<sup>94</sup> the grounds of aggravation were extended to cover the colour, sexual orientation and gender identity of the victim. In addition it provided that a sentence in such a situation cannot be suspended. Article 79 provided courts with the opportunity to take into consideration the aforementioned circumstances at the time of sentencing. This provision acknowledged the particular weight of such a circumstance and allowed courts to take it into account so as to hand down the maximum sentence possible without the possibility of its suspension. However, it did not provide the Court with the opportunity to give a higher sentence than it could hand down for

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<sup>91</sup> Fundamental Rights Agency, ‘Racism, Discrimination, Intolerance and Extremism: learning from experiences in Greece and Hungary’ (2013) 14

<sup>92</sup>European Commission against Racism and Intolerance: Report on Greece (24 February 2015) para. 77

<sup>93</sup>Article 23.1 of Law 3719/2008 ‘Amendments for the Family, the Child, the Society and other Provisions’ provides that the commission of an offence motivated by ethnic, racial or religious hatred or hatred on account of a different sexual orientation constitutes an aggravating circumstance.

<sup>94</sup>Article 66 of Law 4139/2013 on Addictive Substances and other Provisions

the equivalent crime which had no bias motive. The non-use of this provision can be demonstrated in some cases. A case<sup>95</sup> that demonstrates this point occurred in 2014 when a member of Golden Dawn participated in the fascist attack of a hit squad against a hair salon run by a Pakistani immigrant. He, along with eight others entered the salon and attacked the two Pakistani employees and one Greek client. They then exited the salon and threw a self-made Molotov bomb into the property. This case did not result in the investigation of racist motives by the police. It must be noted that similar attacks continued to occur over the following weeks in the same area. The case involves Kontomos, who acted along with eight other people. He was sentenced to fourteen years and three months imprisonment as an accomplice in an attempted homicide, dangerous bodily harm, robbery and possession of explosives. However, as with the police, the court did not use the provision of aggravation due to a racist motive, as contained in Article 79(3) applicable at the material time.<sup>96</sup> In 2012, the Magistrates Court only imposed a suspended sentence of eight months and a pecuniary fine of two-hundred Euros on a Golden Dawn member who had violently attacked a member of the Muslim minority in Thrace.<sup>97</sup> However, there are some exceptions to the non-use of the legal framework but also to the habitual inaction of the authorities. In the 2014 case of Shehzad Lukman, a migrant from Pakistan, who was stabbed to death by two members of Golden Dawn when he was on his bicycle going to work, authorities found Golden Dawn material and weapons at the perpetrators' houses. The Court recognised Article 79(3) and the 'racist fury' of the perpetrators and found them guilty of, amongst other, homicide with intent, illegal possession carrying and use of weapons. The Court did not recognise any mitigating factors and handed down the highest sentences possible, more particularly life sentences for both for the intentional homicide plus thirty-two months for the other offences.<sup>98</sup> Although the Court placed the sentencing of the perpetrators within the framework of a racist motive, in their words, racist fury, an interesting point to make was their reference to Golden Dawn. More particularly, the Court held that their membership of this party was not relevant to criminal responsibility. This is a weak point of the judgement and reflective of the general stance of the judiciary towards Golden Dawn's actions,

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<sup>95</sup> There exist several other cases in which the violent actions of Golden Dawn have been prosecuted by the Courts without the recognition of the racist motives have been made see: <<http://www.efsyn.gr/arthro/oi-katadikes-tis-hrysis-aygis>>

<sup>96</sup>Case 114/2014

<sup>97</sup>Council of Europe Commissioner for Human Rights – Report on Greece, CommDH(2013)6 18

<sup>98</sup> Case 398/2014

since they were not willing to recognise the link between the perpetration of criminal acts and Golden Dawn as a violent entity. Following Lukman's murder, Amnesty International announced that this crime was not an isolated incident and that urgent measures need to be taken.<sup>99</sup> This case has been included in the case-file against Golden Dawn as presented to the Supreme Court.<sup>100</sup> In case 1079/2014, the Court found four members of Golden Dawn guilty of attacking Pakistani immigrants working at an olive factory. According to the decision they 'acted with xenophobic and racist feelings.'<sup>101</sup> In case 60084/2013,<sup>102</sup> two members of Golden Dawn had been found guilty of the arson of a bar owned by a Cameroonian national. The Court found that their actions were 'prompted by hate due to the racial and ethnic origin of the civil plaintiff' and sentenced them to forty-one months' imprisonment. However, notwithstanding some positive steps and use of the aggravation provision, the fact remains that Article 79(3) has rarely been used.<sup>103</sup>

Part 3 of Article 79 was replaced by Article 10 of Law 4285/2014 which brought about further changes to the Criminal Code in relation to hate crimes. More particularly, Article 10 incorporates Article 81A, an article entitled 'racist crime' and provides that:

If the act is carried out of hate due to the victim's race, colour, religion, descent, ethnic origin, sexual orientation, gender identity or disability, sentencing increases as follows:

- a) in the event of a misdemeanour, for which the foreseen sentence is between ten days and one year' imprisonment, the lowest sentence is increased by six months and by one year in the rest of the cases of a misdemeanour.
- b) in the event of a felony, for which the foreseen sentence is between five and ten years' imprisonment, the lowest sentence is increased by two years and by three years for the rest of the cases of a felony; and

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<sup>99</sup> Amnesty International Press Release: The Recognition of Racist Motive in the case of Shehzad Lukman' (Η αναγνώριση του ρατσιστικού κινήτρου στην υπόθεση Σαχζατ Λουκμάν) (2013): <<https://www.amnesty.gr/news/press/article/15963/i-anagorisi-toy-ratsistikoy-kinitroy-stin-ypothesi-toy-sahzat-loykman>> [Accessed 25 February 2016] (2015)

<sup>100</sup> Attorneys of the Civil Action: *Memo of the Civil Action of the Anti-Fascist Movement for the Trial of Golden Dawn* (Υπόμνημα της Πολιτικής Αγωγής του Αντιφασιστικού Κινήματος για τη Δίκη της Χρυσής Αυγής) (1<sup>st</sup> edn. Marxist Bookshop 2015) 137

<sup>101</sup> Case 398/2014

<sup>102</sup> Case 60084/2013

<sup>103</sup> European Commission against Racism and Intolerance: Report on Greece (24 February 2015) para. 60

c) fines are doubled

The lowest sentence is not suspendable

Thus, although this article is entitled ‘Racist Crimes,’ it is actually a provision on hate crime. As such, this article is significant as it embeds hate crime as a provision in itself within the Greek Criminal Code and not simply within the ambit of aggravating circumstances and sentencing, as previously set out. Also, this provision provides for higher sentences for hate crimes as opposed to the old law which simply enabled the courts to provide the highest sentence possible without suspension. Further, Article 10 amends Article 61 of the Criminal Code, incorporating the situation described in Article 81A above as a reason for depriving the perpetrator of his/her civil rights for one to five years. On the one hand this is a positive amendment, on the other however, the issue of hate crime continues directly to link the issue of hatred to sentencing and does not set out, for example, the consideration of a racist backdrop of a crime to be considered throughout judicial proceedings. No amendments were made, for example, to the Code of Criminal Procedure in relation to, for example, the consideration of a racist backdrop of a crime at the investigation stage. Although the 2006 Police Circular exists on the consideration of hateful motivations, an amendment to the aforementioned codes and an adoption of the approach that the elements of a hate crime are to be considered throughout the entire procedure and not just in relation to sentencing would have ensured a more effective legal framework in relation to such crimes. Moreover, time will tell if Courts decide systematically and effectively to use the 2014 amendments in relation to hate crime sentencing. As noted by ECRI, authorities must closely monitor the way in which Article 81A will be used by the Courts and whether it will overcome the problems caused by Article 79(3)<sup>104</sup>

#### *4.3 Advances, Amendments and Alterations in the Sphere of Criminal Law*

The Greek legal order has undergone several developments over the past few years such as the 2014 amendments which included, amongst others, an enhanced recognition of hate crimes. It has also undergone other significant amendments which should, theoretically, facilitate the access to justice of victims of hate crime. For example, since 2001 and with Law 2910/2001, crimes incorporated in the anti-racist law can be prosecuted *ex officio*, even though, as reflected

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<sup>104</sup> European Commission against Racism and Intolerance: Report on Greece (24 February 2015) para. 14

in the examination of available jurisprudence, this is not relied on by authorities. Further, a Special Prosecutor<sup>105</sup> has been appointed for the investigation of racist crimes in the region of Athens. Before the establishment of this body, legal practitioners had indicated to the Council of Europe Commissioner for Human Rights that such a development would allow for the consideration of a racist motive from the onset of proceedings, rather than merely considering such a motive at the end of the trial in terms of sentencing.<sup>106</sup> However, this post only exists for the region of Athens with the Council of Europe Commissioner for Human Rights recommending its extension into other areas to ensure adequate and geographical fairness in relation to the effective implementation of the anti-racist law,<sup>107</sup> insofar as the Special Prosecutor can bring about such results. Further, Presidential Decree 132.2012 established several departments and bureaus for combatting violence based on racial, ethnic or religious hatred. More particularly, two anti-racist departments were established, one in the region of Attiki and one in Thessaloniki whilst sixty-eight bureaus were established in different police departments throughout the country.<sup>108</sup> They can carry out investigations into racist attacks, carry out an *ex officio* investigation and receive complaints through a hotline.<sup>109</sup> Although this is a positive development on a theoretical level, in 2015, ECRI noted that there was little evidence of their effective functioning.<sup>110</sup> In addition, the barriers to reporting a hate crime have been partly tackled through Article 44(1) of Law 3386/2004 as amended. This article allows the Ministry of Interior to grant a residence permit on humanitarian grounds to migrants (third country nationals) who are victims of crimes provided for in Articles 1 and 2 of Law 927/1979 and Article 16.1 of Law 3304/2005<sup>111</sup> in the event that a criminal prosecution has commenced and up until the moment that a final judgement has been delivered.<sup>112</sup>

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<sup>105</sup> Ministry of Justice - General Secretariat of Transparency and Human Rights - Human Rights – National Action Plan (Δικαιώματα του Ανθρώπου – Εθνικό Σχέδιο Δράσης) 2014-2016 (2014)

<sup>106</sup> Council of Europe Commissioner for Human Rights – Report on Greece, CommDH(2013)6, 65

<sup>107</sup> *Ibid.* 1

<sup>108</sup> Ombudsperson: ‘Special Report: The Phenomenon of Racist Violence in Greece and How it Can be Tackled’ (Το Φαινόμενο της Ρατσιστικής Βίας στην Ελλάδα και η Αντιμετώπισή του’) (September 2013) 29

<sup>109</sup> European Commission against Racism and Intolerance: Report on Greece (24 February 2015) para. 77

<sup>110</sup> Council of Europe Commissioner for Human Rights – Report on Greece, CommDH(2013)6, 81

<sup>111</sup> It sets out criminal penalties for offences provided for in this law

<sup>112</sup> Provided that the person is not a risk to public order and safety. In case such persons are under medical treatment, the residence permit is granted until the termination of the treatment.

As such, within the realm of anti-racist legislation, it can be said that Greece, albeit with certain limitations, has an adequate framework of criminal law that should be relied upon to tackle the activities and rhetoric of the far-right. It cannot be doubted that over the past few years this country has taken significant steps in improving this particular aspect of its legal order, incorporating the 2008 EU Framework Decision, albeit restrictively in some areas, establishing a Special Prosecutor for racist crimes and seeking to overcome certain reporting obstacles by allowing for the granting of residence permits on humanitarian grounds for victims of hate crime. However, as noted by the ICERD Committee in its latest Concluding Observations, and as continues to be the case today, notwithstanding some positive changes brought about following the crackdown on Golden Dawn, such as the fall in hate crime and increased recognition of bias in some court cases, this country is ‘not effectively implementing legal provisions aimed at eliminating racial discrimination and in particular those relating to the prosecution and punishment of racially motivated crimes.’<sup>113</sup> The Council of Europe Commissioner for Human Rights shares this view, arguing that there is an ‘ineffective application or non-application of the existing anti-racism legislation’<sup>114</sup> and refers to the lack of training of competent authorities as the key reason for this reality.<sup>115</sup> In addition to the lapses between theory and practice when it comes to Greek legislation and the non-application of the law when it comes to challenging the far-right, there is one more issue that is of a more general nature that also comes into play when considering the efficacy of the current legal framework for purposes of tackling the far-right. That is the issue of access to justice. The first element of this is the fact that Greece has slow judicial proceedings. A fact that illustrates this point is that out of the six hundred and sixty two judgements delivered against Greece by the European Court of Human Rights (ECtHR) up until the end of 2012, over half, and particularly four hundred and thirty eight, concerned the excessive length of judicial proceedings.<sup>116</sup> The second element relates to the issue of legal aid as regulated by Law 3226/2002, which provides legal aid, to migrants and also certain groups such as victims of trafficking. However, this does not extend to victims of hate crime. For purposes of ensuring that such victims are considered on an equal footing in the national legal system, this point should be rectified. As such, along with the particular issues above which prevent the

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<sup>113</sup> UN Committee on the Elimination of All Forms of Racial Discrimination Concluding Observations: Greece CERD/C/GRC/CO/16-19 (14 September 2009) 2

<sup>114</sup> Council of Europe Commissioner for Human Rights – Report on Greece, CommDH(2013)6, 69

<sup>115</sup> Ibid.

<sup>116</sup> European Court of Human Rights Annual Report 2011, p. 160 and Annual Report 2012, p. 152

effective legal challenging of the far-right, its actors and elements, the issue of effectively accessing justice is of utmost importance as only with an improvement in this situation will victims of the far-right be able to find justice through the prosecution of the perpetrators.

#### *4.4. Criminal Organisation – Prohibition of Establishment, Leadership and Participation*

Article 187 of the Criminal Code on criminal organisations is particularly significant for this dissertation given that it is the provision through which the State is attempting to tackle and potentially dismantle Golden Dawn and punish its leadership and members. Article 187(1) of the Criminal Code punishes with imprisonment of up to ten years whosoever establishes or becomes a member of a criminal organisation. Whoever leads such an organisation receives a prison sentence of at least ten years.<sup>117</sup> The article holds that a criminal organisation is an entity which includes three or more members that aims at committing an array of offences including, *inter alia*, homicide with intent, grievous bodily harm, arson and kidnapping.<sup>118</sup> The establishment of a criminal organisation is the provision of guidance and help with the steps necessary for the recruitment of members for the creation of the organisation.<sup>119</sup> In relation to the establishment of a criminal organisation which comes with a lower sentence than running such an organisation, the Prosecutor's Recommendation refers to it as a 'momentary crime.'<sup>120</sup> Throughout the trial documents, Michaloliakos is referred to as the founder and leader of Golden Dawn. Yet in the Prosecutor's Recommendation, in relation to Michaloliakos, no reference is made to the aspect of establishing a criminal organisation but rather his participation and leadership of a criminal organisation. The type, details or object of such crimes do not have to be pre-determined, all that is necessary is that pursuing the perpetration of such crimes is directly linked to the establishment or functioning of such a group, even if it is not required that the perpetration of such a crime reflects the will of all those who established and participate in the organisation and is not necessarily known by all members.<sup>121</sup> In brief, there are three elements necessary for the existence of a criminal organisation under the Criminal Code. Firstly, a qualitative element in that the group must be structured, a quantitative element in that the group must be made up of

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<sup>117</sup>Article 187(3) Criminal Code

<sup>118</sup>Article 187 Criminal Code

<sup>119</sup> Special Investigation Department: Athens Court of Appeal: Report to the President of the Greek Parliament regarding lifting the immunity of Golden Dawn Members of Parliament, Document Number 305 (19 February 2014) 8

<sup>120</sup> Ibid.13

<sup>121</sup> Ibid. 19



three or more persons and a temporal element, in that there is requirement for ongoing action.<sup>122</sup> The trial documents hold that the prohibitions arising from Article 187 occur for purposes of protecting public order and personal freedoms.<sup>123</sup> Moreover, the organisation must have an objective, common to the members/leaders. This can be financial, ideological or anything else.<sup>124</sup> Further, the Prosecutor's Recommendation noted that criminal organisations are extremely dangerous due to their particular dynamic but also their internal objective of committing particularly serious crimes.<sup>125</sup>

A most significant issue is the determination of who is to be considered a member of a criminal organisation since a conceptualisation of this term is important so as to understand under the criminal responsibility of Golden Dawn members. This point is elucidated in documents from the party's trial, namely the pre-trial report and the Prosecutor's Recommendation. They hold that a member of the organisation is anyone who subordinates his or her will to the will of the organisation, without his or her personal involvement in the operations of the organisation being necessary. His or her participation in the organisation is manifested by the participation in military training activities, festivities and talks, the commission of punishable acts, the propaganda of the organisation, funding of its activities, attracting new members to the organisation or any other forms of support. It is of no relevance if the decisions are taken by the majority of members or, due to the embedded principle of obedience, if they are taken by the leader, as long as any decision is considered the decision of the organisation. Mere support of the organisation's objectives extraneously does not make him or her a member. In a criminal organisation, the desire of the group for the implementation of its objectives binds all members, regardless of their involvement in the design of the criminal acts, as long as each member is aware that he or she is contributing to the implementation of the organisation's objectives through the duties granted to him/her.<sup>126</sup> For the above to be applicable, the element of malice is required with the members/leaders of the groups wanting to be part of the membership/management of the group. Such malice is demonstrated in the participation in all types of activities and particularly having knowledge of events in which force was used and

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<sup>122</sup> Ibid. 7

<sup>123</sup> Ibid. 11, 26 & 8

<sup>124</sup> Ibid. 11

<sup>125</sup> Ibid.

<sup>126</sup> Ibid. 9

crimes were committed, the acceptance of these as desirable objectives and non-repudiation of such acts and non-departure from the group.<sup>127</sup> As such, the definition of ‘member’ in the realm of a criminal organisation seems to denote that criminal responsibility extends to the active members of the party even if that member does not take part in the commission of a particular crime, but, as is reasonable, does not extend to those who merely support the objectives of the party (and may even vote for this party).

It must be noted that the Criminal Organisation provision was used to imprison members of the Revolutionary Organisation 17<sup>th</sup> November in 2003. This organisation was a violent far-left organisation which carried out its crimes for twenty-seven years as an untraceable ghost organisation, carrying out over ninety attacks against Greek, American and European targets such as government officials. The important difference was that during the trial of 17<sup>th</sup> November, which ended on the 17<sup>th</sup> December 2003,<sup>128</sup> the provision on terrorist organisations was not part of the Criminal Code since Article 187B became part of the Greek Criminal Code in 2005 following amendments brought about by Law 3251/2004<sup>129</sup> adopted in July 2004. Unlike Golden Dawn, this organisation was habitually referred to as a terrorist organisation by competent authorities,<sup>130</sup> the media<sup>131</sup> and the public, something which is not the case with Golden Dawn. One will never know whether the anti-terror provision of the Criminal Code would have been used for 17<sup>th</sup> November had it existed at the time of its trial.

It must be noted that, in connection with the absolutist approach adopted by the Greek legal order towards political parties and their non-prohibition, such an approach is not applicable when confronted with a criminal organisation. The guise of a political party cannot stand in the way of prosecuting the leadership and members of a criminal organisation, just because this entity is registered as a political party.<sup>132</sup>

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<sup>127</sup> Ibid. 10

<sup>128</sup> Appeals for sentences took place in 2005 – 2007

<sup>129</sup> Law on European arrest warrants and amendment of Law 298/2001 on criminal organisations and other provisions.

<sup>130</sup> See, for example, Police Press Release regarding 17<sup>th</sup> November (22 May 2003): <[http://www.astinomia.gr/index.php?option=ozo\\_content&perform=view&id=1317&Itemid=171&lang=](http://www.astinomia.gr/index.php?option=ozo_content&perform=view&id=1317&Itemid=171&lang=)>

<sup>131</sup> See online articles such as: <<http://www.newsbeast.gr/society/arthro/386344/ti-kanoun-simera-oi-protagonistes-tis-17-noemvri>> and <<http://www.newsbomb.gr/tags/tag/31957/17-noemvrh>>

<sup>132</sup> Lambros Margaritis & Konstantinos Hadjioannou ‘Criminal Organisations and Political Parties’ (‘Εγκληματικές Οργανώσεις και Πολιτικά Κόμματα’) 2 *Criminal Justice* (2014) 178

#### 4.5. Terrorist Organisations: Core Difference

In relation to a terrorist organisation, it must be noted that the far-right has not been considered within this framework by the State. Either way, Article 187B of the Criminal Code holds that ‘a terrorist act is the commission of a criminal activity including, *inter alia*, homicide with intent, grievous bodily harm, arson or kidnapping in a manner or to an extent or under circumstances which may seriously harm a country or an international organisation and has the aim seriously to intimidate a population or illegally force a public authority or international organisation to carry out any act or omit to do so or to seriously harm or ruin the fundamental constitutional, political or financial infrastructure of a country or of an international organisation. No definition in any legislative, jurisprudential or policy document exists regarding issues of threshold in relation to the above definition, such as what the severity of harm may be and what could constitute an intimidating circumstance for a population. This could potentially retract from the clarity of the definition and does not facilitate its suitable use. In brief, the difference between a criminal organisation and a terrorist organisation is that the latter seeks to carry out the criminal acts noted in the relevant section with the aim of achieving results such as population intimidation or serious harm to a country’s infrastructure. On the other hand, a criminal organisation is lower on the hierarchy of harm given that it is simply termed as such as it entails three or more persons who conduct criminal activities with no overarching objective to cause collective harm as is the case with a terrorist organisation. This is notwithstanding the fact that the trial documents recognised the damage caused by Golden Dawn to, amongst others, the rule of law and the rights of others.

It could be argued, that by relying on Article 187 of the Criminal Code rather than Article 187B, the authorities did not consider the activities of Golden Dawn to meet the threshold of seriously intimidating a population and/or seriously harming or ruining the fundamental constitutional or political infrastructure<sup>133</sup> of Greece regardless of its rain of terror on the streets of Greece (predominantly Athens) and even though the trial documents recognise that the group’s activities were destructive to, amongst others, the rule of law.

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<sup>133</sup> The financial infrastructure requirement is not deemed directly applicable to Golden Dawn’s actions

## 5. Constitutional Law: Treatment of Political Parties by National Law

### *5.1 (i) Registration of Political Parties*

Article 29 of Law 3023/2002 deals with the establishment, legal personality and emblem of a political party. Part 1, therein, holds that, before a political party commences its activities, it files a founding statement at the Supreme Court in which it refers to the fact that the organisation and its activities serve the free functioning of a democratic State. Part 2, therein, holds that the party must inform the Supreme Court of its name, emblem and seat and submit, thereto, the party's constitution or the founding statement signed by at least two hundred citizens who hold the right to vote. Part 3 of the same article provides that the use of symbols, referred to in Article 37(5) of Presidential Decree 55/1999 as names and symbols of a political party, are forbidden. Relevant to this dissertation is that this law prohibited the use of names, symbols or emblems the symbols of the Junta or photographs of persons involved with the regime. Examples of the prohibition of a name can be found in a 2012 case before the Court of Cassation regarding a political party entitled Tyrannicides (Τυραννοκτόνοι) that was prohibited from taking part in the May 2012 elections given that the Court considered that this name demonstrated the intention to 'commit a criminal act'<sup>134</sup> and that this went against Article 29 (1) of the constitution and Article 37(5) of the relevant presidential decree. However, all the party had to do was change its name so as to be able to take part in the elections. Thus, this approach demonstrates a certain level of superficiality in the judiciary's approach to potentially dangerous political parties as it merely requested a change of name, making no inquest and assessment and taking no measures in relation to the party's objectives. In 2007, the Supreme Court had decided that the name 'New Fascism' (Νέος Φασισμός), to which the candidate affiliated himself, was not allowed and that he would have to put forward his candidature without any affiliation to such a title as such a title goes against Article 37(5) of the Presidential Decree 96/5.6.2007 in combination with Article 29(1) of the constitution.<sup>135</sup> Two issues can be concluded here. Firstly, that the judiciary is willing to take a broad approach to the meaning of Junta affiliated symbols and emblems as it considered the title 'New Fascism' as well as 'Tyrannicides' to fall within the framework of prohibited titles as provided for in Article 37(5) of the aforementioned decree. Secondly, that rather than investigating the aims and objectives of the particular candidate/party and considering

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<sup>134</sup> Case 4/2012: 'καταδεικνύει πρόθεση αξιόποινης πράξης.'

<sup>135</sup> Case 4/2007

whether his/her/its ideology sought to do harm to a democratic State, the Court simply removed the problematic title attached to his candidature in one case and requested the political party to change its name in the other, providing for a superficial result. Article 29(6) of Law 3023/2002 holds that, from the date of its inception, a political party gains a legal personality for the effectuation of its constitutional mission. Thus, a political party does not have to submit its constitution but can merely submit its founding statement that includes its adherence to serving the free functioning of a democratic State. So, a political party can have a constitution which contains an array of fascist and/or racist statements and objectives but does not need to submit this to the State. At the same time, by simply pledging allegiance to the principles of Article 29 of the constitution on the necessity of a political party to serve a free functioning democracy, this does not necessarily mean that it sincerely aims to do so. Moreover, the Greek legal order has no tools which can be used for checking the sincerity of the required declaration.<sup>136</sup> As noted by the prosecutor of the Court of Cassation to the Council of Europe Commissioner of Human Rights, this procedure is not used to ‘verify the lawfulness of the party concerned but acts in effect as a protocol book registering the applicant party.’<sup>137</sup> In fact, once there is an approval of the founding statement of the party, there seems to be no possibility for subsequently dismantling that party whilst there is no review process of the party’s ongoing objectives and activities.<sup>138</sup> It must be highlighted that, even if there existed an obligation in Greek law for political parties to submit their constitution before the inception of their activities, this does not necessarily correlate with the ousting of, *inter alia*, far-right parties from existence. This is because camouflaging its real intentions and objectives within a constitution is not a complex task. However, the fact that a State needs to incorporate its dedication to this principle when seeking to be established demonstrates the weight that is attached to this requirement given that a political party can function legitimately only insofar as it accepts this principle, an issue that seems to have been ignored by the Greek State, as demonstrated in relation to its stance on Golden Dawn. Furthermore, banning a particular emblem or name does not necessarily correlate to ousting far-right elements from the political scene of the country. Either way, in the relevant law, only those related to the Junta are banned and thus others, such as the Nazi swastika are

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<sup>136</sup> Dimitris Psaras, ‘Golden Dawn before Justice’ (*‘Η Χρυσή Αυγή Μπροστά στη Δικαιοσύνη’*) (1<sup>st</sup> edn. Rosa Luxemburg Foundation 2014) 438

<sup>137</sup> Council of Europe Commissioner for Human Rights: Report on Greece, CommDH (2013)6, 8

<sup>138</sup> European Commission against Racism and Intolerance: Report on Greece (24 February 2015) para. 26

permissible, unless a broad understanding of emblems and symbols related to the Junta is adopted and, in the cases discussed above, such a broad approach was, in fact, adopted.

In relation to the above, a comparison with the treatment of associations by the Civil Code of the Country is important. More particularly, Article 79, therein, provides that for purposes of registering an association, the founders or its management must submit an application to the competent court which includes its instrument of establishment, the names of the members of its administration and the association's statutes with the signatures of the members and with the date. In fact, Article 80 of the Civil Code highlights the elements that need to be incorporated in the Constitution which include, amongst others, the association's objectives, membership and funding. As such, unlike a political party, an association must deposit its statutes which, as demonstrated in two cases which reached the ECtHR, are up for examination and scrutiny by the Courts. More particularly in *Sidiropoulos and others v Greece*<sup>139</sup> and *L'affaire Maison de la Civilisation macédonienne et autres c. Grèce*, Greece was found in violation of Article 11 for refusing to register an association entitled the 'Home of Macedonian Civilisation' (*Στέγη Μακεδονικού Πολιτισμού.*) The second case arose following Greece's unwillingness to conform to the *Sidiropoulos* judgement. In both cases the national judiciary had rejected the application for the association's formation on grounds pertaining to the dispute regarding the use of the name 'Macedonia.' As such, in relation to associations, the State and particularly the judiciary has the power to reject the formation of associations on grounds which they deem fit as these are not incorporated in the Civil Code. No equivalent of restriction is available for political parties with the strange result being that in Greece whilst parties such as Golden Dawn were allowed to register and subsequently enter the parliament, an association seeking to involve itself with a matter which is historically disputed has been prevented from registering as an association, regardless of an ECtHR in its favour.

### *5.1 (ii) The Post-Registration Phase*

The Greek legal system also provides for enhanced protection for the activities of Members of Parliament, limiting, to the extent possible, any censorship or restriction from the State. The principle of parliamentary immunity is protected by Article 62 of the constitution which holds

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<sup>139</sup> *Sidiropoulos and Others v Greece*, App no. 57/197/841/1047 (ECHR 10 July 1998)

that ‘during the parliamentary term the Members of Parliament shall not be prosecuted, arrested, imprisoned or otherwise confined without prior leave granted by Parliament.’<sup>140</sup> However, this article provides that ‘no leave is required when Members of Parliament are caught in the act of committing a felony.’ On the last point regarding felonies, in 2012 and following the increase in violence perpetrated against groups such as migrants and arbitrary identification checks by groups of citizens which also included Members of Parliament, a new circular was prepared regarding the issue of impunity. This circular allows for the arrest of Members of Parliament if they are committing a felony even if parliamentary immunity has not been lifted.<sup>141</sup> The principle of immunity granted to parliamentarians renders members of parliament almost untouchable with Golden Dawn conducting violent activities with little or no fear of prosecution. Following Fyssas’ murder, the parliament voted to lift this immunity so that they could be tried.

In addition, following the arrests of the Golden Dawn leadership in 2013, the Greek Parliament amended Law 3023/2002 on the financing of political parties<sup>142</sup> and, in this way, decided that public funding may be ceased if a party’s leader or head of the parliamentary group or one fifth of its Members of Parliament are charged with involvement in a criminal or terrorist organisation. However, if the defendants are found not guilty then the suspended funds must be returned to the party. Either way, as well as the practical effect of this amendment to the functioning of a far-right party, this also reflects the possibility that a criminal organisation may, in fact, be acting under the guise of a political party.

It appears to be a relatively easy task to register a political party in Greece, so long as you have no emblems or symbols related to the Junta, your registration is supported by two hundred signatures and you pledge allegiance to the free functioning of a democratic State. In addition to this, the State’s ongoing approach has been that the Greek legal order does not allow for the

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<sup>140</sup> Όσο διαρκεί η βουλευτική περίοδος ο βουλευτής δεν διώκεται ούτε συλλαμβάνεται ούτε φυλακίζεται ούτε με άλλο τρόπο περιορίζεται χωρίς άδεια του Σώματος. Επίσης δεν διώκεται για πολιτικά εγκλήματα βουλευτής της Βουλής που διαλύθηκε, από τη διάλυσή της και έως την ανακήρυξη των βουλευτών της νέας Βουλής.

<sup>141</sup> Athanasios Theodoridis, ‘Report on Measures to Combat Discrimination – Directives 2000/43/EC and 2000/78/EC – Country Report 2013 – State of affairs up to 1<sup>st</sup> January 2014) European Network of Legal Experts in the Non-discrimination field’ 134

<sup>142</sup> Law 3023/2002 on the Financing of Political Parties by the State. Income and Expenditure, Visibility, Publicity and Auditing of the Finances of Political Parties and Parliamentary Candidates (Χρηματοδότηση των Πολιτικών Κομμάτων από το Κράτος. Έσοδα και Δαπάνες, Προβολή, Δημοσιότητα και Έλεγχος των Οικονομικών των Πολιτικών Κομμάτων και των Υποψήφιων Βουλευτών)

prohibition of political parties. Thus, it is not only easy to register as a political party and hide your true intentions but also to continue functioning as one without the fear of prohibition unless, as with the case of Golden Dawn, your activities move into the realm of a criminal organisation. In fact, the only constructive measure the State may take against a party is the suspension of public funding in cases of serious criminal offences committed by its members and/or leadership and the prosecution of its Members of Parliament and, according to the situation as described above, this can take place with or without lifting their immunity. As such, unless the activities or rhetoric of a political party meet the high thresholds of a criminal organisation, it can seemingly act and speak freely in Greece, notwithstanding existing anti-racist legislation that prohibits, *inter alia*, organisations that incite racial or religious hatred or violence. This has been the case up until the arrest of Golden Dawn's leadership and members. It may be the case that, following the end of the trial, the State adopts a different and more cautious approach to political parties. Unfortunately, the reality is that between political parties and criminal organisations there exists a lot of space in which a group can harm the daily existence of several groups of persons and actively work against doctrines such as the rule of law and democracy.

### Conclusion

In conclusion, Greece has experienced a far-right entity, registered as a political party but simultaneously acting in the manner one would expect from a violent subculture movement, with the only difference being that instead of a loose structure, Golden Dawn is characterised by a tight structure with a strict hierarchy. The elements of the Greek legal order relevant to challenging the far-right include the anti-racist law, the provisions of the Criminal Code on aggravation and sentencing and the anti-discrimination law. With the 2014 amendments to the anti-racist law, the relevant tools became more restrictive, probably with the aim of or under the guise of protecting freedom of expression. Relevant conditions incorporated following the 2014 amendments include the need for prohibited conduct that affects public order or causes a threat to the life, liberty or physical integrity of a person or persons. Although the far-right or comparable movements and groups are not predominantly tackled through public order legislation, the issue of public order and the importance attached, thereto, when considering tackling the far-right is evident in the anti-racist law and the trial documents referred to above, in which the authors refer to the damage which criminal organisations cause to public order.



Notwithstanding the above, the fact remains that the legislative tools available to the State to tackle the rhetoric and activities of Golden Dawn remained unused and, instead, this group carried out crimes with a high level of impunity. As reflected in, *inter alia*, parliamentary discussions on the banning of Golden Dawn, the strict approach taken to non-interference to freedoms, such as those of expression and association, systematically stood in the way of steps been taken against the party. Therefore, although a non-abuse of rights clause is incorporated in the Greek constitution which essentially embodies militant democracy, the State's stance towards the activities of Golden Dawn was far from this. The almost libertarian approach taken to the aforementioned freedoms and the dismissal of the need for protecting democracy had, in the case of Greece, harmful effects on individual and societal levels. Further, even in cases pertaining to the activities of Golden Dawn's that were brought to justice, the judiciary often steered away from looking at racist motives, whilst never taking any serious steps to examining the relationship between Golden Dawn and the array of violent activities occurring in Greece although acknowledging affiliation of perpetrators to Golden Dawn. At the same time, Golden Dawn disseminated hateful ideas through speech both in and out of parliament, again with no fear of repercussions. This state of affairs continued up until 2013 and up until the point that the State's inactivity and non-use of the legal tools had allowed Golden Dawn to develop extensively to the point where it could be prosecuted as a criminal organisation. The effects of this trial on today's situation include the fall of hate crime in Greece and a slight increase in the use of the above-discussed tools in some cases. This statement is made with reservation to the fact that no such systematic approach can be discerned whilst not enough case-law yet exists to make concrete conclusions on this point. As well as criminal law, Greece has an anti-discrimination framework through which the activities of a Golden Dawn member has, on one occasion been tackled. This is minimal in comparison to the number of times the party as an organised entity has, for example, provided goods and services such as blood donations or soup kitchens to Greeks only. In addition to the non-reliance on legislative tools, it is the absolutist stance adopted by the State towards political parties, which has facilitated Golden Dawn's untouchability. This emanates from the reality that, in Greece, political parties, even ones with dangerous and undemocratic intentions, can register and function without any limitations with the only point of State intervention being when such entities cross into the threshold of a criminal organisation. Evidently the registration and (non) regulation of political parties constituted a key weakness in

tackling Golden Dawn. It seems to be the case that the State had omitted to pay any consideration to the qualification of Article 29(1) insofar as political parties must serve a free functioning democracy as well as its international obligations when it comes to prohibiting racist parties. As such, two issues must be noted. Firstly, that the outcome of the Golden Dawn trial is still pending and, therefore, its effect on the State's future approach to the far-right remains unknown. What one may hope for is that the State will realise the damage of its previous inaction in relation to the far-right as well as its international and European human rights obligations. Secondly, even if the defendants on trial are found guilty and Golden Dawn is deemed a criminal organisation and thus dismantled, this will not offer a long-term solution *vis-a-vis* challenging the far-right. In this realm, the issues of its large electoral support, which continued even following the prosecution of its leadership and members, will need to be addressed. In sum, Greece has legislative tools that can be used to tackle the far-right. Acknowledging the non-absolute nature of political parties will be a good starting point for subsequent measures.

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