EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

DECISION

Application no. 47833/20
Amvrosios-Athanasios LENIS
against Greece

The European Court of Human Rights (Third Section), sitting on 27 June 2023 as a Chamber composed of:

Pere Pastor Vilanova*, President*,
Yonko Grozev,
Georgios A. Serghides,
Darian Pavli,
Ioannis Ktistakis,
Andreas Zünd,
Oddný Mjöll Arnardóttir*, judges*,

and Milan Blaško, *Section Registrar,*

Having regard to the above application lodged on 23 October 2020,

Having regard to the observations submitted by the Greek Government ("the Government") and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Amvrosios-Athanasios Lenis, is a Greek national who was born in 1938 and lives in Aigio. He was represented before the Court by Mr G. Papaioannou, a lawyer practising in Athens.

2. The Government were represented by their Agent's delegate, Ms O. Patsopoulou, Senior Adviser at the State Legal Council.

3. The facts of the case, as submitted by the parties, may be summarised as follows.

4. At the time the events took place the applicant was the Metropolitan of Kalavryta and Aigialeia. At that time, the Hellenic Parliament was about to debate proposed legislation introducing civil unions for same-sex couples.

5. On 4 December 2015, the applicant published an article on his personal blog under the title "THE SCUM OF SOCIETY HAVE REARED THEIR

HEADS! Let's be honest SPIT ON THEM". The content of the article was as follows:

> "We don't have the right to judge people! God is the one who shall judge all of us!
>
> ...
>
> Nevertheless, we are allowed to judge people's actions, and to condemn their unlawful actions!
>
> ...
>
> We therefore have authorisation from divine and human justice to judge the actions of others, especially sinful acts!
>
> However, that general principle, in our view, cannot be true for politicians! On the contrary, in that case, we are authorised and we are able to judge both politicians and their acts! Because politicians are elected, and are chosen, by the people and therefore they answer to the Greek people! ...
>
> Invoking that right, from that position we will today judge and criticise a certain politician, who, in front of the coffin of an actor, to whom we will refer below, identified herself with the deplorable matter of homosexuality!
>
> We have been informed by the media today, 4 December 2015, that the actor M.X. has died. We then read on a website: 'Many did not even know that he was homosexual. On the occasion of his funeral, however, his lover (on top or from the bottom?), young K.F., went and cried out that he was of that kind, enraged that the law had not allowed him to marry the actor with whom he lived together for 25 years' ...
>
> Following that, another actress and member of parliament came forward, an admirer and friend of the deceased, Ms A.V., who addressed the following words to the deceased: 'In memory of your personal distress, I will help to have civil unions voted in by the Hellenic Parliament'!!!!!
>
> We therefore denounce unreservedly the nerve of that politician! We denounce this action and we condemn it without hesitation! Homosexuality is a deviation from the laws of nature! It is a social felony! It is a sin. Those who experience it or support it are not normal people! They are the scum of society! Unfortunately, my brothers, Greece is governed by some such petty people! Of course, they are a small minority of the total of the Hellenic Parliament; nevertheless, they exist! They are some of the scum of society, marginal people, defective, humiliated, people of the dark, who now, with the rising of the left, have reared their heads! I give you advice. Do not go near them! Do not listen to them! Do not trust them! They are the damned of Society! It is their right, of course, to live secretly – privately – the way they want! But disgraced people cannot defend the passions of their souls in public! Our Greece is now governed by atheists! I remind you of the words of Lech Wałęsa of Poland: 'a man without God is a dangerous man'. So, these disgraced people, spit on them! Condemn them! Blacken them out! ("*Μαυρίστε τους!*") They are not human! They are perversions of nature! They are suffering mentally and spiritually! They are people with a mental disorder! Unfortunately, these people are worse and more dangerous than some of the people living in nuthouses! Therefore, do not hesitate! When you meet them, spit on them! Do not let them rear their heads! They are dangerous! Our Church is praying for them as follows: 'Let the sinners be consumed out of the earth, and let the wicked be no more' (Psalm 103), meaning let all sinners and all the lawless disappear from earth so that they no longer exist! All the damned should go to hell (*στον αγύριστο*)!

> I remind you of the words of the sinful and lawless: 'In memory of your personal distress, my friend M., I will help to have civil unions voted in by the Hellenic Parliament. Kisses! A.'!!!!!"

6. The text was reproduced by multiple websites, media outlets and social media, with titles such as: "The raving of Amvrosios: when and where you meet homosexuals, spit on them", "Unbelievable raving of Amvrosios against homosexuals: wherever you meet them, spit on them", "The raving of Amvrosios against homosexuals: They are not normal people, they are scum."

7. On 21 December 2015 the applicant published an article on his personal blog under the title "Let's get things clear – Love the sinner but deal with the sin". In it, he had clarified that he had not incited to violence, which was rejected by people of the church, and that the reproduction by the media of his article dated 4 December 2015 had been false. People of the church condemned sin but prayed for sinners. His article had been an expression of criticism against deputy Ms A.V. and those who would imitate her; his expressions "humiliated" and "spit on them" referred precisely to them. While only God could judge people, the applicant could still judge politicians, and all those who proudly projected their immorality, such as the partner of the actor M. X. who complained about the impossibility of making lawful their pervert and thus, unnatural relationship. He further added that the phrase "spit on them" had been used metaphorically and had meant "despise them". He then cited his previous article and concluded that from its content it had been clear that he had targeted politicians who, without asking the voters, attempted to legalise the immorality in its most disgusting form.

8. Due to the publication of the applicant's article dated 4 December 2015, charges were brought against him for breaching Article 1 of Law no. 927/79 as amended by Article 1 of Law no. 4285/14, that is to say, for public incitement to violence or hatred against people because of their sexual orientation, and Article 196 of the Criminal Code as in force at the time, that is to say, for abuse of ecclesiastical office.

9. The applicant was sent for trial to the Aigio One-member Misdemeanour Court. On 15 March 2018 the domestic court in decision no. 322/2018 acquitted the applicant on all charges. The domestic court held that the applicant had regarded homosexuality as a deviation from the laws of nature and as a sin and social felony. On the basis of those views, he had characterised those who experienced and supported homosexuality as abnormal people and the scum of society. Nevertheless, he had not incited any acts of hatred or violence based on another person's sexual orientation. The rest of the applicant's comments targeted the members of the Hellenic Parliament who had supported the proposed legislation on civil unions for same-sex couples and therefore, when the applicant had incited people to "spit on them", "blacken them out" and "not go near them", he had been referring to the members of parliament and not to homosexual people.

10. The Aigio and Patras public prosecutors lodged appeals against the acquittal. The appeals were heard by the Aigio Three-member Misdemeanour Court on 23 and 28 January 2019. By decisions nos. 47/2019 and 49/2019, the applicant was declared guilty of the two misdemeanours he had been charged with. He was sentenced to seven months in prison, suspended for three years, and ordered to pay legal costs of 240 euros. In particular, the appellate court held that the article should be read as a whole; read with the other evidence and witness statements produced in court, it had been clear which group of people had been targeted by the applicant and who the intended victims of his words and expressions had been, and that he had intended to incite hostility and hatred against them and to deprive them of their honour and their status as people. At the start of his article, the applicant might have spoken of a member of parliament who had expressed her intention to support the legislative proposal on civil unions for same-sex couples. However, he had then expressed his opinion on homosexuality and stated that it was a deviation from the laws of nature, a social felony and a sin and that those who experienced it or supported it were the scum of society; that was the same form of words as in the title of the article, leaving no room for any interpretation other than that he was targeting those who "experienced" homosexuality. Moreover, when he had referred to those who could do as they wished in private, secretly, but who should not defend their passions in public, he was clearly targeting homosexual people. The rest of his expressions, such as "criminals", "people of the dark", "mentally ill people", and "defective" or "humiliated" people were expressions commonly associated with homosexual people by others who shared the applicant's views. That conclusion was further strengthened by the applicant's defence submissions, in which he had admitted that his article referred to homosexual people and to politicians who were homosexual, as well as by all the documents he had adduced in an attempt to prove that homosexuality was a disease. That conclusion could not be rebutted by the expression "blacken them out", which indeed referred usually to politicians, as that phrase again targeted homosexual people because the politicians referred to intended to vote for civil unions for same-sex couples; that expression therefore had a direct relationship with homosexual people and was intended to diminish them. The applicant had gone so far as to call for the complete social exclusion of those people. The incitements contained in the text were threatening and were liable to cause anxiety and fear to homosexual people as a distinct group. The domestic court attached particular importance to the office held by the applicant, who was followed by his congregation and who had their respect. It further considered that the strength of his words was liable to cause feelings of hostility and hatred against homosexual people which could potentially lead to acts of violence against them. The article therefore did not simply express the applicant's views, even harsh ones, against homosexuality, which would have been legitimate. This meant that the

applicant's freedom of expression had not been violated, as his views were liable to cause discrimination and hatred against homosexual people. While the applicant referred to his subsequent article dated 21 December 2015 in his defence submissions, there is no reference to it in the domestic court's reasoning.

11. On 26 September 2019 the applicant lodged an appeal on points of law with the Court of Cassation and on 11 November 2019 he lodged additional grounds. The Court of Cassation, by decision no. 858/2020 published on 29 June 2020 and running to sixty-six pages, granted the appeal on points of law in part; in particular, it applied the principle that if a more lenient legal provision applied on the same facts, it should be used, and thus acquitted the applicant of the offence of abuse of ecclesiastical office, which had ceased to exist in the meantime. It rejected the rest of the applicant's grounds for cassation, holding that the appellate court had included sufficient reasoning and confirmed the finding of the Court of Appeal that the applicant's freedom of expression had not been violated as his article had been liable to cause discrimination and hatred against homosexual people. It accordingly reduced the applicant's sentence to five months, suspended.

RELEVANT LEGAL FRAMEWORK

I. INTERNATIONAL LAW

12. The relevant Council of Europe instruments and materials are cited in the Court's judgment in *Perinçek v. Switzerland* ([GC], no. 27510/08, §§ 78-79, ECHR 2015 (extracts)).

13. In addition, following the sixth monitoring cycle, the ECRI report on Greece, adopted on 28 June 2022, included the following data on LGBT in Greece (footnotes omitted):

> "12. In 2020 the youth organisation Colour Youth carried out a survey of attitudes towards LGBTI pupils and students in schools, which concluded that the situation of LGBTI children in Greek schools was "still deplorable". During its visit, the ECRI delegation heard shocking testimonies about some teachers' statements to intersex pupils (e.g. "you should not exist"). ECRI also notes that in response to complaints of discriminatory treatment in secondary education on the basis of gender or sex characteristics, the GO suggested that school teachers be provided with training about LGBTI issues, notably to prepare them for teaching the subject of sexual education, which has become compulsory since September 2021.
>
> 13. ECRI recommends that the Greek authorities put in place training for teachers on how to address LGBTI-phobic intolerance and discrimination in schools while promoting understanding of and respect for LGBTI pupils. These efforts should include the preparation and production of further appropriate teaching materials and the establishing of school policies to prevent, monitor and respond to LGBTI-phobic incidents, including bullying, with guidelines for pupils and students, teachers and parents.
>
> ...

26. According to a 2020 online survey, 27% of LGBTI persons stated that, due to their sexual orientation or gender identity, they are sometimes, often or always discriminated against in public services. Only 7% had reported an incident of discrimination or violence to a public body and 72% said they did not feel safe reporting such an incident. ECRI is pleased to note that, in response to persisting problems in the area of LGBTI equality, some encouraging steps have been taken by the Greek authorities both in legislation and on the policy level.

...

111. A general tendency of police officers apprehending individuals and taking them to a police station without any apparent reason was also underlined in the 2020 report of the National Mechanism for Investigation of Arbitrary Incidents. This is exemplified by one such incident in August 2020, when a gay activist was verbally harassed in the street by several policemen who made fun of his "feminine appearance" and who then placed him in police detention for no apparent reason.

112. ECRI recommends, in line with its General Policy Recommendation No. 11 on combating racism and racial discrimination in policing, in particular §§ 6, 7, 8 and 9, that the Greek authorities introduce decisive measures to enhance the effectiveness of investigations into the misconduct by members of the Hellenic Police forces, be it motivated by racism or LGBTI-phobia, followed by, where warranted, effective and proportionate sanctions or criminal charges against perpetrators."

14. According to the data from the Organisation for Economic Co-operation and Development (OECD (2019), Society at a Glance 2019: OECD Social Indicators, OECD Publishing, Paris), Greece figures 28th out of the 36 countries included in the table concerning the levels of acceptance of homosexuality. Moreover, as regards perception of discrimination by LGBT people, homosexuals report the highest level of discrimination in eight countries, including Greece.

II. DOMESTIC LAW

A. Constitution

15. The relevant provisions of the Constitution read as follows:

Article 4

"1. All Greeks are equal before the law.

2. Greek men and women have equal rights and equal obligations.

..."

Article 5

"1. All persons shall have the right to develop freely their personality and to participate in the social, economic and political life of the country, in so far as they do not infringe the rights of others or violate the Constitution and moral values.

2. All persons living within 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 ..."

Article 25

"1. The rights of the human being as an individual and as a member of society and the principle of the welfare state based on the rule of law shall be guaranteed by the State. All agents of the State shall be obliged to ensure the unhindered and effective exercise thereof. These rights shall also apply to the relations between individuals where appropriate. Restrictions of any kind which, in accordance with the Constitution, may be imposed upon these rights shall be provided either directly by the Constitution or by statute should there be a corresponding reservation, and shall respect the principle of proportionality.

2. The recognition and protection of fundamental and inalienable human rights by the State shall be aimed at the achievement of social progress in freedom and justice.

3. The abusive exercise of rights shall not be permitted.

4. The State shall have the right to require all citizens to fulfil the duty of social and national solidarity."

B. Law no. 927/1979

16. Article 1 of Law no. 927/1979, as amended by Law no. 4285/2014, which is based on the International Convention on the Elimination of All Forms of Racial Discrimination of 21 December 1965 (CERD), as ratified by Greece by Legislative Decree no. 494/1970, and on Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law, reads as follows:

Article 1

"1. Whoever intentionally, publicly, orally or *via* the press, *via* the Internet or *via* any other means or in any other way incites, provokes, promotes or encourages another to carry out acts or actions capable of causing discrimination, hatred or violence towards a person or to a group of people defined by reference to race, colour, religion, descent or national or ethnic origin, sexual orientation, gender identity or disability, in a way that endangers public order or includes a threat to the life, freedom or bodily integrity of the above persons, shall be punished by imprisonment ranging from three (3) months to three (3) years and a monetary fine ranging from five to twenty thousand (5,000-20,000) euros."

C. Criminal Code

17. Article 196 of the Criminal Code as in force at the material time and until it was repealed on 30 June 2019, read as follows:

"A religious officer who in the performance of his work or publicly and in his official capacity provokes or causes citizens to become hostile to the State or other citizens shall be punished by imprisonment for up to three years."

18. Article 347 as in force at the time, and later repealed by Article 68 of Law no. 4356/2015, read as follows:

> "1. Buggery between males committed:
>
> (a) by abuse of a relationship of dependency based on any service;
>
> (b) by an adult who seduces a person younger than seventeen years old or for financial gain shall be punished by imprisonment for at least three months.
>
> 2. The same sentence shall be imposed on anyone who breaches paragraph 1 by profession."

D. Law no. 4356/2015

19. On 24 December 2015 Law no. 4356/2015 on "Civil union, exercise of rights, criminal and other provisions" expanding the civil union partnerships to same-sex couples came into force. Its explanatory report includes the following:

> "By the first chapter of the legislative proposal, the modernisation of the legislation on the civil union partnerships is pursued towards two fundamental directions: on the one hand, the validity of the civil union shall extend to same-sex couples, and on the other hand, the importance and the consequences of the civil union shall be reinforced, given that family ties shall be recognised between its members.... As regards the unions between same-sex couples, the necessity of their legal, official recognition follows from the principles of the equality between citizens and respect for diversity, as they are already protected by the Greek Constitution and the ECHR (European Convention of Human Rights)...
>
> Besides, it should be mentioned that Greece has been convicted by the European Court of Human Rights (ECtHR) in the case of Vallianatos and others v. Greece (7.11.13) for violation of Articles 8 and 14 of the Convention for the reason that Law no. 3719/2008 excludes same-sex couples from the possibility of concluding a civil union contract...."

20. On the basis of the action report submitted by the Government, which included the individual measures taken by the payment of the amounts awarded under Article 41 of the Convention to the applicants, and the general measures taken by the adoption of Law no. 4356/2015 expanding the civil union partnerships to same-sex couples, in its resolution CM/ResDH(2016)275, adopted on 21 September 2016, the Committee of Ministers declared itself satisfied that in case *Vallianatos and Others v. Greece* [GC] (nos. 29381/09 and 32684/09, ECHR 2013 (extracts)) all the measures required under Article 46 § 1 of the Convention had been adopted. It thus declared that the respondent State had exercised its functions under Article 46 § 2 of the Convention and closed the examination of that case.

COMPLAINT

21. The applicant complained under Article 10 of the Convention that his criminal conviction for publishing the article on his personal blog had violated his freedom of expression. The relevant Article of the Convention reads as follows:

> "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
>
> 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

22. Article 17 of the Convention reads as follows:

> "Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention."

THE LAW

A. The Government's submissions

23. The Government invited the Court to reject the case as incompatible *ratione materiae* with the provisions of the Convention with reference to Article 17 of the Convention. The applicant had been convicted by the domestic courts because his article had been considered to be hate speech, from which all public authorities and officials had a special responsibility to refrain. The Government referred to the Court's case-law, according to which tolerance and respect for the equal dignity of all human beings were the cornerstones of a democratic and pluralistic society. On that basis, the Government argued that punishment of the applicant had been necessary as his conduct had fallen within the forms of expression that propagated, encouraged, promoted or justified hatred based on intolerance, and that the punishment had been proportionate to the legitimate aim pursued.

24. In particular, the applicant's article read as a whole, but also taking its elements separately, had targeted homosexual people in an inflammatory way, as pointed out by the two public prosecutors who had lodged appeals against the applicant's acquittal by the first-instance court. In the applicant's article, homosexuality was described as a "social felony" and a "deviation

from the laws of nature" and those who experienced or supported it were called "the scum of society", "defective", humiliated", and "people of the dark" who "rear[ed] their heads". Moreover, the applicant had asked his readers to drop any reservations they might have by using the expression "do not hesitate", also calling for the complete social exclusion of homosexual people by citing a church psalm. The domestic courts had accepted that the applicant had used those phrases and characterisations to encourage others to refuse persons of certain sexual orientation the right to exist in society, to participate, to act and to express their views and goals as members of society. On the basis of those considerations, the domestic courts had concluded that the applicant's article undermined social cohesion and respect between people and created an atmosphere of conflict and violent behaviour against people based on the sole criterion of their sexual orientation.

25. The Government further noted that the applicant had not merely expressed his opinion on debates taking place in Parliament on the proposed legislation introducing civil unions for same-sex couples but had exceeded the acceptable limits. His words had included threatening content within the meaning of Article 1 of Law no. 927/1979 and Article 1 of Law no. 4825/2014, as he had clearly targeted homosexual people. He had done that in a way that could have objectively caused them fear and anguish by seeking imminent harm, as indicated by the use of certain expressions such as "blacken them out" and "spit on them".

26. The Government further emphasised that under no circumstances could it be considered that the applicant's article formed part of his duties as Metropolitan. According to the legislation, a Metropolitan had: (a) priestly duties, concerning the performance of religious services and ceremonies; (b) administrative duties, concerning the organisation and administration of services in his diocese, and (c) pastoral duties, meeting the needs of his congregation, whom he had to approach with love and respect. His life should be in accordance with what was required by his office. His main duties were therefore to listen to his congregation and try to inspire in them feelings of love, respect and respect for human values and human rights in general, as any officer of any religion should do. As the domestic courts had highlighted, such discriminatory speech could not be reconciled with the role of the applicant, who had heightened responsibility and influence, especially towards people who believed in orthodox Christianity, that is to say, the majority of the Greek population.

27. It followed that the applicant, a religious officer, had encouraged the public to act in a way that could cause discrimination, hatred and violence against a group of people whom he had identified on the grounds of their sexual orientation, namely homosexual people. He had therefore propagated hate speech against that group of people and his speech had fallen outside the protection provided by Article 10 of the Convention.

28. In any event, even if it were considered that the applicant's complaint fell to be examined under Article 10 of the Convention, the authorities' interference with the applicant's freedom of expression had been justified pursuant to Article 10 § 2 of the Convention. The provisions of Law no. 927/1979 were aimed at the protection of the rights of every Greek citizen to equal treatment, to free development of his or her personality and not to be discriminated against, as protected by the Greek Constitution and Article 14 of the Convention. Moreover, the above-mentioned Law was aimed at the protection of public order, given that hate speech endangered the rights of the persons who were targeted.

29. The Government further relied on the Court's case-law according to which politicians and other public persons, when expressing themselves in public, should take care to avoid comments that might foster intolerance. It reiterated that it was primarily for the national authorities to assess whether there was a need capable of justifying the authorities' interference. They also asserted that in cases such as the present one, in which the applicant was a senior religious officer whose speech could influence many people, the authorities' margin of appreciation was greater than usual. They further emphasised that the disputed words had been disseminated and reproduced on the Internet, which made their potential impact on public order and social cohesion much greater, and that they had been liable to cause social hatred and violence against homosexual people, especially if one took into account that they had been published during the period when the proposed legislation on civil unions for same-sex couples was about to be debated in the Hellenic Parliament.

30. Lastly, the Government pointed out that the domestic courts had chosen a rather lenient sentence, namely five months' imprisonment suspended for three years, whereas the law provided for sentences of up to three years. In the Government's view, such a sentence was proportionate to the aim pursued.

B. The applicant's submissions

31. The applicant did not put forward specific arguments regarding the Government's objection of incompatibility *ratione materiae* with the provisions of the Convention. His core submissions lay in the argument that the disputed article had referred to politicians and in particular, to Ms A.V., who had been a member of parliament at the time and had expressed her intention to see that the proposed legislation introducing civil unions for same-sex couples passed into law. The applicant argued that the Government and the domestic courts had detached certain expressions from their context and had arbitrarily interpreted them as if they had targeted homosexual people. However, it had been clear from the article read as a whole that the applicant's comments had targeted specific political figures. The applicant

had further clarified the fact that his article had referred to politicians in a second article he had published on 21 December 2015 under the title "Let's get things clear – Love the sinner but deal with the sin". In it, he had clarified that the phrase "spit on them" had been used metaphorically and had meant "despise them" and that people of the church condemned sin but prayed for sinners. In addition, he had rejected any violent actions, and had clarified that homosexual people were welcomed by the Church, which prayed for their healing as sinners.

32. The applicant further argued that the expression "blacken them out" was a common expression used against politicians and meant to vote them out. It had originated in an era where votes had been cast with a white and a black ballot, the second being a vote against the candidate, so it had been clear from the use of that expression that the applicant's article had targeted politicians. That interpretation had been upheld by the first-instance court, which had acquitted him; it was only after two public prosecutors had lodged appeals that he had been convicted and it was his belief that the appeals had been lodged following political pressure.

33. It was widely known that the Orthodox Church disapproved of and condemned homosexuality and only supported procreation within the context of a heterosexual family. In addition, at the time of publication of the applicant's article, Article 347 of the Criminal Code, which made buggery between males a criminal offence, had still been in force. Those two facts had resulted in a demonstration of support from almost every priest of his diocese. The publication of the disputed article on the applicant's blog was therefore nothing more than the applicant's priestly duty and the expression of the feelings and views of the Church, as well as of a large part of Greek society. The applicant's conviction had therefore constituted an interference with his profession and mission as Metropolitan of the Orthodox Church.

34. In any event, and regardless of the fact that the article had referred to politicians and not homosexual people, its content could under no circumstances be regarded as incitement to violence against a group based on their sexual orientation. This had been clear from the disputed article itself, as well as from the subsequent article published on 21 December 2015. The phrases "spit on them", "disapprove of them" and blacken them out" could not be interpreted as incitements to violence; moreover, the phrases "They are not human! They are perversions of nature! They are suffering mentally and spiritually" on the one hand concerned politicians and, on the other hand, constituted value judgments, even if in strong and harsh terms.

35. Lastly, the applicant referred to certain decisions of the Court of Cassation in other cases in which it had held that the criteria for characterising certain phrases as incitement to violence had not been fulfilled; in his view, the expressions used in those cases had been more serious and yet they had not been treated as incitement to violence, which meant that he had been discriminated against in the application of the law.

C. The Court's assessment

1. General principles

36. The Court has consistently held that freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual's self-fulfilment. Subject to paragraph 2 of Article 10, it is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Such are the demands of pluralism, tolerance and broadmindedness without which there is no "democratic society". As enshrined in Article 10, freedom of expression is subject to exceptions which must, however, be construed strictly, and the need for any restrictions must be established convincingly (see *Von Hannover v. Germany (no. 2)* [GC], nos. 40660/08 and 60641/08, § 101, ECHR 2012; *Couderc and Hachette Filipacchi Associés v. France* [GC], no. 40454/07, § 88, ECHR 2015 (extracts); and *Bédat v. Switzerland* [GC], no. 56925/08, § 48, 29 March 2016).

37. The principles concerning the question of whether an interference with freedom of expression is "necessary in a democratic society" are well established in the Court's case-law (see, among other authorities, *Delfi AS v. Estonia* [GC], no. 64569/09, §§ 131-32, ECHR 2015, with further references). The Court has to examine the interference complained of in the light of the case as a whole and determine whether it was "proportionate to the legitimate aim pursued" and whether the reasons adduced by the national authorities to justify it are "relevant and sufficient". In doing so, the Court has to satisfy itself that the national authorities applied standards which were in conformity with the principles embodied in Article 10 and, moreover, that they relied on an acceptable assessment of the relevant facts.

38. As regards the application of Article 17 of the Convention, the Court's relevant principles can be found in *Perinçek v. Switzerland* ([GC], no. 27510/08, §§ 113-15, ECHR 2015 (extracts)). The purpose of Article 17, in so far as it refers to groups or to individuals, is to make it impossible for them to derive from the Convention a right to engage in any activity or perform any act aimed at destroying any of the rights and freedoms set forth in the Convention; "therefore, no person may be able to take advantage of the provisions of the Convention to perform acts aimed at destroying the aforesaid rights and freedoms" (see *Lawless v. Ireland*, 1 July 1961, § 7, Series A no. 3). Although to achieve that purpose it is not necessary to take away every one of the rights and freedoms guaranteed from groups and persons engaged in activities contrary to the text and spirit of the Convention, the Court has found that the freedoms of religion, expression and association guaranteed by Articles 9, 10 and 11 of the Convention are covered by Article 17 (see, among other authorities, *W.P. and Others v. Poland* (dec.), no. 42264/98, ECHR 2004-VII (extracts); *Garaudy v. France* (dec.),

no. 65831/01, ECHR 2003-IX (extracts); *Pavel Ivanov v. Russia* (dec.), no. 35222/04, 20 February 2007; and *Hizb ut-Tahrir and Others v. Germany* (dec.), no. 31098/08, §§ 72-75 and 78, 12 June 2012).

39. Speech that is incompatible with the values proclaimed and guaranteed by the Convention is not protected by Article 10 by virtue of Article 17 of the Convention (see, among other authorities, *Delfi AS*, cited above, § 136). The decisive points when assessing whether statements, verbal or non-verbal, are removed from the protection of Article 10 by Article 17 are whether the statements are directed against the Convention's underlying values, for example by stirring up hatred or violence, and whether by making the statement, the author attempted to rely on the Convention to engage in an activity or perform acts aimed at the destruction of the rights and freedoms laid down in it (see, for example, *Perinçek*, cited above, § 115).

40. The Court's decision in *Roj TV A/S v. Denmark* ((dec.), no. 24683/14, §§ 30-38, 24 May 2018) provides a summary of cases in which it has applied Article 17 of the Convention in declaring complaints under Article 10 to be incompatible *ratione materiae* with the Convention.

2. Application of the general principles in the present case

41. The Court would note at the outset that it is not called upon to examine the constituent elements of the offence under Article 1 of Law no. 927/1979 as modified by Law no. 4285/2014. It is first of all for national authorities, especially the courts, to interpret and apply domestic law (see, among many other authorities, *Lehideux and Isorni v. France*, 23 September 1998, § 50, *Reports of Judgments and Decisions* 1998-VII). The Court's task under Article 10 is only to review the decisions delivered by the competent domestic courts pursuant to their power of appreciation. In so doing, it must satisfy itself that the national authorities based their decisions on an acceptable assessment of the relevant facts (see, for example, *Incal v. Turkey*, 9 June 1998, § 48, *Reports* 1998-IV; *Molnar v. Romania* (dec.), no. 16637/06, § 21, 23 October 2012; and *M'Bala M'Bala v. France* (dec.), no. 25239/13, § 30, ECHR 2015).

42. The domestic courts found it established that in his article the applicant had targeted homosexual people when Parliament was debating the proposed legislation on civil unions for same-sex couples. In this regard, the Court emphasises that that legislation, namely Law no. 4356/2015, was introduced following the Court's judgment in *Vallianatos and Others* (cited above), to which it makes explicit reference in its explanatory report (see paragraph 19 above). The Court notes that it is in dispute between the parties whether the applicant had targeted homosexual people in his article or whether his remarks had concerned politicians. The domestic courts, after carefully examining the evidence before them and hearing the witnesses, concluded that most of the applicant's remarks concerned homosexual

people, whereas certain expressions such as "blacken them out" referred to politicians (see paragraph 10 above).

43. The Court agrees with the domestic courts' conclusions in that regard. In particular, it is clear from the content of the applicant's article that he referred to those who "experience or support homosexuality". Moreover, as the domestic courts rightly noted, the majority of the applicant's remarks included expressions commonly used by people who shared the applicant's views in referring to homosexual people, such as "It is their right, of course, to live secretly – privately – the way they want". In his application to the Court, the applicant acknowledged that that phrase referred to homosexual people. The Court also observes that in his defence submissions before the appellate court, the applicant clarified that his article referred to homosexual people and specifically homosexual politicians. While obviously certain expressions used referred to politicians, such as the beginning of the article reproducing Ms A.V.'s statements, the greater part of the applicant's article referred to homosexuality. Even the expressions of incitement directed against politicians who wished to vote for the legislation introducing civil unions between same-sex couples, such as "blacken them out", were in fact targeting homosexual people. As the domestic courts rightly pointed out, such phrases could not be seen separately but had to be read as directly connected with the applicant's intention to diminish homosexual people. The above conclusions are not rebutted by the applicant's subsequent article dated 21 December 2015, on which he relied before the Court to prove that his initial article had referred to politicians. Even though in that article the applicant stated that his previous article had referred to politicians, such retrospective clarification could not alter the content of the initial article.

44. The Court notes that the appellate court reviewed several pieces of evidence and examined several witnesses over the course of the two days of the hearing, and that its judgment of 28 January 2019 described at length, namely over 120 pages, the facts of the case and its assessment of the evidence before it. Moreover, the Court of Cassation, in a lengthy judgment of sixty-six pages, examined all the grounds for cassation put forward by the applicant, including those relating to his freedom of expression, and rejected them. It concluded, as the appellate court had done, that the applicant's right to freedom of expression as protected by the Convention had not been violated, as his views were liable to cause discrimination and hatred against homosexual people. In the light of all the above considerations, the Court considers that the domestic courts carefully assessed the evidence before them and conducted a balancing exercise which took the applicant's right to freedom of expression into account. The Court has not found any elements indicating that the domestic courts did not base their findings on an acceptable assessment of the relevant facts.

45. The Court will now proceed to examine whether Article 17 of the Convention is applicable in the present case.

46. It notes that the applicant was convicted of incitement to hatred or violence and sentenced to five months' imprisonment pursuant to Law no. 927/1979, which is based on the International Convention on the Elimination of All Forms of Racial Discrimination of 21 December 1965 (CERD), as ratified by Greece by Legislative Decree no. 494/1970, and on Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law. In particular, the appellate court, after considering the article as a whole, concluded that certain expressions used by the applicant in relation to homosexual people, such as that homosexuality was a "social felony", a "sin" and "a deviation from the laws of nature" and that homosexual people were "the scum of society", "criminals", "people of the dark", "mentally ill people", "defective" and "humiliated", amounted to hate speech against a group of individuals identified on the basis of their sexual orientation. It further focused on the incitements contained in the article – "Spit on them! Condemn them! Blacken them out! ... Therefore, do not hesitate! When you meet them, spit on them! Do not let them rear their heads!" – and the quotation from the psalm at the end and concluded that the applicant's article was capable of stirring up violence against homosexual people and causing them anguish and fear.

47. The Court agrees with the domestic courts' conclusions. It reiterates that regard must be had to the words used and the context in which they were published, with a view to determining whether the texts taken as a whole can be regarded as incitement to violence (see *Özgür Gündem v. Turkey*, no. 23144/93, § 63, ECHR 2000-III). In the present case, it considers that the expressions used by the applicant amounted to hate speech against a group of people on the basis of their sexual orientation. As the domestic court rightly pointed out, the applicant used harsh expressions which went so far as to deny homosexual people their human nature stating "They are not humans! They are perversions of nature!" Other phrases used, such as "They are the scum of society, marginal people, defective, humiliated, people of the dark, who now, with the rising of the left, have reared their heads!... They are the damned of Society!" and "They are suffering mentally and spiritually! They are people with a mental disorder! Unfortunately, these people are worse and more dangerous than some of the people living in nuthouses", further reinforce the above conclusion, as it is clear that these phrases go beyond the expression of opinion, even in offending, hostile, or aggressive terms (contrast *Savva Terentyev v. Russia*, no. 10692/09, § 72, 28 August 2018).

48. The Court further notes that pursuant to its case-law, another factor to be taken into account is whether the statements, fairly construed and seen in their immediate or wider context, could be seen as a direct or indirect call for violence or as a justification of violence, hatred or intolerance (see *Perinçek*, cited above, § 206, with further references). In the circumstances of the present case, the applicant's article included multiple incitements to violence.

Contrary to the applicant's allegations that the phrase "spit on them" was metaphorical, that phrase, coupled with the phrases "condemn them", "blacken them out" and "do not go near them", was clearly used in the context of the article in its literal sense. These phrases, which were repeated in the article preceded by the phrase "do not hesitate", could have caused any homosexual people to feel stress, anguish and terror as, coupled with the hate speech that was present throughout the article, they were capable of stirring up violence against them. That was expressly stated by many witnesses in the domestic proceedings, who stated that they had felt threatened as homosexual people and that the publication and reproduction of the article had caused them feelings of fear. In view of the above, and having regard to the content, tone and context of the whole article, the Court concludes that it constituted hate speech and incitement to violence against a group of people on the basis of their sexual orientation.

49. These conclusions are further reinforced by three factors. First, as the domestic courts highlighted, the applicant, who was a senior official of the Greek Orthodox Church, had the power to influence not only his congregation but also many other people who adhered to that religion, that is to say, the majority of the Greek population.

50. Secondly, the applicant disseminated his remarks on the Internet, which made his message easily accessible to thousands of people. While the applicant's blog does not appear to have a wide readership, his article was reproduced by several media outlets and is still to this day accessible online. In this connection, the Court reiterates that defamatory and other types of clearly unlawful speech, including hate speech and speech inciting violence, can now be disseminated as never before, worldwide, in a matter of seconds, and will sometimes remain persistently available online (see *Delfi AS*, cited above, § 110). This means that the risk of harm posed by content and communications on the Internet to the exercise and enjoyment of human rights and freedoms, particularly the right to respect for private life, is certainly higher than that posed by the press (ibid., § 133). At the same time, it is clear that the reach and thus the potential impact of a statement released online with a small readership is certainly not the same as that of a statement published on mainstream or frequently visited web pages. It is therefore essential for the assessment of the potential influence of an online publication to determine the scope of its reach to the public (see *Savva Terentyev*, cited above, § 79).

51. Thirdly, the applicant's comments targeted homosexuals who may be seen as requiring enhanced protection. In particular, the Court notes that it has already found that gender and sexual minorities required special protection from hateful and discriminatory speech because of the marginalisation and victimisation to which they have historically been, and continue to be, subjected (see *Lilliendahl v. Iceland* (dec.), no. 29297/18, § 45, 12 May 2020). The Court also notes the low levels of acceptance of

homosexuality and the situation of LGBTI people in the national context as identified in international reports (see paragraphs 13-14 above).

52. The Court reiterates that Article 17 of the Convention is only applicable on an exceptional basis and in extreme cases (see *Perinçek*, cited above, § 114). In cases concerning Article 10 of the Convention, it should only be resorted to if it is immediately clear that the disputed statements sought to deflect this Article from its real purpose by employing the right to freedom of expression for ends clearly contrary to the values of the Convention (ibid.). Though this list is not exhaustive, the Court has applied Article 17 of the Convention by excluding certain statements from the protection afforded by Article 10 mainly in cases relating to statements denying the Holocaust (see *Garaudy*, cited above), in cases which concerned the use of freedom of expression for Islamophobic purposes (see *Norwood v. the United Kingdom* (dec.), no. 23131/03, ECHR 2004-XI) and antisemitic purposes (see *Pavel Ivanov* and *M'Bala M'Bala*, both cited above) and to cases inciting violence against all non-Muslims (see *Belkacem v. Belgium* ((dec.), no. 34367/14, 20 July 2017).

53. In this connection, the Court stresses that discrimination based on sexual orientation is as serious as discrimination based on "race, origin or colour" (see *Vejdeland and Others v. Sweden*, no. 1813/07, § 55, 9 February 2012). In the circumstances of the present case, and having regard to the nature and wording of the disputed statements, the context in which they were published, their potential to lead to harmful consequences and the reasons adduced by the Greek courts, the Court considers that it was immediately clear that the statements sought to deflect Article 10 of the Convention from its real purpose by employing the right to freedom of expression for ends clearly contrary to the values of the Convention.

54. The Court would further stress that criticism of certain lifestyles on moral or religious grounds is not in itself exempt from protection under Article 10 of the Convention. However, when the impugned remarks go as far as denying LGBTI people their human nature, as in the present case, and are coupled with incitement to violence, then engagement of Article 17 of the Convention should be considered.

55. Consequently, the Court finds that, taking account firstly of the nature of the disputed article, which included incitement to violence and dehumanising hate speech against a group of people identified on the basis of their sexual orientation, elements which were extensively examined by the national courts; secondly, of the applicant's position as a senior official of the Church who could influence many people; thirdly, of the fact that the views expressed in the article were disseminated to a wide audience through the Internet; and, fourthly, of the fact that they related directly to an issue which is of high importance in modern European society – protection of people's dignity and human value irrespective of their sexual orientation – the

applicant's complaint does not, in the light of Article 17 of the Convention, attract the protection afforded by Article 10.

56. Therefore, the present case is distinguishable from case *Lilliendahl v. Iceland* (cited above), in which the Court examined whether Article 17 applied but concluded that it was not immediately clear that the applicant's comments, though highly prejudicial, aimed at inciting violence and hatred or destroying the rights and freedoms protected by the Convention and thus he was not barred from invoking his freedom of expression in that instance (ibid., 26). The Court notes in particular that in that case, the applicant's comments had included hate speech which was not considered to reach the threshold of the gravest forms of hate speech (ibid., §§ 26, 39), had not included incitement to violence and had been expressed by "a member of the general public not expressing himself from a prominent platform likely to reach a wide audience" (ibid., 39). Whereas in the present case, the applicant, who was a senior official of the Church, not only disseminated expressions amounting to the gravest form of hate speech, given their severity and the actual content, but also coupled them with incitement to violence and shared them through his personal blogspot, which was later reproduced by several media outlets.

57. Having regard to the above, the Court considers that the applicant was attempting to deflect Article 10 of the Convention from its real purpose by employing the right enshrined in that Article for ends which are clearly contrary to the values of the Convention. Consequently, the Court finds that by reason of Article 17 of the Convention, the applicant cannot claim the benefit of the protection afforded by Article 10 of the Convention.

58. It follows that the application is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected in accordance with Article 35 § 4.

For these reasons, the Court, by a majority,

Declares the application inadmissible.

Done in English and notified in writing on 31 August 2023.

Milan Blaško Section Registrar	Pere Pastor Vilanova President