European Court of Human Rights: *Amvrosios-Athanasios Lenis v. Greece*

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The European Court of Human Rights (ECtHR) once again confirmed that in a democratic society there can be no tolerance for stirring up hatred, discrimination or violence against LGBTI people. Applying the abuse clause of Article 17 of the European Convention on Human Rights (ECHR), the ECtHR found that Amvrosios-Athanasios Lenis, as a senior officer of the Orthodox Church, could not claim the benefit of the right to freedom of expression as guaranteed by Article 10 ECHR: Lenis' expressions and statements, disseminated through his personal blog spot, amounted to the gravest form of hate speech and incitement to violence against homosexuals.

The case goes back to 2015 when Lenis, who was the Metropolitan of Kalavryta and Aigialeia, published an article on his personal blog vehemently criticising a law proposal debated in the Hellenic Parliament introducing civil unions for same-sex couples. His article referred to homosexual people as "the scum of society", it qualified homosexuality as a deviation from the laws of nature, as a social felony, and as a sin. Homosexuals were described as disgraced people and it continued: "Spit on them! Condemn them! Blacken them out! They are not human! They are perversions of nature! They are suffering mentally and spiritually! They are people with a mental disorder! [..] Therefore, do not hesitate! When you meet them, spit on them! Do not let them rear their heads! They are dangerous!". The text was reproduced by multiple websites, media outlets and social media. Charges were brought against Lenis, and after having been acquitted in first instance, the appellate court declared Lenis guilty of public incitement to violence or hatred against people because of their sexual orientation. The Court of Cassation confirmed this finding and agreed that Lenis' freedom of expression had not been violated as his article had been liable to cause discrimination and hatred against homosexual people. Lenis was convicted to a prison sentence of five months, suspended for three years. He complained before the ECtHR that his criminal conviction had violated his right to freedom of expression.

The ECtHR in its decision focussed on the relation between Article 17 and Article 10 ECHR. It reiterated that speech that is incompatible with the values proclaimed and guaranteed by the ECHR is not protected by Article 10 by virtue of Article 17 ECHR (also qualified as the "abuse-clause"). 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 ECHR a right to engage in any activity or perform any act aimed at

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destroying any of the rights and freedoms set forth in the ECHR and therefore, no person may be able to take advantage of the provisions of the ECHR to perform acts aimed at destroying the aforesaid rights and freedoms. In earlier case law the ECtHR has found that the freedoms of religion, expression and association guaranteed by Articles 9, 10 and 11 ECHR are covered by Article 17. 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 ECHR to engage in an activity or perform acts aimed at the destruction of the rights and freedoms laid down in it. The ECtHR also reiterated however that Article 17 ECHR is only applicable on an exceptional basis and in extreme cases (see also *Perinçek v. Switzerland*, IRIS 2016-1/1 and *Roj TV A/S v. Denmark*, IRIS 2018-7:1/2). The ECtHR next referred to the finding by the appellate court and the Court of Cassation, that the article at issue amounted to hate speech against a group of individuals identified on the basis of their sexual orientation, and it agreed with their conclusion that Lenis' article was capable of stirring up violence against homosexual people. It reiterated 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. The ECtHR found that Lenis used harsh expressions which went so far as to deny homosexual people their human nature and that some of his statements clearly went beyond the expression of opinion, and were formulated in offending, hostile, or aggressive terms. Furthermore, the ECtHR took into account that the statements could be seen as a direct or indirect call for violence or as a justification of violence, hatred or intolerance, as they included multiple incitements to violence. The article had also caused feelings of fear amongst homosexual people. The ECtHR additionally referred to the fact that Lenis was a senior official of the Greek Orthodox Church, having 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. Lenis had disseminated his remarks on the Internet, which made his message easily accessible to thousands of people. Clearly unlawful speech, including hate speech and speech inciting violence, can be disseminated as never before, worldwide, in a matter of seconds, and will sometimes remain persistently available. Finally, Lenis' comments targeted homosexuals who may be seen as requiring enhanced protection. In particular, the ECtHR noted that it has already found that gender and sexual minorities require special protection from hateful and discriminatory speech because of the marginalisation and victimisation to which they have historically been, and continue to be, subjected. It also noted the low levels of acceptance of homosexuality and the situation of LGBTI people in the national context as identified in international reports. As a kind of disclaimer, the ECtHR stressed that criticism of certain lifestyles on moral or religious grounds is not in itself exempt from protection under Article 10 ECHR. However, when the impugned remarks go

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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 ECHR should be considered. 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 ECtHR considered that it was immediately clear that the statements sought to deflect Article 10 ECHR from its real purpose by employing the right to freedom of expression for ends clearly contrary to the values of the ECHR. Also the fact that the impugned statements 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 – brought the ECtHR to the finding that in the light of Article 17 ECHR Lenis' complaint did not attract the protection afforded by Article 10. As by reason of Article 17 ECHR, Lenis could not claim the benefit of the protection afforded by Article 10 ECHR, the ECtHR declared his application incompatible *ratione materiae* with the provisions of the ECHR and rejected it as inadmissible.

Decision by the European Court of Human Rights, Third Section, in the case of Amvrosios-Athanasios Lenis v. Greece, Application No. 47833/20, 27 June 2023 and notified in writing on 31 August 2023

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