

Dept 5

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Åke Green has denied his guilt on the grounds that the actual sermon did not constitute persecution of a people group insofar as he had no intention of occasioning disrespect for homosexuals in the manner described in Chapter 16, para.8 of the Criminal Code.

In the presentation of this case, prosecuting counsel has put forward the following: The issue has to do with the sermon “Is homosexuality something one is born with or is it a diabolical plot against mankind?” presented in Borgholm on 20th July, 2003 by Åke Green, pastor in the Pentecostal Church before some fifty listeners. Despite the fact that Åke Green invited the media to his sermon, no representative of the media attended. So, Åke Green therefore distributed an account of his sermon to Ölandsbladet [a local newspaper], amongst others, which in turn published parts of it on 26th July, 2003. Against this background and the great interest the article aroused over the contents of Åke Green’s sermon, the prosecutor then decided to raise the current case against him of “persecution of a people group”.

Percy Bratt’s presentation in defence of Åke Green asserts: The issue at law invoked here, namely Chapter 16, para.8 of the criminal code, is first and foremost designed to counter agitation against homosexuals by racist and Nazi groups. In this context, Åke Green’s sermon must be recognised as being outside of this specific area. In the determination of this case, specific attention must be paid to Åke Green’s right to religious freedom and to his freedom of speech, which should be strongly protected in line with the European Convention for Constitutional Freedom and Human Rights, Articles 9 and 10. Furthermore, the so-called “instruction” in freedom of the press and freedom of speech must also be constitutionally observed, so regulating those in juridical positions vis-à-vis misuse of freedom of the press and freedom of speech alike, and those keeping watch over these rights shall consider whether they provide for a free social order, paying attention to the purpose rather than to the presentation, and in so doing, give the benefit of the doubt. In relation to the conditions of the

criminal code, the European Convention takes preference according to the principle, *lex superior* (Latin = higher law), Chapter 2, para. 23 RF. In which case determination of any penalty is given by a fundamental interpretation, and one conforming with the Convention, which would strongly indicate that Åke Green's sermon clearly lies outside the area of jurisdiction of Chapter 16, para.8 of the criminal code. In which case, Åke Green's liability for the indictment in question infringes his rights to freedom of religion and freedom of speech.

The Finding of the District Court

On January 1 2003, the penalty for Incitement to Hatred, chap. 16 s. 8 in the penal code, was extended to also include homosexuals. Corresponding changes were made in the Freedom of the Press Act simultaneously. The reason for this extension of the area to be declared criminal was that homosexuals are a particularly vulnerable group in society and are frequently the victims of crime just because of their sexual disposition.

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With freedom of religion particularly in view, this freedom may be under obligation to avoid statements, as far as is possible, that violate and express disdain towards others and hence infringe upon their rights. Accordingly, it may be necessary, in a democratic society, to attempt to prevent and penalize undesirable expressions for certain religious proclamations on the condition that this is done while considering taking into account that the sanction in question is proportional to the goal in view (Kokkinakis v. Austria para 49).

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...In the rationale for the change of the law (prop 2001/02:59 p 41f) it was pointed out that not every communication containing an opinion about a certain group nor every expression of disrespect is punishable. For such to be so it requires that it unquestionably exceeds the boundaries of a pertinent and reliable discussion concerning the group. Proving that an act is deemed to be persecution of homosexuals means that the verbal or written communication must always be judged in its context.

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Analysis must first be carried out of the sermon, "Is homosexuality something one is born with or is it a diabolical plot against mankind?" as delivered by Åke Green and

which is at the basis of this criminal action. Åke Green has made it clear that he has religious beliefs which are true to what the Bible says and, further it needs to be understood that the Bible is the Word of God. God's thoughts have been revealed to him by a process of prayer and meditation, and as such they are alive and living. Consequently, Åke Green asserts that it was God's thoughts he was preaching. Åke Green's sermon, now under question, contains in the greater part direct quotations from the Bible, ranging from (and including) Genesis 1:27; 2:24, Romans 1:1, Timothy 1:10. These Bible extracts, which give the Bible's view of homosexuals have been strung together by him and complemented with Åke Green's own words and interpretations. In this context, the District Court finds reason to concentrate its specific attention on the following four extracts of the sermon given by Åke Green.

“Legalizing [domestic] partnerships between men and men, between woman and woman will simply create disasters -- beyond compare! We are already seeing the results of this. We see it through the spread of AIDS. Certainly, not all AIDS-infected individuals are homosexuals, but it came into existence because of this in the past. For that matter, innocent people can become infected with this terrible disease, without having had anything to do with what lies behind it, as far as homosexuality is concerned.”

On the specific question of the advent of AIDS/HIV and its proliferation, Åke Green has taken recourse to what is written in the National Encyclopedia which states that AIDS/HIV had its source amongst homosexuals in New York during the 1970's. According to Åke Green, it has to be understood that the illness and homosexuality are connected.

“The Bible clearly teaches about these abnormalities. Sexual abnormalities are a deep cancerous tumor throughout the body of society. The Lord knows that sexually twisted people may even rape animals. Not even animals can avoid the fiery passion of man's sexual lust. Even this [bestiality], some will pursue.”

Åke Green's comments concerning these acts are to the effect that bestiality is a growing problem in Sweden, but that it is not only homosexuals who do such things.

“Paederasts -- when the Bible was written the Lord already knew what was going to happen. We have experienced it here, and we are horrified by it. In First Timothy 1:10 Paul talks about perverts. “Perverse” is translated from the original text, which states: “one who lies with boys.” I want to underline the fact that all homosexuals are not pedophiles. And that all homosexuals are not perverts. Nonetheless, it opens the door to forbidden areas and allows sin to take hold of the life of the mind.”

“Voluntarily, I part with cleanliness and receive uncleanness. Consciously they exchanged, says Paul. Homosexuality is something that is sick. So, a healthy and clean thought has been exchanged for a contaminated [or defiled] one. A healthy heart has been exchanged for a sick one. ...Is homosexuality something one chooses? Answer: YES. You choose it. You are not born into it. You choose it, quite simply. You exchange it. It is absolutely that way; otherwise it would be a betrayal of mankind.

Åke Green’s remarks concerning the above extract from his sermon are that he is against homosexuality, as a phenomenon – not against specific people who are homosexuals. His job as a servant of God is to seek to re-orientate homosexuals by means of counseling.

Only quoting and discussing religious documents, in this case the Bible, does not fall within any criminal arena. The Law Office, in its decision 2003-01-21 Dnr 16-03-30, concerning quotations from the Bible and their exegesis has said that religious exegesis in isolation which could be construed as persecution of homosexuals does not constitute a criminal act when it is only a quotation from the Bible. In addition, the Law Office said that persecution of a people group can be said to have taken place if such an exegesis is emphasized and expressly used in a demeaning way against homosexuals. It follows that it is forbidden to use the Bible or similar material to threaten or express disrespect for homosexuals as a group. A differentiation must therefore be made between explanation and communication which alludes to an “orientation” as such and expresses threats or disrespect against a group on the grounds of their sexual preference and explanation and communication which alludes to the behaviour or the like that the sexual preference might occasion, but which does not tend to infringe or threaten the whole group of homosexuals. Lifestyles and views

on life consequently may be discussed. In his sermon, Åke Green has said what must be taken as that pedophiles and people who engage in sexual behaviour with animals are in the majority homosexuals.

The point that not all homosexuals are pedophiles can reasonably be understood in any other way than, in his opinion, (Åke Green's) that this is common. Furthermore, this court calls particular attention to Åke Green's comparison of homosexuality with a cancer in society, a comparison that must be seen as an offensive statement for homosexuals as a group. While it is stipulated that the pursuit of impartial debate and free opinion must be permitted and not lead to any liability, this does not have in view these kinds of utterances and statements, in the opinion of this court. To a great extent Åke Green's sermon contains clear attacks on, and contemptuous expressions regarding, homosexuals as a group. The implication of Åke Green's pronouncements can therefore not be seen as anything other than a violation of people with this sexual disposition.

In the opinion of this court, a person may not hide behind biblical quotations in order to convey his/her opinions about a certain people-group. Åke Green has not only quoted passages from the bible and interpreted them, but elaborated upon these quotations himself and developed them further into direct attacks that homosexuals commit punishable offences, which, by society in the main, are viewed as of a specially grave nature. In the opinion of this court, Åke Green has deeply offended homosexuals as a group through his statements and his sermon has clearly had as its purpose to despise homosexuals as a group.

As mentioned above, the freedoms of religion and expression are, however, vigorously protected, partly under Swedish national law and partly under international law by which Sweden is bound. The protection of fundamental civil and political rights is what constitutes a democratic society. In this, too, lies the basic concept of the dignity of each individual and the right to be spared violation by others for a variety of reasons including one's sexual disposition. In recent years (Swedish) society has paid particular regard and attention to those infringements and offences that people have had to suffer on the grounds of their particular sexual disposition. This found expression in the enactment of the Law of Partnership—the right of

homosexuals to adopt children and the penalty regulation, Incitement of Hatred. For a time, hate crimes have enjoyed priority in the judicial system and such offences are deemed to be of an especially serious nature. In the opinion of this court, the make up of the modern society in which we live cannot be ignored or how extremist groups express deep contempt and disdain for specially vulnerable minority groups.

In specific, serious cases threats and violence have also been used against those groups. In a democratic environment the principles of free debate must be allowed to rule and the protection of every person's freedom and rights ensured as far as possible. It ought to be taken further so that should someone in the name of their rights accept the explanations and communications that in their turn infringe another person's rights. According to the District Court, so that the rights of homosexuals as a group be not infringed they are worthy of greater protection than is Åke Green who, in the name of religion, put forward the discussion that cause the infringement.

Against the above background, the District Court found Åke Green guilty of persecution of a people group in accordance with their finding that his sermon was intentionally designed to clearly show disrespect for people on the grounds of their sexual preferences and that without any possible doubt his comments were purposely made to bring disdain and demean upon homosexuals as a group.

The crime of persecution of a people group, according to the Law, is an especially serious type when it has to do with infringing the rights of a person on the grounds of their sexual preferences, and when taken to extremes can seriously lessen the democratic values we seek to safeguard and the protection minority groups enjoy in our communities. The crime that Åke Green has committed is as the prosecutor made appropriate, punishable to the normal degree of the law.

Consequences

Åke Green has no previous convictions.

For persecution of a people group, as no petty crime, the law allows a punishment of a maximum of two years. The crime is a so-called "type-crime" for which the

consequence shall be commitment to prison unless no special reason can be given for a non-confined punishment. Should certain special reasons not exist and, therefore an alternative sentence is not in question, then Åke Green's sentence shall be determined as a reduced prison term.