

Disciplinary Action and Freedom of Artistic Expression

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I. The case of George Gavriel

A recent incident in Cyprus re-ignited the debate about the limits of artistic freedom. George Gavriel, a director and teacher of art of a secondary education public school, who is also an artist in his leisure time, posted on social media in September 2020 pictures of some of his latest paintings.¹ Some of them have a clear anti-Church theme, with one picture in particular showing a naked Jesus riding a motorcycle and wearing a scarf with the symbols of a well-known Cypriot soccer team, and yet another picturing a dog urinating on the current Archbishop of the Orthodox Church of Cyprus. Another picture takes a political stance, with yet another dog defecating on a statue of former General Georgios Grivas, who was the military leader of guerilla organisation EOKA during Cyprus's liberation struggle against the British during 1955–59,² but who later became a controversial figure when leading a paramilitary organisation, ironically named EOKA II, in the years prior to the military coup against former President of the Republic of Cyprus, Archbishop Makarios, and the Turkish invasion of Cyprus in 1974.³ Some of the paintings have also been described as sexist and misogynist due to the manner in which the female body was depicted.⁴

The artist defended his work, which he described as 'anti-systemic art', an expression reflecting his artistic creativity.⁵ However, following a public uproar, and complaints by organized groups, who called for

Gavriel's dismissal, including a letter by the Archbishop himself to the Minister of Education, Culture, Sports and Youth, effectively asking for Gavriel's dismissal,⁶ the Ministry (ie Gavriel's employer) launched a probe to examine whether the teacher-artist was liable for disciplinary offences. The Ministry noted that the freedom of artistic creation could not justify the insult of public feeling and the messages of the paintings that cultivate a sense of contempt or possibly a climate of intolerance within the student community, when such expression derives from an official in the field of public education.⁷

Many defended Gavriel's art, or at least his right to be provocative, and accused the Ministry of arbitrarily violating freedom of artistic expression. The debate included announcements by political parties and statements by individual politicians, as well as heated discussion and passionate statements by organized groups or the public at large, either supporting or criticizing the disciplinary action against Gavriel.⁸ Many accusers of Gavriel demanded his immediate dismissal or even imprisonment, with some even calling him an antichrist or a left-wing conspirator; on the other hand, many of Gavriel's defenders labeled anyone who disagreed with Gavriel's work as racist or fascist.⁹ Even the Senate of the leading public university in Cyprus, in a rare public announcement requesting the termination of the disciplinary action against Gavriel, could not avoid the extreme comparison between the case of Gavriel and the cases of Salman Rushdie and Charlie Hebdo.¹⁰ Such comparisons,

1 See eg 'Teacher under fire for irreverent artwork' *Financial Mirror* (Nicosia, 17 September 2020); E Sizopoulou, 'Uproar for the Paintings of a Teacher' *Phileneews* (Nicosia, 16 September 2020) (in Greek).

2 See eg Robert Holland, *Britain and the Revolt of Cyprus, 1954–1959* (Clarendon Press 1998).

3 For which see eg Kypros Chrysostomides, *The Republic of Cyprus: A Study in International Law* (Martinus Nijhoff 2000).

4 See eg E Andreou, 'Probe launched against head teacher for controversial artwork' *Cyprus Mail* (Nicosia, 16 September 2020).

5 See eg S Antoniou, 'The teacher of...antisystemic art responds to the aggrieved' *Politis* (Nicosia, 16 September 2020) (in Greek); M Michaelides, 'That's who I am for better or worse. An open sincere discussion with G. Gavriel' *City Sigmalive* (Nicosia, 18 September 2020) (in Greek).

6 'Archbishop to Prodromou: Gavriel has no place in education' *Kathimerini* (Nicosia, 18 September 2020) (in Greek).

7 'Disciplinary action for the director with the paintings' *Phileneews* (Nicosia, 16 September 2020) (in Greek).

8 A Viketos, 'Disciplinary action against the teacher for his paintings' *Ageliaforos* (Nicosia, 17 September 2020) (in Greek), 'AKEL accuses the Ministry of Education because of the director artist probe' *Reporter*, (Nicosia, 28 September 2020) (in Greek).

9 See eg G Kallinikou, 'The paintings, fanaticism, tolerance and the crime' *Phileleftheros* (Nicosia, 18 September 2020) (in Greek), M Nomikos, 'Your canvas. George Gavriel did not undress Christ but your hypocrisy' *Avant Garde* (Nicosia, 18 September 2020) (in Greek).

10 'The Senate of the University of Cyprus requests from the MECSY to

however, are entirely disproportionate.¹¹ A fatwa was issued against Salman Rushdie and the publishers of the book, convicting them to death under Islamic law. Calling on all zealous Muslims to execute the death sentence, it forced Rushdie to live in hiding and led to the murder of the Japanese translator of Rushdie's novel *The Satanic Verses*, to the wound of the Norwegian publisher of the books, and to 22 deaths in violent protests in India, Pakistan, and Egypt.¹² The violent shooting by two French Muslim brothers in the offices of the satirical newspaper *Charlie Hebdo* resulted in 12 murders and 11 injured persons.¹³ So far there has only been a probe for potential disciplinary offences against Gavriel, with the artist freely holding successful unrestricted exhibitions of his paintings, and appearing in all mainstream media discussing his work.¹⁴

II. The legal framework

Cypriot penal law has not yet abolished the law of blasphemy.¹⁵ Section 141 of the Criminal Code, Cap 154 provides that any person who, with the deliberate intention of wounding the religious feelings of any person, utters any word or makes any sound in the hearing of that person, or makes any gesture in the sight of that person, or places any object in the sight of that person, is guilty of a misdemeanour and is liable to imprisonment not exceeding one year. Moreover, section 142 of Cap 154 provides that any person who publishes a book or pamphlet or any article or letter in a newspaper or periodical which any class of persons considers as a public insult to their religion, with intent to vilify such religion or to shock or to insult believers of such religion, is guilty of a misdemeanour. The good protected is public order, as well as the religious feelings of believers, which may be offended by the publication. It could be argued that the *actus reus* of the offence is to be determined on the basis of the criteria prevailing in English law with respect to the common law offence of blasphemy and thus the manner in which the views are expressed are more important than the views themselves.¹⁶ The publication should have an element of vilification, ridicule, or irreverence that would be likely to infuriate others.¹⁷ The court must be satisfied that the offender intended to vilify such religion, or shock or insult believers of such religion. The offence applies to all religions. A prosecution for the offence of circulation of defamatory publication may not be commenced except by, or with the consent of, the Attorney General of the Republic of Cyprus.¹⁸

suspend the disciplinary prosecution of Gavriel' *Cyprus News Agency* (Nicosia, 21 September 2020).

11 Correctly on this K Demetriou, 'Reply to the announcement of the Senate of the University of Cyprus for Mr. G. Gavriel' *Paideia-news* (Nicosia, 21 September 2020) (in Greek).

12 See eg MM Ahsan and AR Kidwai, *Sacrilege Versus Civility: Muslims Perspectives on the Satanic Verses Affair* (Islamic Foundation 1991).

13 See eg Jeroen Temperman and András Koltay (eds), *Blasphemy and Freedom of Expression: Comparative, Theoretical and Historical Reflections after the Charlie Hebdo Massacre* (Cambridge University Press 2017).

14 See eg 'All the information on the upcoming painting exhibition of George Gavriel' *City Signalive* (Nicosia, 25 September 2020).

15 For a detailed history of the offence see Leonard W Levy, *Blasphemy: Verbal Offence against the Sacred from Moses to Salman Rushdie* (University of North Carolina Press 1995). See also Law Commission, *Criminal Law: Offences against Religion and Public Worship* (Law Com No 145, 1985).

16 *R v Ramsay and Foote* [1883] 15 Cox CC 231, which was approved by the House of Lords in *Bowman v Secular Society Ltd* [1917] AC 406 (HL). See further *R v Lemon* [1978] 67 Cr App R 70; *Whitehouse v Lemon* [1979] AC 617 (HL) 662; *R v Gott* [1922] 16 Cr App R 87.

17 *Bowman* (n 16) 446.

18 See also Achilles C Emilianides, 'Religion in the Criminal Law in Cyprus' in Matti Kotiranta and Norman Doe (eds), *Religion and Criminal Law* (Peeters 2013) 35–40.

The actual wording of section 142 and the reference to specific kinds of publications would indicate that it is inapplicable to artistic works, as opposed to literary works. It is also doubtful whether section 141 could be interpreted to include a painting within the definition of an 'object' that might be placed in the sight of a person. There have been no decisions of the Supreme Court of Cyprus holding that a publication is blasphemous, or that a publication ought to be seized because of its blasphemous content; thus, the extent to which section 142 of Cap 154 is consistent with Article 19 of the Constitution, or to which a publication might be seized because its content is considered to be blasphemous, has not been thoroughly considered by the Cypriot courts. It would seem, however, that Cypriot prosecuting authorities have been unwilling to prosecute cases of blasphemy, and indeed, despite the protests, it would seem that neither the police, nor the office of the Attorney General, even considered the possibility of pressing charges against the artist. This is definitely a positive development, as it shows that the prosecuting authorities refrain from using criminal law as an instrument for restricting artistic expression.

The issue remains whether disciplinary action would be consistent with freedom of expression. The Cypriot Ombudsman, who has also been appointed as the National Authority for Human Rights, in a controversial statement issued immediately after the probe was announced by the Ministry, held that Gavriel had crossed the acceptable boundaries for the exercise of his freedom of expression. The Ombudsman noted that the manner in which the artistic work in question was expressed had offended the rights and religious sentiments of third persons, which is a legitimate objective for restricting freedom of artistic expression in a democratic society.¹⁹ The Ombudsman specifically referred to the ECtHR case of *Otto-Preminger*, where it was held that the seizure and forfeiture by the Austrian State of a film that contained trivial erotic imagery of Christianity did not violate Article 10 of the ECHR.²⁰ The Court reasoned that in the absence of a uniform position in Europe on the significance of religion in society, the national authorities were entitled to a certain margin of appreciation in assessing the necessity of imposing restrictions to avoid offending religious beliefs. The ECtHR further held that in seizing the film, the authorities had acted to safeguard religious peace in a region where Roman Catholicism was the majority religion and to prevent Christians from feeling that their religious beliefs were attacked in an offensive and unwarranted manner.²¹

It is correct that the ECtHR has in general been unwilling to accept that the offense of blasphemy violates the ECHR.²² Applying the principle of subsidiarity, ECtHR prioritizes the uniform application of the standard of freedom of expression concerning political and public speech, while at the same time it allows a wide margin of appreciation with respect to cultural or artistic speech,²³ especially taking into account the lack of harmonisation of the laws of its member states concerning religion.²⁴ The general approach of the *Otto-Preminger* case referred to by the Cypriot Ombudsman has been recently confirmed.

19 "He crossed the limits of freedom of expression" says the Ombudsman' *Alphanews* (Nicosia, 18 September 2020).

20 *Otto-Preminger-Institut v Austria* App no 13470/87 (ECtHR, 20 September 1994).

21 *ibid*.

22 See also *Wingrove v United Kingdom* App no 17419/90 (ECtHR, 25 November 1996).

23 See Paul Mahoney, 'Universality Versus Subsidiarity in the Strasbourg Case Law on Free Speech: Explaining Some Recent Judgments' [1997] EHRLR 364.

24 For which see Gerhard Robbers (ed), *State and Church in the European Union* (third edn, Nomos 2019); Norman Doe, *Law and Religion in Europe. A Comparative Introduction* (Oxford University Press 2011).

The ECtHR held that the conviction of an applicant for disparaging religious doctrines, through statements conveying the message that Muhammad had pedophilic statements, did not violate Article 10 of the ECHR safeguarding freedom of expression.²⁵ The ECtHR held that the conviction pursued a legitimate aim, namely to protect religious peace and religious feelings, as well as to prevent disorder, which corresponds to protecting the rights of others.²⁶ It further held that the state may legitimately consider expressions which go beyond the limits a critical denial of other people's religious beliefs and are likely to incite religious intolerance, as incompatible with respect to the freedom of thought, conscience and religion, and take proportionate restrictive measures. States enjoy a wide margin of appreciation in this respect and also have the positive obligation under Article 9 of the ECHR to ensure peaceful co-existence of all religions by ensuring mutual tolerance. The applicant was ordered to pay a moderate fine. It was accordingly held that the domestic courts had carefully balanced the applicant's right to freedom of expression with the rights of others to have their religious feelings protected and to have religious peace preserved.²⁷

There have yet been no disciplinary proceedings taken against Gavriel; there is merely a probe at this stage. The alleged offence is section 48 (1) (d) and (e) of the Public Education Law 10/1969, which provides that each educational officer must not act in a manner which might defame the educational service in general, or his office in particular, or which tends to hinder the trust of the public towards the educational service.²⁸ Article 19 of the Constitution of Cyprus corresponds to Article 10 of the ECHR. It safeguards to every person the freedom of speech and expression in any form, without interference by any public authority. The exercise of the right can only be subject to such formalities, conditions, restrictions, or penalties as are prescribed by law and are necessary in the interests of the security of the Republic, constitutional order, public safety, public order, public health, public 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.²⁹ Educational officers enjoy freedom of expression, and disciplinary action against them for the exercise of such freedom amounts to a restriction of it.³⁰

It would be considered that potential disciplinary proceedings against Gavriel would be prescribed by law and would have a legitimate aim, pursuant to the case law of the ECtHR interpreting Article 10 of the ECHR, on which Article 19 of the Constitution is based. A more challenging question would be whether the restriction would be necessary in a democratic society. As already indicated, artistic expression does not enjoy unqualified protection under the ECHR or the Constitution of Cyprus. In *Müller*, the ECtHR upheld the imposition of a fine against a group of artists for obscene paintings, holding that it did not constitute a violation of their right to artistic expression.³¹ In

this context, it should be taken into account that the Cypriot authorities have neither prosecuted Gavriel for his paintings nor prohibited their dissemination; Gavriel has held his painting exhibition and shown his paintings to the public without any restrictions or problems. If disciplinary offences are found, this would be expected, considering prior practice of authorities in similar cases, to lead to minor sanctions at worst. There is little doubt that the paintings have been offensive to the religious feelings of Christians, in a country where the majority of the population is religious.³² The paintings have also specifically targeted the Archbishop at a personal level. On the basis of the case law of the ECtHR, it is most likely that a potential disciplinary conviction would be upheld, as the Ombudsman has already indicated. However, this is hardly a satisfactory solution.

III. Assessment

The implied argument of the disciplinary probe is that the right of artistic expression of Gavriel the teacher should not be equivalent to the said right of Gavriel the artist. This distinction would be more convincing if Gavriel had expressed his anti-religion, political, or other sentiments during the exercise of his professional duties as a teacher. There was, however, no indication that Gavriel had in this case presented himself at any time as anything other than an artist, and there was no report of him acting in a given way during classes. Accordingly, the disciplinary offences, if any, referred to actions of Gavriel outside his working hours, or work as a teacher, and in particular to his artistic expression as an individual artist. Art should not be subject to a single interpretation. Even if it is not accepted that works of art are open to each specific reader's interpretation,³³ a work of art is still in search of its 'model reader' and as such it is distinct of its author.³⁴

The mere fact that a category of 'readers' understands art as blasphemous or offensive should not mean that this is actually blasphemous or offensive. The right of the single individual to express himself artistically should be considered to be equally important as the right of a religious group to believe in whatever religion they want. Freedom should therefore not be curtailed merely because its exercise is unpleasant for the majority.³⁵ Neglecting art's distinctive ontology would be detrimental to both art and law.³⁶ This might also potentially lead the large category of public employees to become hesitant to express themselves artistically due to fear of disciplinary sanctions.³⁷ It is therefore suggested that the mere fact that artistic freedom expressed outside the school premises is offensive towards a—potentially large—group of the public, should not lead to disciplinary proceedings because of the artist's parallel status as a member of the public educational service. Neither the public's trust towards the educational service is hindered, nor is the educational service defamed, simply because a teacher might be considered by part of the public as a bad or provocative artist. And it is submitted that no such restriction of Article 19 of the Constitution of Cyprus is necessary in a modern democratic society, such as the Cypriot one.

25 *E.S. v Austria* App no 38450/12 (ECtHR, 25 October 2018).

26 *ibid* [41].

27 *ibid* [42]–[58].

28 S Antoniou, 'These are the charges against the art teacher' *Politis* (Nicosia, 27 September 2020) (in Greek); *idem*, 'They neglect the constitutional rights of the art teacher' *Politis* (Nicosia, 26 November 2020) (in Greek).

29 See in general Achilles C Emilianides, *Constitutional Law in Cyprus* (second edn, Kluwer 2019); Criton Tornaritis, *State Law of the Republic of Cyprus* (Cyprus Research Center 1982).

30 See also the Ombudsman reports dated 20 January 2010 and 24 June 2015 regarding disciplinary proceedings against educational officers for expression of their opinions in the press, Achilles C Emilianides, 'The Right of Educational Officers to Express their Opinions Publicly' *Dikaiosyni* (Nicosia, 26 September 2020) (in Greek).

31 *Müller and Others v Switzerland* App no 10737/84 (ECtHR, 24 May 1988).

32 See in general Achilles C Emilianides, *Law and Religion in Cyprus* (third edn, Kluwer 2019).

33 See eg Michel Foucault, 'What is an Author' in Josué V Harari (ed), *Textual Strategies: Perspectives in Post-Structuralist Criticism* (Cornell University Press 1979) 144.

34 For the 'model reader' see eg Umberto Eco, *The Role of the Reader: Explorations in the Semiotics of Texts* (Indiana University Press 1995).

35 See eg HLA Hart, *Law, Liberty and Morality* (Oxford University Press 1963).

36 Paul Kearns, 'Obscene and Blasphemous Libel: Misunderstanding Art' [2000] *Criminal Law Review* 652.

37 See also Anthony Bradney, *Religions, Rights and Laws* (Leicester University Press 1993) 97.