Reports of Cases

OPINION OF ADVOCATE GENERAL
ĆAPETA
delivered on 30 January 2025 [1]

Joined Cases C-555/23 and C-556/23

Makeleio EPE (C-555/23)
Zougla G.R. AE (C-556/23)
v
Ethniko Symvoulio Radiotileorasis (ESR)

(Requests for a preliminary ruling from the Symvoulio tis Epikrateias (Council of State, Greece))

(Reference for a preliminary ruling – Directive 2010/13 – Provision of audiovisual media services (AVMS) – Internet news portal also broadcasting AVMS – Respect for human dignity – Prohibition of broadcasting programmes of poor quality – Principle of conforming interpretation – Limits – Principle of legality)

I. Introduction

1. Two Greek internet news portals were fined by the competent national audiovisual media services (AVMS) authority for broadcasts that violate human dignity.

2. Before the Symvoulio tis Epikrateias (Council of State, Greece), which is the referring court in the present cases, those portals have challenged the fines imposed on them, claiming that the relevant legislation prohibiting such broadcasts was not aimed at internet news portals also broadcasting AVMS.

3. In the context of those national proceedings, several questions of interpretation of the Audiovisual Media Services Directive [2] ('the AVMS Directive') and of the limits of the principle of conforming interpretation arose.

[1] Original language: English.

[2] Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) (OJ 2010 L 95, p. 1), as amended by Directive 2018/1808 (in its consolidated version, 'the AVMS Directive').

II. The facts in the main proceedings, the questions referred for a preliminary ruling and the procedure before the Court

4. Makeleio and Zougla ('the applicants in the main proceedings') are Greek internet news portals which also offer audiovisual programmes on their websites. They are not traditional AVMS providers; in other words, they are not comparable to TV stations, which either broadcast on allotted frequencies or online, or both. Nevertheless, those internet news portals sometimes offer to the public programmes that are subject to the AVMS Directive. I will refer to such providers as internet news portals also broadcasting AVMS.

5. On 29 June 2021, Makeleio broadcasted a programme in which the newscaster, while presenting the news of LGBT+ community representatives' visit to the Greek Prime Minister's office, used derogatory, offensive and abusive language about homosexual people, made ironic comments about their sexual orientation and indirectly encouraged verbal and physical attacks on them. Finally, that newscaster repeatedly made clear references to the sexual orientation of named political figures ('the first programme at issue').

6. On 22 February 2022, Zougla transmitted through its website the programme of a radio station that also broadcasts via the internet. During that broadcast, on the pretext of ongoing criminal proceedings against third parties for paedophilia, the presenter personally attacked, without substantiation, certain political figures, using their names and surnames and making a series of slanderous and offensive comments that concerned their alleged tendency to protect paedophiles, pederasts and their agency in promoting people to positions of responsibility in order to pursue their sexual preferences ('the second programme at issue').

7. Both programmes at issue were referred to the Ethniko Symvoulio Radiotileorasis (National Broadcasting Council, Greece; 'the ESR'), the Greek independent administrative authority that supervises and regulates the AVMS market. [3]

8. The ESR considered that it has jurisdiction over the two programmes that were made available to the public, as it deemed both Makeleio and Zougla to be AVMS providers within the meaning of the AVMS Directive and Law 4779/2021, [4] which transposed that directive into national legislation.

9. For broadcasting the first programme at issue, [5] the ESR imposed two administrative penalties on Makeleio. The first penalty, in the amount of EUR 30 000, was imposed for infringing the prohibition under Article 8 of Law 4779/2021 on incitement to violence or hatred towards persons because of their sexual orientation. That provision of Law 4779/2021 transposed Article 6 of the

[3] The ESR is the national regulatory authority within the meaning of Article 30 of the AVMS Directive.

[4] Nomos 4779/2021, Ensomatosi stin ethniki nomothesia tis Odigias (EE) 2010/13 tou Europaikou Koinovouliou kai tou Symvouliou tis 10is Martiou 2010 gia ton syntonismo orismenon nomothetikon, kanonistikon kai dioikitikon diatakseon ton kraton melon schetika me tin parochi ypiresion optikoakoustikon meson, opos echei tropopoiithi me tin Odigia (EE) 2018/1808 tou Europaikou Koinovouliou kai tou Symvouliou tis 14is Noemvriou 2018 kai alles diatakseis armodiotitas tis Genikis Grammateias Epikoinonias kai Enimerosis (Law 4779/2021 transposing into national legislation Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive), as amended by Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 and other provisions under the competence of the General Secretariat of Communication and Information) (Government Gazette I/27 of 20 February 2021) ('Law 4779/2021').

[5] It was explained at the hearing that the programme was initially live-streamed, after which it remained on Makeleio's website and could be accessed on demand.

AVMS Directive into Greek law. It follows from the orders for reference that Article 8 of Law 4779/2021 did not transpose the entirety of Article 6(1) of the AVMS Directive verbatim, omitting its introductory phrase referring generally to the prohibition of the violation of human dignity. [6]

10. The second penalty, also in the amount of EUR 30 000, was imposed for infringing the prohibition of broadcasting a programme of poor quality. Such prohibition is provided for by two pieces of legislation that precede Law 4779/2021, that is, Law 2328/1995 and Presidential Decree 77/2003. [7] Those two acts expressly impose the obligation to respect human value and personality and prohibit the broadcasting of programmes of which the content is poor. At the hearing, the ESR explained that the content of those programmes was considered to be poor precisely because it violated human dignity.

11. The ESR also imposed two administrative penalties on Zougla for broadcasting the second programme at issue. The first penalty, in the amount of EUR 80 000, was imposed for the transmission of poor content and the second penalty, in the amount of EUR 40 000, for infringement of the obligation to respect human dignity. Both penalties were based on the same two laws on the basis of which the second penalty was imposed on Makeleio, that is, Law 2328/1995 and Presidential Decree 77/2003.

12. Law 2328/1995 and Presidential Decree 77/2003, which served as the legal bases for part of the penalties imposed, do not expressly apply to internet news portals also broadcasting AVMS. Nevertheless, the ESR was of the view that national laws which prescribe the obligation to respect human dignity and personality, even if they were enacted before the AVMS Directive, must apply to 'any audiovisual material which is made available to the public via freely accessible websites and which may have an effect on those who watch it comparable to that caused by the transmission of corresponding content by traditional content providers'. Therefore, in the ESR's view, the obligations that arise from those national laws must also apply to internet news portals also broadcasting AVMS, although the latter are not expressly included in the wording of the relevant national provisions.

13. By two separate applications, the applicants in the main proceedings submitted requests for the annulment of the ESR's decisions before the Symvoulio tis Epikrateias (Council of State). The applicants argue that they cannot be sanctioned for the violation of the obligation to respect human dignity and for broadcasting a programme of poor quality because the national law that provides for such an obligation does not apply to internet news portals also broadcasting AVMS.

14. It is not apparent from the file before the Court that the applicants challenge the characterisation of the programmes at issue as violating human dignity or as being of poor quality. Rather, the challenge concerns the *applicability* of the Greek law imposing on them the obligation not to violate human dignity.

[6] According to Annex II to both orders for reference, Article 8 of Law 4779/2021 provides: 'The audiovisual media services should not contain any incitement to violence or hatred directed against a group of persons or a member of a group based on race, skin colour, national or ethnic origin, ancestry, religion, handicap, sexual orientation, identity or the characteristics of a gender.'

[7] The orders for reference refers to Article 1(1) of Nomos 2328/1995, nomiko kathestos tis idiotikis tileorasis kai tis topikis radiofonias, rythmisi thematon tis radiotileoptikis agoras kai alles diatakseis (Law 2328/1995 regarding the legal status of private television and local radio, regulation of the broadcasting market and other provisions) (Government Gazette I/159 of 3 August 1995) ('Law 2328/1995') and Article 2(1), Article 4 and Article 9(2) of Proedriko diatagma 77/2003, kodikas deontologias eidiseografikon kai allon dimosiografikon kai politikon ekpompon (Presidential Decree 77/2003 regarding the code of ethics for news and other journalistic and political broadcasts) (Government Gazette I/75 of 28 March 2003) ('Presidential Decree 77/2003').

15. The panel of the Symvoulio tis Epikrateias (Council of State) is divided as to whether national law imposes the prohibition of the violation of human dignity and on the broadcasting of a programme of poor quality on internet news portals also broadcasting AVMS. On the one hand, the majority considers that the relevant national laws do not relate, clearly and unequivocally, to such internet news portals also broadcasting AVMS. As a result, in the view of the majority, the national regulatory authority could not, by applying the provisions of national law by analogy, impose the penalties at issue on the applicants.

16. On the other hand, a minority of the panel of the Symvoulio tis Epikrateias (Council of State) considers that Greek law, including Article 15(2) of the Syntagma tis Elladas (Greek Constitution),[8] covers the broadcasting of any programme, irrespective of the manner of broadcasting, thus including internet news portals also broadcasting AVMS. That minority is therefore of the opinion that Greek law as it stands already imposes a prohibition of violation of human dignity on broadcasters such as Makeleio and Zougla. In the view of the minority, the national regulatory authority therefore lawfully imposed the penalties at issue.

17. In spite of that disagreement, the Symvoulio tis Epikrateias (Council of State) unanimously considers that one of the objectives of the AVMS Directive is to ensure respect for human dignity and to prevent the broadcasting of programmes of poor quality that is at issue in the two cases at hand. However, that court asks for confirmation from the Court of Justice that such an interpretation of the AVMS Directive is correct.

18. Furthermore, even if the prohibition of violation of human dignity is the objective of the AVMS Directive and comes within its regulatory scope, the referring court, or at least the majority of that court, considers that the penalties at issue could not be imposed on internet news portals also broadcasting AVMS, merely through an interpretation of national law in conformity with the AVMS Directive. That would be precluded by the principle of legality, as expressed in the maxim *nullum crimen, nulla poena sine lege*.

19. In those circumstances, the Symvoulio tis Epikrateias (Council of State) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Do the objectives of Directive [2010/13], as amended by [Directive 2018/1808], and therefore its regulatory scope, include (a) ensuring respect for and protection of human value and dignity and (b) preventing the broadcasting of inappropriate content by television service providers and, in particular, content with the characteristics of the content broadcast in the present case by the applicant company?

(2) If (a) the obligation to respect and protect human value and dignity and/or (b) the prohibition of broadcasting inappropriate content and, in particular, content with the characteristics of the broadcast in question, come within the regulatory scope of the directive, does national legislation under which those obligations are imposed on all television service providers

[8] Article 14 of the Greek Constitution deals with the freedoms of expression and of the press. Article 15(1) thereof states that ‘the protective provisions for the press in the preceding article shall not be applicable to films, sound recordings, radio, television or any other similar medium for the transmission of speech or images’.
Article 15(2) of the Greek Constitution reads as follows:
‘Radio and television shall be under the direct control of the State. The control and imposition of administrative sanctions belong to the exclusive competence of the National Radio and Television Council, which is an independent authority, as specified by law. The direct control of the State, which may also assume the form of a prior permission status, shall aim at the objective and on equal terms transmission of information and news reports, as well as of works of literature and art, at ensuring the quality level of programs mandated by the social mission of radio and television and by the cultural development of the Country, as well as at the respect of the value of the human being and the protection of childhood and youth.’

other than those broadcasting television content solely via the internet run counter to Article 4(1) of the directive in conjunction with the principle of equal treatment enshrined in Articles 20 and 21 of the Charter of Fundamental Rights of the European Union?

(3) If the answer to the first two questions is in the affirmative, must the national regulatory authority, in order to ensure the practical effectiveness of the directive, apply the rules of national law imposing without distinction the obligations at issue to all television service providers, even though national law imposes the obligations and associated penalties on all other television service providers, but not on those who broadcast their content exclusively via the internet? Or is the imposition of administrative penalties for breach of those obligations by an internet television broadcast, by way of a broad interpretation or by applying the provisions of national law accordingly, incompatible with the principle *nullum crimen, nulla poena sine lege certa*, enshrined in the first sentence of Article 49(1) of the Charter of Fundamental Rights of the European Union, in conjunction with the principle of legal certainty?

(4) If the first question referred for a preliminary ruling is answered in the negative and it is held that (a) the obligation to respect and protect human value and dignity and/or (b) the prohibition of broadcasting inappropriate content (and in particular content such as that of the broadcast in question) do not come within the regulatory scope of the directive within the meaning of Article 4(1), where the law of a Member State imposes those obligations on television service providers via terrestrial broadcast, satellite or broadband networks, with the threat of administrative penalties, but does not include corresponding rules regarding providers of television services via the internet, must Article 2(1) of Directive 2010/13, as currently in force, be understood as meaning that the competent national authority is required to consider imposing administrative penalties for breach of the above rules also in relation to the transmission of internet television broadcasts, on the basis of the principle of equal treatment?

(5) If the answer to the fourth question is in the affirmative, does the obligation of the national regulatory authority, based on an interpretation of national law as set out above and consistent with EU law and, in particular, with the provisions of the directive referred to above, to apply to all television services without distinction, irrespective of their medium of transmission, the rules of national law imposing the obligations in question, comply with the principle *nullum crimen, nulla poena sine lege certa* and the principle of legal certainty, given that those obligations, which are laid down by national law for all other television service providers, do not apply to internet television?

20. Written observations were submitted to the Court of Justice by Makeleio, the ESR, the Greek and Swedish Governments and the European Commission.

21. A hearing was held on 16 October 2024 at which Makeleio, the ESR, the Greek and Swedish Governments and the Commission presented oral argument.

III. Analysis

A. Preliminary issues

1. Can websites such as Makeleio and Zougla be considered AVMS providers?

22. At the outset, it is necessary to determine whether, in relation to the programmes at issue for which they were fined, Makeleio and Zougla could be considered AVMS providers covered by the AVMS Directive.

23. An answer to that question in the affirmative follows clearly, in my view, from *New Media Online*.[9] That judgment preceded the 2018 amendments of the AVMS Directive. Nevertheless, it remains relevant, particularly as some of the findings of that judgment were even included in the 2018 version of the AVMS Directive.

24. That case concerned a service provided by a company which, similarly to the applicants in the present cases, manages an online newspaper. However, in addition to its primary service, that company also offered short videos which corresponded to brief news clips which are not usually found, in that format, on 'traditional' television. Those videos were not associated with the news provided by those online newspapers.

25. In those circumstances, the Court first found that 'the concept of "programme" within the meaning of Article 1(1)(b) of Directive 2010/13 must be interpreted as including, under the subdomain of a website of a newspaper, the provision of videos of short duration consisting of local news bulletins, sports and entertainment clips'.[10]

26. After its 2018 amendment, the definition of a 'programme' in Article 1(1)(b) of the AVMS Directive remained the same. It provides:

'"programme" means a set of moving images with or without sound constituting an individual item, irrespective of its length, within a schedule or a catalogue established by a media service provider, including feature-length films, video clips, sports events, situation comedies, documentaries, children's programmes and original drama'.

27. In *New Media Online*, the Court further considered that such a programme amounts to an 'audiovisual media service' within the meaning of Article 1(1)(a)(i) of the AVMS Directive, even if the principal business of the company is to provide online newspapers, if such a programme can be dissociated from the news that the company is providing.[11]

[9] Judgment of 21 October 2015, *New Media Online* (C-347/14, EU:C:2015:709, '*New Media Online*').

[10] New Media Online, paragraph 24.

[11] *New Media Online*, paragraphs 26, 28 and 33.

28. Article 1(1)(a)(i) of the AVMS Directive, which defines the meaning of audiovisual media services, was thus amended to include this case-law and it now reads:

'(a) "audiovisual media service" means:

(i) a service as defined by Articles 56 and 57 of the Treaty on the Functioning of the European Union, where the principal purpose of the service or a dissociable section thereof is devoted to providing programmes, under the editorial responsibility of a media service provider, to the general public, in order to inform, entertain or educate, by means of electronic communications networks within the meaning of point (a) of Article 2 of Directive 2002/21/EC; such an audiovisual media service is either a television broadcast as defined in point (e) of this paragraph or an on-demand audiovisual media service as defined in point (g) of this paragraph'.

29. In the light of the foregoing, there is, to my mind, no doubt that websites that are not conventional TV stations fall under the scope of the AVMS Directive when they broadcast programmes within the meaning of Article 1(1)(a)(i) of the AVMS Directive, either as their principal service or as a dissociable section of the other type of service they provide.

30. The videos that were made public by Makeleio and Zougla do not seem to be associated with the news on their websites. Therefore, the programmes at issue in the present cases seem to fall under the definition of an audiovisual media service.

31. At the hearing, Makeleio argued that the programme at issue was not provided under its editorial responsibility.

32. The Court found that it is to be understood that 'a natural or legal person established in a Member State assumes editorial responsibility … if it selects that channel's programmes and organises them in a chronological schedule'.[12] That is also reflected in the definition of 'editorial responsibility' in Article 1(1)(c) of the AVMS Directive.[13]

33. In the division of competences between the Court of Justice and national courts in the preliminary ruling procedure, it is for the referring court to establish the facts. The Court of Justice is, in principle, bound by the description of the case in terms of the facts and the applicable national law as presented by the referring court.[14]

34. In that respect, it is relevant that, in the orders for reference, the referring court took into consideration the AVMS Directive and the judgment in *New Media Online*, and unanimously considered that, in relation to the programmes for the broadcast of which they were fined, both applicants are AVMS providers in the sense of the AVMS Directive.

35. Subject to final confirmation by the referring court, the circumstances in the main proceedings therefore seem to fall within the personal scope of the AVMS Directive, as amended in 2018.

[12] See, to that effect, judgment of 4 July 2019, *Baltic Media Alliance* (C-622/17, EU:C:2019:566, paragraph 41).

[13] In the present case, when asked about that matter at the hearing, Makeleio confirmed that an employee of Makeleio selected and organised the AVMS under the supervision of that company.

[14] See, to that effect, judgments of 16 March 1978, *Oehlschläger* (104/77, EU:C:1978:69, paragraph 4), and of 31 January 2023, *Puig Gordi and Others* (C-158/21, EU:C:2023:57, paragraph 61 and the case-law cited).

2. The disagreement between the members of the panel of the referring court

36. As I have explained, the members of the panel of the referring chamber of the Council of State disagree on the interpretation of the Greek law as it pertains to the present cases (see points 15 and 16 of this Opinion).

37. On the one hand, the majority considers that Greek legislation does not impose the general prohibition of the violation of human dignity and the provision of programmes of poor quality on internet news portals also broadcasting AVMS. On the other hand, the minority considers that such obligations are imposed on such internet broadcasters under the existing Greek law.

38. In that respect, it is necessary to recall that, under the division of competences in the preliminary ruling procedure, the Court of Justice does not have jurisdiction to interpret national law. The Court can only interpret the relevant provisions of EU law.[15] Where directives are at issue, as in the present cases, the Court can explain the obligations which a directive requires the Member States to impose on the subjects within their jurisdiction by adopting implementing legislation.

39. Whether or not the implementing national law transposed a directive correctly is then for the referring court to determine. In that respect, the Court is not in a position, in the present cases, to resolve the disagreement between the majority and minority views of the referring chamber of the Council of State.

40. Nevertheless, it is worth recalling that, under the third paragraph of Article 288 TFEU, a directive, while binding upon each Member State to which it is addressed as to the result to be achieved, leaves the choice of form and methods to the national authorities.

41. Thus, the adoption of legislation implementing a directive does not necessarily mean that a law with the specific purpose of transposing a particular directive must be adopted.

42. According to settled case-law of the Court, 'the existence of general principles or general rules may render superfluous transposition by specific additional legislative or regulatory measures, provided, however, that those principles or rules actually ensure the full application of that directive and that, where the relevant provision of the directive seeks to create rights for individuals, the legal situation arising from those principles or rules is sufficiently precise and clear and that the persons concerned are put in a position to know the full extent of their rights and, where appropriate, to be able to rely on them before the national courts'.[16]

43. It follows that, 'in order to determine whether national legislation adequately implements the obligations resulting from a given directive, it is important to take into account not only the legislation specifically adopted for the purposes of transposing that directive, but also all the available and applicable legal rules'.[17]

[15] See, to that effect, judgments of 1 December 1965, *Dekker* (33/65, EU:C:1965:118, p. 904), and of 26 October 2023, *EDP – Energias de Portugal and Others* (C-331/21, EU:C:2023:812, paragraph 40 and the case-law cited).

[16] See, to that effect, judgment of 10 June 2021, *Ultimo Portfolio Investment (Luxembourg)* (C-303/20, EU:C:2021:479, paragraph 34 and the case-law cited).

[17] Judgment of 10 June 2021, *Ultimo Portfolio Investment (Luxembourg)* (C-303/20, EU:C:2021:479, paragraph 35).

44. Therefore, legislation existing prior to the adoption of a directive or the rules laid down in the national constitution might be understood as being sufficient for the transposition of the directive, provided that subjects can ascertain with sufficient certainty that they enjoy rights or have obligations imposed on them by that directive. Likewise, the existing rules might only be supplemented with new law in the section that is not yet covered by the existing rules. The proper technique for the transposition of directives thus depends on the specific regulatory methods in each Member State.

45. Whether Law 4779/2021, which transposed the AVMS Directive into Greek law, only supplemented the complex network of the laws that regulate audiovisual media services in Greece,[18] and introduced only those norms that did not already exist (as proposed at the hearing by the ERS and the Greek Government), can only be decided by the national court.

46. That being said, the first and second questions referred might be understood as asking the Court to explain which obligations on AVMS providers the Member States were required to introduce into their legal system in order properly to transpose the AVMS Directive. That will enable the referring court to decide whether that directive was correctly transposed into national law.

47. The third question then asks whether, in the event that the national law did not entirely transpose the AVMS Directive, the national court is, in the cases at hand, under an obligation to interpret the existing national law so as to achieve the result required by that directive. In the present cases, that result is the prohibition of the violation of human dignity for all providers of audiovisual media services, including the internet news portals also broadcasting AVMS. In particular, with that question, the referring court asks whether the obligation of conforming interpretation would reach its limit if it were to result in the imposition of an obligation on an individual, for the infringement of which a criminal penalty may be imposed.

48. As I will demonstrate, in the light of the answers to those questions, it will not be necessary to address the fourth and fifth questions.

B. Answers to the questions referred

1. The first question – regulatory scope of the AVMS Directive

49. By its first question, the referring court requests confirmation from the Court of Justice that the objective, and therefore the regulatory scope, of the AVMS Directive includes (a) the prohibition of the violation of human dignity and (b) the prohibition of the programme's content of poor quality.

50. In that respect, the referring court, in essence, seeks an interpretation of Article 6(1) of the AVMS Directive.

[18] At the hearing, the Greek Government explained that the various layers of national legislation concerning AVMS must be understood in a historical context, starting from the new constitution, the first privatisation of public television, then the expansion to pay-per-view television, the arrival of digital television, which replaced analogue television, and on-demand AVMS. Apart from the three laws already referred to, other Greek laws, referred to in the orders for reference, are relevant in the cases before the referring court.

51. That provision reads as follows:

'1. Without prejudice to the obligation of Member States to respect and protect human dignity, Member States shall ensure by appropriate means that audiovisual media services provided by media service providers under their jurisdiction do not contain any:

(a) incitement to violence or hatred directed against a group of persons or a member of a group based on any of the grounds referred to in Article 21 of the Charter;

(b) public provocation to commit a terrorist offence as set out in Article 5 of Directive (EU) 2017/541.'

(a) Prohibition of the violation of human dignity

52. In the first place, the question arises as to the meaning of the introductory phrase of Article 6(1) of the AVMS Directive: 'without prejudice to the obligation of Member States to respect and protect human dignity'. Should that phrase be read as requiring Member States to introduce a general prohibition of the violation of human dignity in the programmes of AVMS providers? Alternatively, are the only obligations that Member States have to impose on AVMS providers those two concrete obligations expressed under letters (a) and (b) of that Article?

53. In the Commission's proposal for the Directive 2018/1808, that introductory phrase did not exist. [19]

54. The Commission explained at the hearing that that phrase was the result of a compromise between the insistence of the European Parliament to include expressly the general prohibition of the violation of human dignity and the opposition of the Council of the European Union to such general wording in the AVMS Directive.

55. The only available document forming part of the legislative history of that directive enables the Court merely to confirm that such a phrase was accepted by both the Parliament and the Council at the first reading of the legislative process leading to the amended AVMS Directive. [20] However, neither the reasons for which the Parliament wanted expressly to include the general prohibition of the violation of human dignity in the text of the directive, nor, more importantly, the reasons why the Council opposed such a solution, are expressed in the available documents that chronicle the legislative history of the AVMS Directive.

56. Therefore, as admitted by the Commission at the hearing, there are at least two possible readings. On the one hand, Article 6(1) of the AVMS Directive could be understood as not imposing a general obligation to prohibit violations of human dignity, but only two specific obligations (incitement to hatred and violence (Article 6(1)(a)) and public provocation to commit

[19] European Commission, 'Proposal for a directive of the European Parliament and of the Council amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services in view of changing market realities' (COM(2016) 287 final). In the original 2010 version of the AVMS Directive, Article 6 read as follows: 'Member States shall ensure by appropriate means that audiovisual media services provided by media service providers under their jurisdiction do not contain any incitement to hatred based on race, sex, religion or nationality.' Thus, it also did not contain any reference to a general prohibition of programmes that violate human dignity.

[20] Council of the European Union, 'Proposal for a directive of the European Parliament and of the Council amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services in view of changing market realities – Outcome of the European Parliament's first reading, (Strasbourg, 1 to 4 October 2018)', (ST 12689 2018 INIT), p. 62. The same phrase was also included in recital 60 of Directive 2018/1808.

a terrorist offence (Article 6(1)(b))). On the other hand, that same provision could be understood as imposing a general obligation not to violate human dignity, *alongside* those two specific aforementioned obligations.

57. At the hearing, the Commission preferred the first reading, namely that the AVMS Directive does not contain a general prohibition of the violation of human dignity that must be imposed on AVMS providers. Nevertheless, it considered that specific obligations to prohibit content that incites violence, hatred or terrorism are an expression of the requirement to respect human dignity.

58. On the contrary, all the other participants in the present procedure (Makeleio, the ESR and the Greek and Swedish Governments) have agreed that ensuring respect for and protection of human dignity is an obligation under the AVMS Directive. That is also the position of the referring court.

59. I propose that the Court endorse a reading of the introductory part of Article 6(1) of the AVMS Directive according to which Member States are required to provide a general prohibition of programmes violating human dignity in their national laws.

60. The purpose of the AVMS Directive and the legal context of Article 6(1) thereof, including other provisions of the directive itself and broader EU law and international law, all contribute to the introductory phrase of Article 6(1) being read as meaning that Member States must ensure that AVMS providers respect the general obligation not to violate human dignity in their programmes.

61. Among other things, the purpose of the AVMS Directive is to enable the internal market in AVMS, while ensuring, at the same time, a high level of protection of objectives of general interest. [21] In that respect, it relies on the country of origin principle, according to which it is the responsibility of a Member State under whose jurisdiction the AVMS providers are established to ensure that they comply with the rules which that State imposes on AVMS intended for the public. [22] The AVMS Directive imposes the minimum set of rules [23] that all AVMS providers must respect (in the 'fields coordinated by this Directive'). That enables the imposition of an obligation on all Member States to enable the cross-border reception of AVMS broadcasted by providers from other Member States. No Member State can impose, in principle, any restriction for reasons which fall within the fields coordinated by the directive. [24]

62. Thus, the directive introduces a set of common requirements for AVMS providers that enhance mutual trust among Member States and without which it would be difficult for them to accept cross-border AVMS without prior control and authorisation. Those requirements include the respect of fundamental rights provided for by the Charter of Fundamental Rights of the European Union ('the Charter'), [25] including the respect for human dignity expressed in its opening article.

[21] See recital 104 of the AVMS Directive.

[22] Article 2(1) of the AVMS Directive.

[23] See judgments of 22 September 2011, *Mesopotamia Broadcast and Roj TV* (C-244/10 and C-245/10, EU:C:2011:607, paragraph 34), and of 18 July 2013, *Sky Italia* (C-234/12, EU:C:2013:496, '*Sky Italia*', paragraph 12).

[24] Article 3 of the AVMS Directive.

[25] Recital 16 of the AVMS Directive.

63. As far as the wording of the AVMS Directive is concerned, in addition to the introductory phrase of Article 6(1) thereof, recitals 59, 60 and 104 thereof refer to the protection of human dignity as a value that the AVMS Directive must ensure. Therefore, even if the Charter cannot, by itself, impose obligations on the Member States, the AVMS Directive clearly includes the obligation for the respect of human dignity among the requirements which Member States must fulfil in order to enable the proper functioning of the internal market in the field of AVMS. [26]

64. Recital 3 of the AVMS Directive refers to the Council of Europe's European Convention on Transfrontier Television, adopted on 5 May 1989. [27] That convention, on which the Court has already relied when interpreting the AVMS Directive, [28] contains Article 7, entitled 'Responsibilities of the broadcaster', which states that 'all items of programme services, as concerns their presentation and content, shall respect the dignity of the human being and the fundamental rights of others'.

65. Even more importantly, human dignity is a value contained in Article 2 TEU, the provision that enumerates the values on which the European Union is founded. [29] It states that those values are common to the Member States.

66. Additionally, all EU Member States are also parties to the European Convention on Human Rights (ECHR). Even if that convention does not entail any explicit provision that requires respect for human dignity, the case-law of the European Court of Human Rights (ECtHR) provides that the very essence of the ECHR is respect for human dignity and human freedom. [30]

67. The centrality of human dignity is further stressed by various international instruments, including the United Nations Universal Declaration of Human Rights of 1948, the preamble and Article 1 of which refer to the concept of human dignity.

68. It follows that the logical reading of the introductory phrase to Article 6(1) of the AVMS Directive is that it simply restates the obligation that the Member States already have. It merely applies the general obligation of the Member States to respect and protect human dignity to the field of audiovisual media services, making it clear that the Member States must impose that obligation on providers when they draft their laws regulating AVMS. [31]

[26] One may add, taking into consideration the circumstances such as those in the main proceedings, that in 1998 the Council adopted Recommendation 98/560/EC of 24 September 1998 on the development of the competitiveness of the European audiovisual and information services industry by promoting national frameworks aimed at achieving a comparable and effective level of protection of minors and human dignity (OJ 1998 L 270, p. 48).

[27] *European Treaty Series*, No 132.

[28] See, to that effect, judgments of 2 June 2005, *Mediakabel* (C-89/04, EU:C:2005:348, paragraph 41), interpreting Directive 89/552 and 98/34/EC, predecessors of the AVMS Directive, and of 4 July 2019, *Baltic Media Alliance* (C-622/17, EU:C:2019:566, paragraphs 69 and 70).

[29] The importance of Article 2 TEU was stressed by the Court on many occasions, including in the judgment of 27 February 2018, *Associação Sindical dos Juízes Portugueses* (C-64/16, EU:C:2018:117, paragraphs 30 and 32). In the judgment of 16 February 2022, *Hungary* v *Parliament and Council* (C-156/21, EU:C:2022:97, paragraph 232), the Court held that 'it must be borne in mind that Article 2 TEU is not merely a statement of policy guidelines or intentions, but contains values which[…] are an integral part of the very identity of the European Union as a common legal order, values which are given concrete expression in principles containing legally binding obligations for the Member States'.

[30] See, for instance, ECtHR, judgments of 22 November 1995, *S.W. v. The United Kingdom* (CE:ECHR:1995:1122JUD002016692, § 44); of 29 April 2002, *Pretty v. The United Kingdom* (CE:ECHR:2002:0429JUD000234602, § 65); and of 25 June 2024, *Ukraine v. Russia (Re Crimea)* (CE:ECHR:2024:0625JUD002095814, § 1290).

[31] Indeed, as elegantly put by Advocate General Trstenjak in her Opinion in Joined Cases *NS* (C-411/10, EU:C:2011:610, point 112), 'human dignity must not only be "respected", but also "protected"'.

69. For that reason, in reply to the first part of the first question, I am of the view that the Court should find that Article 6(1) of the AVMS Directive requires Member States to include in their laws regulating AVMS the general prohibition imposed on AVMS providers of the violation of human dignity in their programmes.

(b) The prohibition of content of poor quality

70. In the second place, by the first question, the referring court also asks whether the AVMS Directive requires Member States to prohibit programmes of poor quality. In asking that, it seems that the referring court had in mind programmes such as the two broadcasts at issue, which violate human dignity.

71. To my mind, and as claimed by the Swedish Government at the hearing, the AVMS Directive does not regulate the content of the programmes in terms of their quality.

72. One may, nevertheless, also say that the prohibition of the violation of human dignity influences the content of programmes, as that content cannot be such as to violate human dignity, and that, in that sense, the AVMS Directive interferes with the content of the programmes. However, other than the requirement that a programme be free of violations of human dignity and that it respect other obligations imposed under coordinated rules of the AVMS Directive, that act does not interfere any further with the content of the programme.

73. In conclusion, the national measure that allows the sanctioning of the AVMS providers whose broadcasts undermine the value of human dignity falls within the scope of the AVMS Directive.

74. On the contrary, the national measure that provides for the sanctioning of programmes which are merely of poor quality does not fall under the coordinated fields of the directive.

75. It is for the referring court to establish whether the applicants in the main proceedings were fined for the violation of human dignity or rather for the poor quality of their programmes.

76. I therefore propose that the Court answer the first question as follows. The regulatory scope of the AVMS Directive, read in the light of its objectives, includes the general prohibition of programmes that violate human dignity. The AVMS Directive does not regulate the content of the programmes further than such a prohibition of the violation of human dignity and other conditions imposed in the fields coordinated by that directive.

2. The second question – more detailed or stricter national rules

77. Article 4(1) of the AVMS Directive enables Member States to introduce stricter rules in the fields coordinated by the directive under certain conditions. It reads as follows:

‘Member States shall remain free to require media service providers under their jurisdiction to comply with more detailed or stricter rules in the fields coordinated by this Directive, provided that such rules are in compliance with Union law.’

78. By its second question, the referring court asks for the interpretation of that provision, or, more precisely, it wishes to know whether, under such stricter rules, Member States are allowed to differentiate between different types of AVMS providers.

79. To my mind, that question is only admissible if some of the rules of national law at issue in the present cases – that is, the prohibition of the violation of human dignity or the prohibition of programmes of poor quality – could be understood to constitute such stricter or more detailed rules.

80. That, however, is not the case here.

81. The prohibition of the violation of human dignity is imposed as a general requirement under Article 6(1) of the AVMS Directive and is not a 'stricter' rule.

82. The prohibition of programmes of poor quality is not a rule that falls within the scope of the fields coordinated by the AVMS Directive and is therefore outside of the scope of Article 4(1) thereof.

83. Therefore, it does not seem that an answer to the second question can be of any use to the referring court, [32] which is why the Court should refuse to answer it on grounds of inadmissibility.

84. Nevertheless, as the second question was also concerned with whether different AVMS providers may be treated differently, I would add that, as far as the prohibition of the violation of human dignity is concerned, it must be imposed on all AVMS providers without distinction.

85. However, as for the imposition of stricter rules within the fields coordinated by the AVMS Directive, which is not the situation in the cases at hand, the Court has explained that it is possible to differentiate between different types of AVMS providers. If different providers find themselves in objectively different situations, there is no obstacle to imposing different rules on them. [33] Thus, in *Sky Italia*, the Court considered it possible to impose shorter hourly advertising limits for pay-TV broadcasters than those set for free-to-air broadcasters. Such differentiation was justified because the former could cover their costs from the subscriptions taken out by their customers, whereas the latter could be financed only by other means. [34]

86. Had the prohibition of the violation of human dignity been treated as the stricter rule within the field coordinated by the AVMS Directive (*quod non*), there would not be any justification for treating internet providers differently from any other type of AVMS provider. In respect of the purpose of such a rule, AVMS providers are not in an objectively different position.

87. As far as the prohibition of poor quality in terms of the programme's content is concerned, the Member States are not prevented by the AVMS Directive from treating traditional TV broadcasters and internet broadcasters that are not conventional TV stations differently. That issue is outside the scope of that directive.

88. In the light of the foregoing, I propose that the Court not answer the second question.

[32] See, to that effect, judgment of 26 March 2020, *Miasto Łowicz and Prokurator Generalny* (C-558/18 and C-563/18, EU:C:2020:234, paragraphs 44 and 45 and the case-law cited).

[33] Such a solution is, in fact, in line with the general principle of equality, embedded in Article 20 of the Charter. In the Explanations relating to the [Charter] (OJ 2007 C 303, p. 17), the Explanation on Article 20 – Equality before the law reads: 'This Article corresponds to a general principle of law which is included in all European constitutions and has also been recognised by the Court of Justice as a basic principle of Community law (judgment of 13 November 1984, Case 283/83 *Racke* [1984] ECR 3791, judgment of 17 April 1997, Case C-15/95 *EARL* [1997] ECR I–1961, and judgment of 13 April 2000, Case C-292/97 *Karlsson* [2000] ECR 2737).' According to the principle of equality, comparable situations must not only be treated equally, but also different situations must be treated differently, unless there is a reason to treat them equally. See, to that effect, judgment of 14 September 2010, *Akzo Nobel Chemicals and Akcros Chemicals* v *Commission and Others* (C-550/07 P, EU:C:2010:512, paragraph 55).

[34] See, to that effect, *Sky Italia*, paragraphs 20 and 21.

3. The third question – limits to conforming interpretation

89. The third question of the referring court is based on the premiss, endorsed by the majority of the panel of the referring court, that the existing Greek law does not impose a general obligation to respect human dignity on internet news portals also broadcasting AVMS. There would, therefore, be no legal basis, under the Greek law as interpreted by the majority, for imposing the penalties at issue. [35]

90. By its third question, the referring court asks whether it is under an obligation to interpret the national law in such a way that it also imposes a prohibition of the violation of human dignity on internet news portals also broadcasting AVMS, even if that would result in the imposition of penalties.

91. There is a long line of case-law which confirms that directives cannot, in themselves, impose obligations on individuals. [36] That can happen only through the transposition of directives into national law. Therefore, the obligation not to violate human dignity cannot be imposed on Makeleio and Zougla by the AVMS Directive itself.

92. Where national law has not transposed a directive properly or in full, national courts are under an obligation to bring national law into conformity with that directive through interpretation, as the Court originally explained in the judgment in V*on Colson and Kamman*. [37] The national court is required to do 'whatever lies within its jurisdiction' to give effect to the directive in a specific case. [38] It might even need to change its established case-law, if it is based on an interpretation of national law that is incompatible with the objectives of a directive. [39]

93. Thus, the purpose of conforming interpretation is to achieve an outcome in a specific case that produces the result that would have followed had the directive been properly implemented. [40]

94. In the present cases, the required result is the imposition of an obligation on Makeleio and Zougla not to violate human dignity in the audiovisual programmes they make available to the public.

95. However, such a reading of the national law would, in the present cases, create quasi-criminal liability, as it would allow for the imposition of administrative penalties for the infringement of obligations construed in this way.

[35] The Commission voiced doubts regarding the admissibility of this (and the second) question. It considers that the referring court has based that question on a – prima facie – incorrect premiss that the transposition of the AVMS Directive into national law does not include internet broadcasters that are not also conventional TV stations. In the preliminary ruling procedure, there is, however, no possibility for the Court to establish the meaning of national law. The referring court has clearly explained that there is a disagreement about the interpretation of national law between the judges in the deciding chamber, but that the majority take the position on which this question is based. The Court should, therefore, answer this question on the premiss that it means what the referring court stated in its orders for reference.

[36] That line of case-law started with the judgment of 26 February 1986, *Marshall* (152/84, EU:C:1986:84, paragraph 48). For more recent confirmation of that case-law, see judgments of 7 August 2018, *Smith* (C-122/17, EU:C:2018:631, paragraphs 42 and 43), and of 18 January 2022, *Thelen Technopark Berlin* (C-261/20, EU:C:2022:33, paragraph 32).

[37] See, to that effect, judgment of 10 April 1984, *von Colson and Kamann* (14/83, EU:C:1984:153).

[38] See, to that effect, judgment of 5 October 2004, *Pfeiffer and Others* (C-397/01 to C-403/01, EU:C:2004:584, paragraph 118).

[39] Judgment of 19 April 2016, *DI* (C-441/14, EU:C:2016:278, paragraph 33).

[40] See, to that effect, judgment of 5 October 2004, *Pfeiffer and Others* (C-397/01 to C-403/01, EU:C:2004:584, paragraph 119).

96. Very soon after establishing the obligation of conforming interpretation, the Court also made it clear that that obligation has its limits.[41] One limit would be reached when conforming interpretation were to have the effect of determining or aggravating the liability in criminal law of persons who act in contravention of the provisions of the directive.[42]

97. That limitation is the reflection of the principle of legality, as expressed in the maxim *nullum crimen, nulla poena sine lege*. That principle is embodied in Article 49 of the Charter and Article 7 ECHR.

98. In a nutshell, the principle of legality means that a person cannot be held criminally or quasi-criminally[43] liable for an act that was not prohibited by *law* at the time when the act was performed.

99. As the conforming interpretation takes place after the punishable act had been committed, it might be understood as imposing criminal liability *post festum*.[44]

100. In the present cases, the majority of the Symvoulio tis Epikrateias (Council of State), and the applicants in the main proceedings, seem to start from the premiss that the principle of legality always requires an express reference to all the subjects it covers in the applicable legal provision. As this was lacking in the Greek legislation, that did not expressly mention internet news portals which also offer AVMS, one should conclude that the applicants did not know that the prohibition of broadcasting programmes that violate human dignity also applies to them. Thus, the limit of conforming interpretation would be reached.

101. However, the case-law of the Court or of the ECtHR does not require an explicit mention in the legislation in order for the requirements of the principle of legality to be fulfilled. What is crucial is that that the person at issue could foresee that the prohibition also concerns his or her activity.

102. Thus, the ECtHR explained that 'when speaking of "law" Article 7 alludes to the very same concept as that to which the Convention refers elsewhere when using that term, a concept which comprises statute law as well as case-law and implies qualitative requirements, including those of accessibility and foreseeability'.[45]

41 Thus, in the judgment of 13 November 1990, *Marleasing* (C-106/89, EU:C:1990:395, paragraph 8), the Court stated that the national court is obliged to find a solution through interpretation 'as far as possible'. Ever since the judgment of 16 June 2005, *Pupino* (C-105/03, EU:C:2005:386), the limit of conforming interpretation is expressed through the concept of '*contra legem*' (Ibidem, paragraph 47 and, more recently, judgment of 25 January 2024, *Sofiyski gradski sad* (C-722/22, EU:C:2024:80, paragraph 24 and the case-law cited)).

42 See, to that effect, judgment of 8 October 1987, *Kolpinghuis Nijmegen* (80/86, EU:C:1987:431, paragraph 13). See also, judgments of 3 May 2005, *Berlusconi and Others* (C-387/02, C-391/02 and C-403/02, EU:C:2005:270, paragraph 74), and of 20 December 2017, *Vaditrans* (C-102/16, EU:C:2017:1012, paragraph 56 and the case-law cited).

43 The Court has already established that the principle of legality, usually relevant in the field of criminal law, also applies to administrative penalties. See, to that effect, judgments of 28 October 2010, *SGS Belgium and Others* (C-367/09, EU:C:2010:648, paragraphs 39 and 61), and of 24 March 2021, *Prefettura Ufficio territoriale del governo di Firenze* (C-870/19 and C-871/19, EU:C:2021:233, paragraphs 49 and 50). As Advocate General Kokott argued, there is indeed nothing to prevent the substance of the principle of legality of criminal offences and penalties from being used for guidance in respect of administrative penalties (see her Opinion in *SGS Belgium and Others*, C-367/09, EU:C:2010:440, point 37).

44 There is a certain paradox in such a statement. Namely, judicial interpretation does not create new law, but only states what the law has been since its inception. Therefore, it is also possible to claim that the legal obligation at issue existed at the time when the punishable act was performed. Nevertheless, another important element is also the subjective one, namely that that persons, subject to legal rules, could have known with sufficient clarity which obligations are imposed on them by the accessible law. Thus, a creative judicial interpretation might indeed be associated with law creation.

45 ECtHR, judgment of 22 June 2000, *Coëme and Others v. Belgium*, (CE:ECHR:2000:0622JUD003249296, § 145, and the case-law cited).

103. The Court likewise considered, relying on the case-law of the ECtHR, that the requirement that an offence and a penalty be clearly stated by law 'is met in the case where the individual concerned is in a position, on the basis of the wording of the relevant provision and with the help of the interpretative assistance given by the courts, to know which acts or omissions will make him criminally liable'. [46]

104. The principle that offences and penalties must be defined by law cannot therefore be interpreted as precluding the gradual, case-by-case clarification of the rules on criminal liability by judicial interpretation, provided that the result was reasonably foreseeable at the time the offence was committed, especially in the light of the interpretation put on the provision in the case-law at the material time. [47]

105. In short, the crux of the principle of legality is the requirement that the person that is punished knew or could not have ignored that his or her action was prohibited.

106. As the Court further explained, the scope of the notion of foreseeability depends to a considerable degree on the content of the text at issue, the field it covers and the number and status of those to whom it is addressed. A law may still satisfy the requirement of foreseeability even if the person concerned has to take appropriate legal advice to assess, to a degree that is reasonable in the circumstances, the consequences which a given action may entail. This is particularly true in relation to persons carrying on a professional activity, who are used to having to proceed with a high degree of caution when pursuing their occupation. Such persons can therefore be expected to take special care in evaluating the risk that such an activity entails. [48]

107. Therefore, in the present cases, the referring court is, in principle, prevented from finding the applicants punishable for the violation of human dignity on the basis of conforming interpretation of national law. That is so unless the referring court is of the view that those applicants could have foreseen, under the Greek law which existed at the relevant time, and even though that law did not expressly refer to the internet news portals also broadcasting AVMS, that the prohibition of broadcasting programmes with prohibited content also concerns them. [49]

108. It is for the referring court to establish whether the applicants in the main proceedings could have foreseen, at the time when they broadcast the programmes at issue, that the prohibition of the violation of human dignity, and the punishment for the infringement thereof, also concerned

[46] Judgment of 3 May 2007, *Advocaten voor de Wereld* (C-303/05, EU:C:2007:261, paragraph 50). See also, judgment of 24 March 2021, *Prefettura Ufficio territoriale del governo di Firenze* (C-870/19 and C-871/19, EU:C:2021:233, paragraph 49).

[47] Judgments of 22 October 2015, *AC-Treuhand* v *Commission* (C-194/14 P, EU:C:2015:717, paragraph 41), and of 27 June 2024, *Mylan Laboratories and Mylan* v *Commission* (C-197/19 P, EU:C:2024:550, paragraph 156 and the case-law cited).

[48] Judgments of 5 May 2022, *BV* (C-570/20, EU:C:2022:348, paragraph 43), and of 27 June 2024, *Mylan Laboratories and Mylan* v *Commission* (C-197/19 P, EU:C:2024:550, paragraph 157 and the case-law cited).

[49] To recall, in the present cases, the ESR issued four fines. Concerning Makeleio, the first fine was determined for incitement to violence or hatred towards persons because of their sexual orientation. There is no issue with that fine, as it was based on the clear prohibition laid down in Law 4779/2021 transposing the AVMS Directive, which provided for penalties by reference to earlier laws. However, the second fine imposed on Makeleio and both fines imposed on Zougla were based on the earlier pieces of legislation, which did not expressly impose any obligations on the internet providers of their kind. For that reason, the majority of the referring court considered that the fines at issue were in breach of the principle of legality.

their activity, even though they are internet news portals also broadcasting AVMS.[50] If they must have been aware of such a prohibition, then confirming such an obligation through interpretive clarification of the Greek rules does not necessarily exceed the limit of conforming interpretation imposed by the principle of legality.

4. The fourth and fifth questions

109. The fourth and fifth questions are posed on condition that the Court answer the first question in the negative, that is, that the AVMS Directive does not require the introduction of a general prohibition of programmes that violate human dignity and the prohibition of programmes of poor quality.

110. As I have proposed that the Court answer that question in the affirmative, it is not necessary to answer the fourth and fifth questions.

111. Indeed, to my mind, in its answer to the first question, the Court should explain that the AVMS Directive does not regulate the quality of the broadcast programmes and, therefore, does not prohibit programmes of poor quality. However, inasmuch as the referring court explained that part (b) of the first question, which refers to the poor content of a programme, considers programmes of the same kind as those at issue in the case at hand, it in fact asks the same as part (a) of that question, which relates to the violation of human dignity. In the case at hand, the referring court is thus not concerned with any question relating to the prohibition of programmes of poor quality by national law, which goes further than the prohibition of the violation of human dignity.

112. For those reasons, I do not consider it necessary to answer the fourth and fifth questions.

IV. Conclusion

113. In the light of the foregoing, I propose that the Court answer the questions referred by the Symvoulio tis Epikrateias (Council of State, Greece) as follows:

(1) The regulatory scope of Article 6(1) of Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive), as amended by Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018, read in the light of the objectives of that directive,

must be interpreted as meaning that it includes the general prohibition of programmes that violate human dignity.

[50] In support of such a finding, the Commission points out that the applicants must have been aware that the ethical code of journalistic broadcasts, enacted in Presidential Decree 77/2003, prohibits content which violates human dignity as well as broadcasting content of poor quality. Even if that code is not a binding legal instrument, it may be taken into consideration when assessing the foreseeability of legal obligations. Indeed, the case-law of the ECtHR suggests that such acts may have a role in assessing whether an obligation was 'prescribed by law' within the meaning of Article 7 ECHR. In the judgment of the ECtHR, dated 6 April 2010, *Flinkkilä and Others v. Finland*, (CE:ECHR:2010:0406JUD002557604, § 63 to 68), the ECtHR found that although the legislation was not precise, the Guidelines for Journalists and the practice of the Council for Mass Media provided even stricter rules than criminal law itself. For that reason, the ECtHR found that the obligation at issue in that case was 'prescribed by law' and the punishment was, accordingly, coherent with the principle of legality.

The AVMS Directive does not regulate the content of programmes further than such a prohibition of the violation of human dignity and other conditions imposed in the fields coordinated by that directive.

(2) In the light of the answer to the first question, there is no need for the Court to answer the second question.

(3) The principle of legality, enshrined in the first sentence of Article 49(1) of the Charter of Fundamental Rights of the European Union, prevents the referring court from finding a person punishable for the violation of human dignity on the basis of conforming interpretation of national law, unless that person could have foreseen, under the Greek law which existed at the relevant time, that the prohibition of broadcasting programmes with content which violates human dignity also concerns them, even though the law was not expressly referred to the internet news portals also broadcasting AVMS.

It is for the referring court to establish whether the applicants in the main proceedings could have foreseen, at the time when they broadcasted the programmes at issue, that the prohibition of the violation of human dignity, and the punishment for the infringement thereof, also concerned their activity. If they must have been aware of such a prohibition, then confirming such an obligation through interpretive clarification of the Greek rules does not necessarily exceed the limit of conforming interpretation imposed by the principle of legality.

(4) It is not necessary to answer the fourth and fifth questions.