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THE 2021-2022 PRICE MEDIA LAW MOOT COURT COMPETITION

Emilia Bos and Santos Darl

(*Applicants*)

v.

State of Sargon

(*Respondent*)

MEMORIAL FOR APPLICANTS

WORD COUNT: 4,894

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LIST OF ABBREVIATIONS

AChHPR	African Charter on Human and People's Rights
ACHPR	African Commission on Human and People's Rights
ACHR	American Convention on Human Rights
CSP	Community Standards Policy
HRC	United Nations Human Rights Committee
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
ICCPR	International Convention on Civil and Political Rights
NOC	Natter Oversight Council
OAS	Organization of American States
OSCE	Office for Security and Co-Operation in Europe
RSMA	Regulation of Social Media Act
UDHR	Universal Declaration of Human Rights
UK	United Kingdom
UN	United Nations
UNESCO	United Nations Educational, Scientific and Cultural Organization
US	United States

LIST OF AUTHORITIES

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STATEMENT OF RELEVANT FACTS

Sargon and the Presidential Election Campaigns

1. Sargon is an island nation of over 60 million people. Its incumbent president Emilia Bos announced that she would run for re-election in the 2021 presidential elections. Her opponent Philemon Gen is the spiritual leader of Phi, a religion that has been practiced on the island for over four centuries. Over 60% of the population in Sargon are adherents of Phi.
2. A strong nationalist discourse emerged from the immigrant community which claimed that the original inhabitants of Sargon were banished by Philemenon the Great, the founder of Phi. Eminent historians backed up this claim. Many Sargonians demanded that the government include this origin story of "returnees" in official history curricula. In a television interview, Bos promised to reform history curricula to "reflect the histories of all the peoples of Sargon" and suggested that teaching the tenets of Phi should be discontinued in public schools.

Removal of Santos Darl's Posts on Natter

3. Natter is Sargon's most popular social media platform with the widest reach in Sargon, even more so than mainstream media.
4. The day after Bos's television interview, she received significant praise on Natter. Some of the posts contained the hashtags "#WeWereHereFirst" and "#Phinished."
5. After receiving complaints about posts containing the hashtag "#Phinished," Natter's content moderators decided to take down all posts with this hashtag and stayed Natter's algorithm with respect to the hashtag "#WeWereHereFirst."
6. Among those greatly affected by Natter's restriction was Santos Darl, a social media influencer and a Bos supporter. All 55 of his posts from 31 May to 2 June 2021, all of which

contain the hashtag "#VoteBos," were taken down. Forty-three posts contained "#Phinished," while 12 had "#WeWereHereFirst." Even his post on 2 June 2021, 9:50 PM questioning the removal of his posts by Natter was taken down.

The Election

7. On the day of the election, Bos was alerted to allegations of election fraud by a number of Natter users. Bos made posts propounding questions of possible election fraud. Natter senior reviewers decided to stay the algorithm with regard to both posts.
8. During these developments, a crowd had gathered outside the headquarters of the Election Commission. When the Election Commission declared that it would resume counting votes as no evidence of election fraud was found, the crowd became boisterous. Police were called to disperse the crowd. The following day, Bos issued a statement condemning the incident at the Election Commission headquarters.

The Natter Oversight Council and Its Decision

9. The Natter Oversight Council (NOC) is an oversight board instituted in compliance with Sargon's Regulation of Social Media Act (RSMA), which required social media providers to institute oversight mechanisms to curb online hate speech. The RSMA, however, does not provide any definition of the term "online hate speech."
10. Both hate speech and deliberate misrepresentation regarding elections are listed as "content liable to be taken down" under Sections 4 and 8 of Natter's Community Standards Policy (CSP), respectively. However, the CSP does not provide details on the criteria for suspension or permanent blocking.
11. As a result of the incident on the night of the election, Natter decided to indefinitely suspend Bos's profile. Her suspension was forwarded to the NOC for deliberation. Darl also

challenged the removal of his posts by filing a complaint with the NOC, claiming that the removal prevented him from engaging in legitimate political speech.

12. The NOC permanently blocked Bos from Natter, stating that she had violated Sections 4 and 8 of the CSP. The NOC also upheld the removal of Darl's posts.

Supreme Court Decision

13. Bos and Darl appealed before the Supreme Court of Sargon, asserting that their rights under Article 10 of the Constitution of Sargon were violated. Among the rights listed in Article 10 is the right to freedom of opinion and expression. The Supreme Court, however, upheld the NOC's decision, finding no violation of Article 10.
14. Having exhausted all domestic remedies, Bos and Darl filed applications before the Universal Court of Human Rights, asserting that Sargon had violated their rights under Article 19 read with Article 25(b) of the ICCPR.

STATEMENT OF JURISDICTION

Emilia Bos, Santos Darl, and the State of Sargon, the latter being a party to the International Covenant on Civil and Political Rights (ICCPR), submitted their differences to the Universal Court of Human Rights ("this Court"), and hereby submit to this Court their dispute concerning Articles 19 and 25(b) of the ICCPR.

On the basis of the foregoing, the Applicants respectfully request for this Honorable Court to adjudge the dispute in accordance with the rules and principles of international law, including any applicable declarations and treaties.

QUESTIONS PRESENTED

I. Whether Sargon's decision to uphold the suspension and permanent blocking of Emilia Bos's Natter profile violated her rights under Article 19 read with Article 25(b) of the ICCPR.

II. Whether Sargon's decision to uphold the removal of the 31 May to 2 June 2021 posts of Santos Darl violated his rights under Article 19 read with Article 25(b) of the ICCPR.

SUMMARY OF ARGUMENTS

I. SARGON VIOLATED EMILIA BOS'S RIGHTS UNDER ARTICLE 19 READ WITH ARTICLE 25(B) OF THE ICCPR BY UPHOLDING THE NATTER OVERSIGHT COUNCIL'S DECISIONS TO SUSPEND AND PERMANENTLY BLOCK EMILIA BOS FROM NATTER.

As a party to the ICCPR, Sargon is obligated to respect and protect its citizens' right to freedom of expression. Sargon has the duty to ensure that policies enacted by private entities such as Natter do not infringe fundamental rights. The suspension and permanent blocking of Bos's profile constitute unlawful restrictions on the freedom of expression.

A. The restrictions are not prescribed by law. The restrictions are not based on a domestic law, but on the CSP of Natter. Furthermore, the CSP fails to meet the standards of clarity and precision that enable Natter users to foresee the consequences of their conduct. The RSMA cannot serve as a basis for the restrictions on Bos's profile, as the RSMA is vague and grants unfettered discretion to Natter.

B. The restrictions do not pursue legitimate aims. The restrictions do not serve to protect the rights and reputations of others because Bos's posts were not a form of religious discrimination against the adherents of Phi. The restrictions do not serve to protect public order since Bos's posts do not constitute hate speech that would incite violence and disrupt public order.

C. The restrictions are not necessary as there is no pressing social need as Bos's posts do not amount to an incitement of violence. Neither are the restrictions proportionate. Firstly, the restrictions are overbroad for impeding on Bos's rights to express political speech.

Secondly, less intrusive means are available. Natter could also have taken progressive steps within its own spectrum of actions for content moderation. The permanent blocking completely deprived Bos of her freedom to seek, receive, and impart ideas in the media of her choice. Lastly, restriction shows no reasonable balance between the freedom of expression and the right of others to be protected from religious criticism.

II. SARGON VIOLATED SANTOS DARL'S RIGHTS UNDER ARTICLE 19, READ WITH ARTICLE 25(B) OF THE ICCPR BY UPHOLDING NATTER'S DECISION TO REMOVE EVERY SINGLE ONE OF HIS POSTS FROM 31 MAY TO 2 JUNE 2021.

Sargon failed to discharge its positive obligation to protect the right to freedom of expression against interference by private persons when it sustained the decision of the NOC to remove every single one of Darl's posts from 31 May to 2 June 2021. The removal of Darl's posts constitutes an unlawful restriction on the freedom of expression.

A. The restriction is not prescribed by law. The restriction is not based on a domestic law, but on the CSP of Natter. Furthermore, the CSP fails to meet the standards of clarity and precision that enable Natter users to foresee the consequences of their conduct. The RSMA cannot serve as a basis for the restriction as the RSMA is vague and grants unfettered discretion to Natter.

B. The restriction does not pursue legitimate aims. The restriction does not serve to protect the rights and reputations of others because Darl's posts were a valid form of religious criticism of Phi's practices, not a form of religious discrimination against the adherents of

Phi. The restriction does not serve to protect public order because Darl's posts did not pose an actual or imminent risk that would threaten public order.

C. The restriction is not necessary as there is no pressing social need to remove Darl's posts because these posts were a valid expression of his political opinions. Neither was the restriction proportionate. Firstly, the restriction is overbroad for indiscriminately inhibiting all posts with the hashtag "#Phinished". Secondly, less intrusive means are available as social media platforms have other tools to deal with content in human rights-compliant ways. Lastly, the restriction shows no reasonable balance between the Darl's right to freedom of expression in relation to his rights as a voter, with the right of others to be protected from religious criticism.

ARGUMENTS

I. SARGON VIOLATED EMILIA BOS'S RIGHTS UNDER ARTICLE 19 READ WITH ARTICLE 25(B) OF THE ICCPR BY UPHOLDING THE NATTER OVERSIGHT COUNCIL'S DECISIONS TO SUSPEND AND PERMANENTLY BLOCK EMILIA BOS FROM NATTER.

1. The right to freedom of expression is a fundamental right and one of the preconditions for a functioning democracy.[1] The State has a positive obligation to protect this right, even against interference by private persons.[2]
2. As a party to the ICCPR,[3] Sargon is obligated to respect and protect its citizens' right to freedom of expression.[4] Moreover, Sargon has the duty to ensure that policies enacted by

[1] Universal Declaration of Human Rights ('UDHR') (adopted 10 December 1948) UNGA Res 217 A(III) art 19; European Convention on Human Rights ('ECHR') (adopted 4 November 1950, entered into force 3 September 1953) 213 UNTS 1932 art 10; International Covenant on Civil and Political Rights ('ICCPR') (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 art 19 [2]; American Convention on Human Rights ('ACHR') (adopted 22 November 1969, entered into force 18 July 1978) art 13; African Charter on Human and Peoples' Rights ('AChHPR') (adopted 27 June 1981, entered into force 21 October 1986) 21 ILM 58 art 9; *Tae Hoon Park v Republic of Korea* Communication no 628/1995, CCPR/C/64/D/628/1995 (HRC, 3 November 1998) [10.3]; *Özgür Gündem v Turkey* App no 23144/93 (ECtHR, 16 March 2000) ('*Özgür Gündem v Turkey*') [43]; *Zhagiparov v Kazakhstan* Communication no 2441/2014 UN Doc CCPR/C/124/D/2441/2014 (HRC, 25 October 2018) [13.3]; *Strizhak v Belarus* Communication no 2260/2013 UN Doc CCPR/C/124/D/2260/2013 (HRC, 1 November 2018) [6.3].

[2] *Fuentes Bobo v Spain,* App no 39293/98 (ECtHR, 29 February 2000) ('*Fuentes Bobo v Spain*') [38]; *Özgür Gündem v Turkey* (n 1) [43]; *Palomo Sánchez and others v Spain* App nos 28955/06, 28957/06, 28959/06 and 28964/06 (ECtHR, 12 September 2011) ('*Palomo Sánchez and others v Spain*') [59].

[3] Fact pattern [71].

[4] ICCPR (n 1) art 2 [1].

private entities such as Natter do not infringe fundamental rights,[5] most especially in the context of elections.[6]

3. However, instead of protecting Bos's right to freedom of expression, the Supreme Court of Sargon impaired it when it sustained the decision of the NOC to permanently suspend and block her from Natter.
4. A court decision in a conflict between private parties is considered a measure of the State.[7] Although the restriction on the applicant's freedom of expression was not the result of direct intervention by the State, the responsibility of the State would nevertheless be engaged if dismissing the applicant's claims would result in a failure of the State to secure the fundamental rights of the applicant.[8]
5. Furthermore, a positive obligation to prevent undue interference on the exercise of free expression may arise in cases where such a platform provides the only viable expressive opportunity.[9] Natter, being the platform with the widest reach in both social media and

[5] ICCPR (n 1) art 2 [1]; *Özgür Gündem v Turkey* (n 1) [43]; *Arenz v Germany* Communication no 1138/2002 UN Doc CCPR/C/80/D/1138/2002 (HRC, 2 April 2004) [8.5]; HRC, 'General Comment no 31: The Nature of the General Legal Obligation Imposed on State Parties to the Covenant' (26 May 2004) CCPR/C/21/Rev.1/Add.13 [3], [4], [7]; HRC, 'Disinformation and freedom of opinion and expression: Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Irene Khan' (13 April 2021) A/HRC/47/25 ('April 2021 Report of UN Special Rapporteur Irene Khan') [31], [38], [88].

[6] HRC, 'General Comment no 34: Article 19: Freedoms of opinion and expression' (12 September 2011) CCPR/C/GC/34 ('General Comment no 34') [19], [37]; HRC, 'General Comment no 25: The right to participate in public affairs, voting rights and the right of equal access to public service (Art. 25)' (12 September 2011) CCPR/C/GC/34 ('General Comment no 25') [12], [19]; *Mathieu-Mohin and Clerfayt v Belgium* App no 9267/81 (ECtHR, 2 March 1987) [54]; *Bowman v United Kingdom* App no 24839/94 (ECtHR, 19 February 1998) ('*Bowman v United Kingdom*') [42]; *Kwiecień v Poland* App no 51744/99 (ECtHR, 9 January 2007) [48].

[7] *Palomo Sánchez and others v Spain* (n 2) [60].

[8] ibid.

[9] *Verein Gegen Tierfabriken v Switzerland* App no 24699/94 (ECtHR, 28 June 2001) [77].

traditional media platforms,[10] is the only viable platform for the subject expressions in this case.

6. For a restriction on the freedom of expression to be permissible it must be: **(A) prescribed by law**; **(B) in the pursuit of a legitimate aim under Article 19(3)**; and **(C) necessary and proportionate**.[11] This test also applies to restrictions that arise from the acts of private actors.[12]

A. The suspension and permanent blocking of Bos's profile are not prescribed by law.

7. To be prescribed by law, a restriction must have legal basis in domestic law,[13] which must be accessible to the persons concerned and foreseeable as to its effects.[14]

[10] Fact pattern [9].

[11] ICCPR (n 1) art 19 [3]; HRC, General Comment no 34 (n 6) [22]; *Hak-Chul Shin v Republic of Korea* Communication no 926/2000 UN Doc CCPR/C/80/D/926/2000 (HRC, 19 March 2004) [7.2]; *Fernando v Sri Lanka* Communication no 1189/2003 UN Doc CCPR/C/83/D/823/1998 (HRC, 21 March 2005) [3.4]; *Marques de Morais v Angola* Communication no 1128/2002 UN Doc CCPR/C/83/D/1128/2002 (HRC, 18 April 2005) [6.8]; *Velichkin v Belarus* Communication no 1022/2001 UN Doc CCPR/C/85/D/1022/2001 (HRC, 20 October 2005) [7.3]; *Pavel Levinov v Belarus* Communication no 2239/2013 UN Doc CCPR/C/123/D/2239/2013 (HRC, 14 August 2018) [6.3] ; *Kirill Nepomnyashchiy v Russian Federation* Communication no 2318/2013 UN Doc CCPR/C/123/D/2318/2013 (HRC, 23 August 2018) [7.6]. See also Manfred Nowak, U.N. Covenant on Civil and Political Rights (2nd revised edition, N.P. Engel Publisher, 2005) 458; Danwood Mzikenge Chirwa, 'The Doctrine of State Responsibility as a Potential Means of Holding Private Actors Accountable for Human Rights' (Vol. 5, Melbourne Journal of International Law) (2004).

[12] *Fuentes Bobo v Spain* (n 2) [44]; *Palomo Sánchez and others v Spain* (n 2) [63].

[13] *Maestri v Italy* App no 39748/98 (ECtHR, 17 February 2004); *Ahmet Yildirim v Turkey* App no 3111/10 (ECtHR, 18 December 2012) ('*Ahmet Yildirim v Turkey*') [57], [59].

[14] *Magyar Jeti Zrt v Hungary* App no 11257/16 (4 December 2018) ('*Magyar Jeti Zrt v Hungary*') [59]; *Dareskizb Ltd v Armenia* App no 61737/08 (ECtHR, 12 September 2021) ('*Dareskizb Ltd v Armenia*') [29]; HRC, 'Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression' (23 April 2020) A/HRC/44/49 ('April 2020 Report of UN Special Rapporteur David Kaye') [14].

8. Sargon's decision to uphold the suspension and permanent blocking was based on Natter's CSP,[15] which lacks basis in domestic law and contains vague definitions.[16] Therefore, it fails to meet the requisites of legality.

1. The restrictions are not based on domestic law.

9. In imposing restrictions on the rights of Bos, Sargon upheld the decision of the NOC, which cited the provisions in the CSP as its only grounds.[17] The CSP, being crafted by a private entity,[18] is not a domestic law upon which restrictions on fundamental human rights can be based.[19]

2. The restrictions are not foreseeable.

10. A restriction is foreseeable when it is formulated with sufficient precision to enable citizens to regulate their conduct accordingly[20] and to predict the consequences of non-compliance.[21]

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[15] Fact pattern [13]–[14], [70].

[16] General Comment no 34 (n 6) [34]; HRC, 'Report of the Special Rapporteur on freedom of religion or belief' (23 December 2015) A/HRC/31/18 ('December 2015 Report of UN Special Rapporteur Heiner Bielefeldt') [64].

[17] Fact pattern [63]–[66].

[18] Fact pattern [13].

[19] General Comment no 34 (n 6) [23]–[27].

[20] General Comment no 34 (n 11) [25]; *The Sunday Times v United Kingdom* App no 6538/74 (ECtHR, 26 April 1979) [49]; *Groppera Radio AG and Others v Switzerland* App no 10890/84 (ECtHR, 28 March 1990) [68]; *Sanoma Uitgevers BV v The Netherlands* App no 38224/03 (ECtHR, 14 September 2010) [81]; *Gaweda v Poland* App no 26229/95 (ECtHR, 14 March 2012) [39]; *Marina Koktish v Belarus* Communication no 1985/2010 (HRC 26 August 2014) [8.5].

[21] *Kruslin v France* App no 11801/85 (ECtHR, 24 April 1990) ('*Kruslin v France*') [27] ; *Huvig v France* App no 11105/84 (ECtHR, 24 April 1990) ('*Huvig v France*') [26]; *Gorzelik and Others v Poland* App no 44158/98 (ECtHR, 17 February 2004) ('*Gorzelik and Others v Poland*') [64]–[65]; *Liu v Russia* App no 42086/05 (ECtHR, 2 June 2008) ('*Liu v Russia*') [56]; *Engels v Russia* App no 35550/18 (ECtHR, 16 January 2020) ('*Engels v Russia*') [23].

a. The CSP fails to meet the standards of clarity and precision to enable Natter users to foresee the consequences of their conduct.

11. While Section 20 of the CSP provides that Natter may permanently block or suspend violators, the CSP does not provide any criteria for suspension or permanent blocking.[22] Thus, Bos could not have known whether her posts would lead to a suspension, permanent blocking, or both. Therefore, she would not have been able to regulate her conduct, nor was she able to predict the consequences of her action.

b. The RSMA is vague and grants unfettered discretion to Natter.

12. A law is vague if there is uncertainty about its scope, making it susceptible to arbitrary application.[23] The result of a vague law is a chilling effect, in which a speaker who would otherwise engage in protected speech would simply self-censor and choose not to speak out of fear of prosecution.[24]

13. The RSMA was enacted to curb online hate speech, cyber-bullying, and religious extremism.[25] However, the CSP cannot find basis in the RSMA to legitimize the restrictions contained therein, as the RSMA fails to clearly define what acts would constitute the above-mentioned offenses.[26]

14. The unclear definitions in the RSMA render the scope of the law vague and confer unlimited power on social media platforms to determine what speech it can restrict and

[22] Fact pattern [15].

[23] December 2015 Report of UN Special Rapporteur Heiner Bielefeldt (n 16) [64].

[24] 'The Establishment Clause and the Chilling Effect' [2020] 133 Harv L Rev 1338 ('The Establishment Clause and the Chilling Effect').

[25] Fact pattern [21].

[26] ibid.

how the speech may be restricted.[27] Since the RSMA contains a vague definition of the speech it seeks to curb, it grants unfettered discretion to Natter. Natter is free to amend the definition of hate speech under the CSP, and may even change the composition of the NOC.

15. The RSMA fails to define or provide a standard for "independent and transparent oversight mechanisms."[28] Although Natter has interpreted this requirement to mean that the oversight mechanism must comprise persons who are not Natter employees and are reputed experts in different fields,[29] the lack of criteria on the part of the RSMA makes it impossible to determine whether the NOC is indeed independent and transparent.

16. Therefore, Natter users would not be able to foresee if their posts would result in a permanent blocking of their account, should the matter be referred to the NOC.[30] That the NOC publishes their decisions on its website[31] is of no consequence, since the RSMA—lacking guidelines on the oversight mechanisms—does not prevent Natter from changing the composition of the NOC, which may also change how the NOC would decide cases.

B. The suspension and permanent blocking of Bos's profile do not pursue legitimate aims.

[27] December 2015 Report of UN Special Rapporteur Heiner Bielefeldt (n 16) [64].

[28] ibid.

[29] Fact pattern [23]; Clarifications [33].

[30] Fact pattern [24].

[31] Fact pattern [25].

17. Under Article 19(3) of the ICCPR, restrictions on the right to freedom of expression are permissible if they are necessary for respect of the rights and reputations of others, protection of national security or public order, or protection of public health or morals.[32]

1. The restrictions do not serve to protect the rights and reputations of others.

18. The right to freedom of expression includes the right to offend, shock, or disturb any sector of the population, including religious sectors.[33] Freedom of religion or belief does not bestow a right on believers to have their religion or belief itself protected from all adverse comments or criticisms.[34]

19. In the case of *Terentyev v Russia*, the European Court of Human Rights (ECtHR) found that comments calling for the ceremonial incineration of "infidel cops" did not amount to speech that incites hatred.[35] The Court ruled that such comments were only scathing criticisms that showed Terentyev's emotional disapproval for the state of the Russian police force.[36] The comments cannot be interpreted as an actual call for the physical extermination of the police since they were only Terentyev's emotional, albeit provocative, appeal to improve the situation.[37]

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[32] ICCPR (n 1) art 19 [3]; General Comment no 34 (n 6) [27]–[31].

[33] *Handyside v United Kingdom* App no 5493/72 (ECtHR, 7 December 1976) ('*Handyside v United Kingdom*') [49]; *Otto-Preminger-Institut v Austria* App no 13470/87 (ECtHR, 20 September 1994) ('*Otto-Preminger-Institut v Austria*') [49]; *İ.A. v Turkey* App no 42571/98 (ECtHR, 13 September 2005) ('*İ.A. v Turkey*') [29]; *Giniewski v France* App no 64016/00 (ECtHR, 31 January 2006) ('*Giniewski v France')* [43]; *Klein v Slovakia* App no 72208/01 (ECtHR, 31 January 2007) ('*Klein v Slovakia')* [47]; General Comment no 34 (n 6) [11].

[34] *İ.A. v Turkey* (n 33) [28]; *Sekmadienis Ltd v Lithuania* App no 69317/14 (ECtHR, 30 January 2018) [81]; General Comment no 34 (n 11) [11]; HRC, 'Report of the Special Rapporteur on freedom of religion or belief' (5 March 2019) A/HRC/40/58 [16].

[35] *Savva Terentyev v Russia* App no 10692/09 (ECtHR, 28 August 2018) ('*Savva Terentyev v Russia*') [69]–[72].

[36] ibid [71].

[37] ibid [72].

20. A similar analysis may be applied to Bos's posts on the night of the elections. Her 1:05 AM post was made after the Election Commission's announcement that they will resume counting the votes.[38] The use of "STOP THE PHRAUD" and "#Phinished" in the post is an emotional reaction to what was perceived to be a fraudulent electoral result that favored Gen, Bos's electoral opponent. The use of these terms did not signify exclusion or display contempt of the adherents of Phi as the NOC ruled,[39] but only showed Bos's emotional disapproval of a potentially fraudulent election that Gen's supporters may have perpetrated. Accordingly, the 1:05 AM post was a valid criticism of Gen's supporters and not a form of religious discrimination against the adherents of Phi.

2. The restrictions do not serve to protect public order.

21. Public order in the ICCPR refers to the maintenance of public peace, safety, and tranquility.[40] To invoke this aim, the State must establish a direct and immediate connection between the expression sought to be censored and the threat or harm sought to be suppressed.[41]

a. Bos's posts do not constitute hate speech.

22. To identify whether an expression constitutes hate speech that would incite violence and disrupt public order, the UN Rabat Plan of Action provides a six-part test that considers (i)

[38] Fact pattern [51]–[52].

[39] Fact pattern [63].

[40] *Scanlen and Holderness v Zimbabwe* Communication 297/05 (ACHPR, 3 April 2009) [19]; *Ramburn v Stock Exchange Commission* [1991] LRC (Const) 272; *Elliott v Commissioner of Police* [1997] 3 LRC 15.

[41] General Comment no 34 (n 6) [35].

context, (ii) speaker, (iii) intent, (iv) content and form, (v) extent of the speech act, and (vi) likelihood including imminence.[42]

(i) Context

23. Context pertains to the legal, political, and social circumstances surrounding the speech.[43]

24. Hate speech laws were established specifically to protect members of vulnerable groups and must not be abused.[44] In this case, over 60% of Sargon's population are adherents of Phi, a religion that has been practiced on the island for over four centuries.[45] Given this context, the adherents of Phi cannot claim that they are an unprotected vulnerable minority or group that needs a heightened protection from insulting or disrespectful attacks.[46]

25. Furthermore, Bos's posts were published on the night of the election[47] and amid allegations of fraud.[48] Thus, they contributed to political discourse, especially with respect to the legitimacy of the elections.

(ii) Speaker

[42] HRC, 'Rabat Plan of Action on the Prohibition of Advocacy of National, Racial or Religious Hatred that Constitutes Incitement to Discrimination, Hostility or Violence' ('Rabat Plan of Action 2012') (2012).

[43] *Savva Terentyev v Russia* (n 35) [73]; UN, UN Strategy and Plan of Action on Hate Speech: Detailed Guidelines on Implementation for United Nations Field Presences ('2020 UN Strategy and Plan of Action on Hate Speech Implementation Guidelines') (September 2020) [17].

[44] General Policy Recommendation no 15 of the European Commission against Racism and Intolerance (December 8, 2015); *Savva Terentyev v Russia* (n 35) [38].

[45] Fact pattern [2].

[46] *Savva Terentyev v Russia* (n 35) [76].

[47] Fact pattern [47], [49], [52].

[48] Fact pattern [45]–[46].

26. The position or status of the speaker in society and their authority or influence over their audience is relevant in determining hate speech.[49] Bos is the President of Sargon, but her following on Natter[50] has 3 million users less than that of Philemon Gen,[51] who also represents a majority of the entire Sargonian population.[52] Thus, Bos's statements are necessary to offer a plurality of views apart from the perspective of the dominant religion.

(iii) Intent

27. For an expression to be considered hate speech, the speaker must have deliberate intent to engage in advocacy of hatred.[53] Mere negligence and recklessness are not sufficient for a restriction on speech.[54]

28. By prefacing her first two posts with the phrases "it has come to my attention"[55] and "the Election Commission now suspects,"[56] Bos made it clear that these were not assumptions of fact. These were followed by her calls to stop the fraud. Since these calls did not have any guidelines or instructions, they were mere expressions of a broad desire to respond to the suspected irregularities in elections.

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[49] 2020 UN Strategy and Plan of Action on Hate Speech Implementation Guidelines (n 43) [18].

[50] Fact pattern [30].

[51] Fact pattern [32].

[52] Fact pattern [2].

[53] 2020 UN Strategy and Plan of Action on Hate Speech Implementation Guidelines (n 43) [18].

[54] Rabat Plan of Action (n 42) [29].

[55] Fact pattern [47].

[56] Fact pattern [49].

29. Furthermore, Bos further affirmed her lack of ill motive or harmful intent by issuing a public statement the following day condemning the violence that had taken place.[57]

(iv) Content and form

30. Content and form relate to the nature and style of the expression, including the extent to which the speech was provocative and direct.[58] A plain reading of Bos's posts would readily reveal that there was neither command nor encouragement given to her supporters to resort to violence.

(v) Extent of speech act

31. Extent is gauged by how widely the expression was disseminated.[59] Following Bos's second post, the NOC hastily took action and stayed the algorithm with respect to her first two posts,[60] thus substantially minimizing their readership.[61]

(vi) Likelihood, including imminence

32. An expression is hate speech if harm would result from such expression. None of Bos's posts contained any call to violence, and the alleged misrepresentations were only expressions of her apprehensions over possible fraud. This makes it unlikely for her posts to be construed as an endorsement or encouragement of violence in response to the alleged fraud.

[57] Fact pattern [56].

[58] Rabat Plan of Action 2012 (n 42) [29]; 2020 UN Strategy and Plan of Action on Hate Speech Implementation Guidelines (n 43) [p. 18].

[59] 2020 UN Strategy and Plan of Action on Hate Speech Implementation Guidelines (n 43) 18.

[60] Fact pattern [50].

[61] Fact pattern [20].

33. Taking all these factors together, Bos's posts on the night of the election could not be considered hate speech. Consequently, Sargon violated Bos's rights when it upheld the restrictions on her Natter profile.

34. Furthermore, there was no direct causation between Bos's statements and the disturbance outside the Election Commission building. Bos's last post accompanied by the photograph of protestors outside the Election Commission[62] could not have possibly been the catalyst of the riot, as they were mere moments apart. It is more likely that the crowd, which was already restless earlier that evening, was triggered by the statement released by the Election Commission.[63] Given the foregoing, the decision to uphold the suspension and permanent blocking of Bos's account do not pursue legitimate aims.

C. The suspension and permanent blocking of Bos's profile are neither necessary nor proportionate.

35. To meet the tests of necessity and proportionality, the State must demonstrate that the restriction is necessary to protect a legitimate interest and is proportionate to achieve the purported aim.[64] The restrictions on Bos's profile do not meet these standards.

1. The restrictions are not necessary.

36. A restriction is necessary when it corresponds to a pressing social need.[65]

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[62] Fact pattern [52].

[63] Fact pattern [51].

[64] ICCPR (n 1) art 19; UDHR (n 1) art 19; *Gündüz v Turkey* no 35071/97 (ECtHR, 4 December 2003) ('*Gündüz v Turkey'*) [37], [40]; *Velichkin v Belarus* App no 1022/01 (ECtHR, 3 November 2005) ('*Velichkin v Belarus*') [7.3]; *Balsytė-Lideikienė v Lithuania* App no 72596/01 (ECtHR, 4 November 2008) ('Balsytė-Lideikienė v Lithuania') [77]; *Animal Defenders International v United Kingdom* App no 48876/08 (ECtHR, 22 May 2013) ('*Animal Defenders International*') [100]; *Delfi AS v Estonia* App no 64569/09 (ECtHR 16 June 2015) [66]; *Lashmankin v Russia* App no 57818/09 (ECtHR, 29 May 2017) ('*Lashmankin v Russia*') [317]; *Pastörs v Germany* App no 55225/14 (ECtHR, 3 October 2019) ('*Pastörs v Germany*') [48]; General Comment no 34 (n 6) [22], [33], [34].

[65] *Ballantyne and Others v Canada* Communication no 359/189 UN Doc CCPR/C/47/D/359/1989 (HRC, 31 March 1993) [11.4]; *Balsytė-Lideikienė v Lithuania* (n 64) [76]; *Animal Defenders International v The United Kingdom* (n

37. There is no pressing social need in this case. As has been discussed, Bos's posts do not amount to an incitement to violence that would disrupt public order. There was also no direct causation between Bos's statements and the disturbance outside the Election Commission headquarters. Therefore, there is no social need, much less a pressing one, to restrict Bos's account.

2. The restrictions are not proportionate.

38. The restrictions are not proportionate because (a) the restrictions are overbroad,[66] (b) the restrictions are not the least intrusive means of achieving the legitimate objective available,[67] and (c) there is no reasonable balance between the general and individual interests at stake.[68]

a. The restrictions are overbroad.

64) [100]; UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS Special Rapporteur on Freedom of Expression and ACHPR Special Rapporteur on Freedom of Expression and Access to Information, 'Joint Declaration on Freedom of Expression and the Internet' (2011).

[66] General Comment no 34 (n 6) [34]; December 2015 Report of UN Special Rapporteur Heiner Bielefeldt (n 16) [64].

[67] *Toregozhina v Kazakhstan* Communication no 2137/2012 UN Doc CCPR/C/112/D/2137/2012 (HRC, 21 October 2014) [7.4]; *Lashmankin v Russia* (n 64) [317]; *Sviridov v Kazakhstan* Communication no 2158/2012 UN Doc CCPR/C/12D/2158/2012 (HRC, 13 July 2017) [10.3]; General Comment no 34 (n 6) [34].

[68] *Rodrigues da Silva and Hoogkamer v The Netherlands* App no 50435/99 (ECtHR, 31 January 2006) ('*Rodrigues da Silva and Hoogkamer v The Netherlands*') [39]; *Evans v United Kingdom* App no 6339/05 (ECtHR, 10 April 2007) ('*Evans v United Kingdom*') [64]; *Perincek v Switzerland* App no 27510/08 (ECtHR, 15 October 2015) ('*Perincek v Switzerland*') [228]; *Couderc and Hachette Filipacchi Associés v France* App no 40454/07 (ECtHR, 10 November 2015) ('*Couderc and Hachette Filipacchi Associés v France*') [90]–[91]; *Medžlis Islamske Zajednice Brčko v Bosnia and Herzegovina* App no 17224/11 (ECtHR 27 June 2017) ('*Medžlis Islamske Zajednice Brčko v Bosnia and Herzegovina* ') [74]; *Dareskizb LTD v Armenia* (n 14) [36].

39. A restriction is overbroad if it sweeps unnecessarily broadly, reaching protected as well as unprotected speech,[69] resulting in a chilling effect.[70]

40. Article 25(b) of the ICCPR recognizes and protects the right of every citizen to vote and to be elected, as well as the right to take part in the conduct of public affairs.[71] The full enjoyment of such rights is only possible if freedom of expression is guaranteed[72] and free exchange of ideas about public and political issues between citizens and candidates is made available.[73]

41. The permanent blocking of Bos's profile not only severs her contact with supporters but also prevents her from engaging in a debate and dialogue with the opposition. Thus, the restriction hampers political discourse and interferes with Bos's right to take part in the conduct of public affairs.

42. As both a candidate and voter, Bos had an interest in ensuring the conduct of clean and honest elections in pursuit of her right to be elected. Bos's posts decrying election fraud is protected political speech.[74] Therefore, the removal was overbroad.

b. <u>The restrictions are not the least intrusive means available.</u>

43. In addressing online hate speech, States should adopt diverse remedies.[75]

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[69] Martin H. Redish, Warren Court, the Burger Court and the First Amendment Overbreadth Doctrine, 78 NW. U. L. Rev.1031 (1983–1984).

[70] The Establishment Clause and the Chilling Effect (n 24).

[71] ICCPR (n 1) art 25(b); HRC, General Comment no 25 (n 6) [1].

[72] General Comment no 25 (n 6) [12].

[73] ibid [25].

[74] 2020 UN Strategy and Plan of Action on Hate Speech Implementation Guidelines (n 43) 15.

[75] ibid [14]–[16].

44. Sargon could have instituted civil, administrative, or public policy remedies such as engaging in educational efforts concerning the harms of hate speech, publicly denouncing hate speech, and establishing stronger collaborations with social science researchers to develop alternative tools against the proliferation of hateful content.[76] One such remedy is the creation of independent, transparent, multi-stakeholder regulatory bodies that would ensure the compliance of large online platforms with codes of conduct.[77]

45. On the other hand, social media companies have a vast range of tools available to them to tailor their responses to specific problematic content depending on the severity of the violation or recidivism of the user.[78] Instead of suspension and blocking, Natter could have availed of other less intrusive remedies such as issuing warnings, affixing labels to problematic content, developing ratings to highlight a person's use of prohibited content, conducting de-amplification, providing users with greater capacity to block others, and even promoting counter-messaging.[79] Thus, given the availability of other tools, Sargon should not have upheld the restrictions on Bos's profile.

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[76] HRC, 'Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, David Kaye' UN Doc A/74/486 (9 October 2019) ('October 2019 Report of UN Special Rapporteur David Kaye') [55]; HRC, 'Promotion and protection of the right to freedom of opinion and expression, Frank La Rue' UN Doc A/67/357 (7 September 2012) [48]; HRC, 'Combating intolerance, negative stereotyping and stigmatization of, and discrimination, incitement to violence and violence against, persons based on religion or belief,' UN Doc A/HRC/RES/16/18 (12 April 2011) [5].

[77] *Big Brother Watch and Others v The United Kingdom* App no 58170/13 (ECtHR, 13 September 2018) [213]; *The Case of Reporters sans frontières and Others* App no 58170/13 (German Federal Constitutional Court, 19 May 2020) [276]; October 2019 Report of UN Special Rapporteur David Kaye (n 76) [7]; April 2021 Report of UN Special Rapporteur Irene Khan (n 6) [60]; 'Regulating social media: we need a new model that protects free expression' (ARTICLE 19, 25 April 2018) <https://www.article19.org/resources/regulating-social-media-need-new-model-protects-free-expression/> accessed 2 November 2021.

[78] October 2019 Report of UN Special Rapporteur David Kaye (n 76) [51], [54].

[79] ibid [51], [55]–[74]. See 'Our range of enforcement options' (Twitter) <https://help.twitter.com/en/rules-and-policies/hateful-conduct-policy> accessed 2 November 2021; 'Facebook Community Standards' (Facebook, 2021) <https://transparency.fb.com/policies/community-standards/hate-speech/> accessed 2 November 2021; 'Regulating social media content: Why AI alone cannot solve the problem' (ARTICLE 19, 11 July 2018).

46. Furthermore, Natter could also have taken progressive steps within its own spectrum of actions for content moderation[80] by either staying the algorithm for Bos's third post or taking down the three impugned posts.

47. Even assuming there was a need to promptly suspend Bos's profile after her third post at the time of the riot, almost a month had elapsed[81] since the elections when the Supreme Court finally upheld the permanent blocking of her account.[82] By then, Gen had been formally declared as the new president[83] and there was no more reason to continue silencing Bos.

48. Additionally, this is the first time that Bos supposedly committed a violation of the CSP. She is not a habitual offender and has not demonstrated a pattern of posting provocative or hateful content. She received no notice or warning that her first offense would soon lead to the suspension and permanent blocking of her profile.

49. Because of the permanent blocking,[84] Bos was completely deprived of her freedom to seek, receive, and impart ideas in the media of her choice.[85] Since no other social media platform

<https://www.article19.org/resources/regulating-social-media-content-why-ai-alone-cannot-solve-the-problem/> accessed 2 November 2021.

[80] Fact pattern [15]–[20], [24].

[81] Fact pattern [55], [70].

[82] Fact pattern [70].

[83] Fact pattern [55].

[84] Fact pattern [63].

[85] ICCPR (n 1) art 19 [2].

in Sargon is comparable in popularity to Natter,[86] the deprivation is made even more burdensome.

c. <u>There is no reasonable balance between the general and individual interests at stake.</u>

50. Measures taken to remove specific content online should be strictly controlled to prevent any abuse of power.[87] However, in the present case, a reasonable balance was not made between the freedom of expression and the right of others to be protected from religious criticism.

51. In the context of religious opinions and beliefs, courts have held that this freedom can only be limited if the impugned statements are offensive and do not contribute to any form of public discussion capable of furthering progress in human affairs.[88]

52. Sargon failed to abide by these standards in restricting the rights of Bos, whose posts were made not to offend the adherents of Phi but to generate a public discussion on the issue of possible election fraud, which is a national concern necessary to be addressed amid the increasing fraud allegations online.[89]

53. Considering that the suspension and permanent blocking of Bos's account are not prescribed by law, do not pursue a legitimate aim, and are neither necessary nor

[86] Clarifications [63].

[87] *Ekin v France* App no 39288/98 (ECtHR, 18 January 2000); 'Recommendation of the Committee of Ministers to member States on a Guide to human rights for Internet users,' Committee of Ministers, Council of Europe (16 April 2014).

[88] *Handyside v United Kingdom* (n 33) [49]; *Otto-Preminger-Institut v Austria* (n 33) [49].

[89] Fact pattern [47], [49], [52].

proportionate, Sargon's decision to uphold said restrictions violates Bos's rights under Article 19 read with Article 25(b) of the ICCPR.

II. SARGON VIOLATED SANTOS DARL'S RIGHTS UNDER ARTICLE 19, READ WITH ARTICLE 25(B) OF THE ICCPR BY UPHOLDING NATTER'S DECISION TO REMOVE EVERY SINGLE ONE OF HIS POSTS FROM 31 MAY TO 2 JUNE 2021.

54. Sargon failed to discharge its positive obligation to protect the right to freedom of expression against interference by private persons[90] when it sustained the decision of the NOC to remove every single one of Darl's posts from 31 May to 2 June 2021.[91] The restrictions on the freedom of expression, on which the removal of Darl's posts finds basis, fail to satisfy the three-part test.[92]

A. The removal of Darl's posts is not prescribed by law.

1. The restriction is not based on domestic law.

55. The removal of Darl's posts was based on a violation of a clause in the CSP, a mere private policy that finds no basis in any of Sargon's domestic laws.[93]

2. The restriction is not foreseeable.

a. <u>The CSP fails to meet the standards of clarity and precision to enable Natter users to foresee the consequences of their conduct.</u>

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[90] *Fuentes Bobo v Spain* (n 2) [38]; *Özgür Gündem v Turkey* (n 1) [43]; *Palomo Sánchez and others v Spain* (n 2) [59].

[91] Fact pattern [70].

[92] ICCPR (n 1) art 19 [3]; General Comment no 34 (n 6) [22]. See also Nowak (n 11) 458; Chirwa 'The Doctrine of State Responsibility as a Potential Means of Holding Private Actors Accountable for Human Rights' (n 11).

[93] *Magyar Jeti Zrt v Hungary* (n 14) [59]; *Dareskizb Ltd v Armenia* (n 14) [32]; April 2020 Report of UN Special Rapporteur David Kaye (n 14) [14].

56. Sections 4 and 8 of the CSP[94] do not clearly state the consequences of non-compliance;[95] they do not provide any criteria as to what kind of speech would merit removal,[96] staying of the algorithm,[97] or suspension.[98]

57. This grants unfettered discretion to content moderators for the restriction of speech,[99] making it susceptible to arbitrary application.[100] For instance, the total removal of all of Darl's posts with the hashtag "#WeWereHereFirst"" is an arbitrary imposition of the restriction. For the posts of other users who used the same hashtag, Natter stayed the algorithm instead of totally removing them.[101] The NOC gave no basis to impose a different measure for Darl's use of the same hashtag.

b. <u>The RSMA is vague and grants unfettered discretion to Natter.</u>

58. The RSMA's unclear definitions render the scope of the law vague and confer unlimited power on social media platforms to determine how speech may be restricted.

B. The removal of Darl's posts does not pursue a legitimate aim.

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[94] Fact pattern [14].

[95] *Kruslin v France* (n 21) [27]; *Huvig v France* (n 21) [26]; *Gorzelik and Others v Poland* (n 21) [64]–[65]; *Liu v Russia* (n 21) [56]; *Engels v Russia* (n 21) [23].

[96] Fact pattern [17].

[97] Fact pattern [19].

[98] Fact pattern [15].

[99] General Comment no 34 (n 6) [25].

[100] December 2015 Report of UN Special Rapporteur Heiner Bielefeldt (n 16) [64].

[101] Fact pattern [36].

59. The removal of Darl's posts is not necessary (**1) for the respect of the rights and reputations of others** or **(2) for the protection of public order.**[102]

1. The restriction does not serve to protect the rights and reputations of others.

60. The NOC found that Darl's posts violated the CSP for promoting the exclusion of the adherents of Phi, implying the superiority of the returnee community and using the term "interloper" which allegedly amounted to hate speech.[103]

61. The freedom of expression includes the right to criticize and disturb any sector of the population, even religious sectors.[104] States should not prohibit criticism directed at, or debate about, particular ideas, beliefs, ideologies, or religions or religious institutions[105] which does not apply in this case. Religious hatred, under Article 20(2) of the ICCPR, must constitute incitement to discrimination, hostility, or violence.[106]

62. Darl's posts are valid religious criticisms of Phi's traditions and practices,[107] which include the promotion of child betrothal and refusal to ordain women into leadership.[108] It must be

[102] ICCPR (n 1) art 19 [3]; General Comment no 34 (n 6) [27]–[31].

[103] Fact pattern [65].

[104] *Handyside v United Kingdom* (n 33) [49]; *Otto-Preminger-Institut v Austria* (n 33) [49]; *İ.A. v Turkey* (n 33) [29]; *Giniewski v France* (n 33) [43]; *Klein v Slovakia* (n 33) [47]; General Comment no 34 (n 6) [11].

[105] ICCPR (n 1) arts 19 [3], 20; *Tagiyev and Huseynov v Azerbaijan* App no 13274/08 (ECtHR, 5 December 2019) [37]–[39]; HRC, 'Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue,' (16 May 2011) A/HRC/17/27 [11] [34]–[37]; Alice Donald & Erica Howard, 'The right to freedom of religion or belief and its intersection with other rights' (2015) ILGA-Europe; ARTICLE 19, The Camden Principles on Freedom of Expression and Equality, 12.3 (April 2009).

[106] ibid.

[107] Fact pattern [38].

[108] Fact pattern [31].

emphasized that criticism of even the most deeply held convictions of the adherents of a religion is protected by freedom of expression.[109]

63. The hashtags "#WeWereHereFirst" and "#Phinished" are not expressions of religious hatred that constitute incitement to discrimination, hostility, or violence. The hashtag "#WeWereHereFirst" is a response to a nationalist discourse regarding the original inhabitants of Sargon[110] and is an expression of opinion on history which cannot be penalized.[111] The hashtag "#Phinished"—an expression of criticism against a religion—also cannot be prohibited[112] as expressions defending one's beliefs or faith, without calling for violence to establish it, cannot be regarded as "hate speech."[113]

2. The restriction does not serve to protect public order.

64. Speech may be prohibited on the grounds of public order when it incites discrimination, hostility or violence.[114] None of Darl's posts posed an actual or imminent risk that would threaten public order.[115]

a. <u>Darl's posts do not constitute hate speech.</u>

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[109] *Rabbae v Netherlands* Communication no 2124/2011 (HRC, 18 November 2016) ('*Rabbae v Netherlands')* [6.9].

[110] Fact pattern [5].

[111] *Dink v Turkey* App nos 2668/07, 6102/08, 30079/08, 7072/09 and 7124/09 (ECtHR, 14 September 2010) ('*Dink v Turkey')* [135]; General Comment no 34 (n 6) [49].

[112] General Comment no 34 (n 6) [48].

[113] *Gündüz v Turkey* (n 64) [51].

[114] ICCPR (n 1) arts 19 [3], 20.

[115] HRC, 'Rabat Plan of Action on the Prohibition of Advocacy of National, Racial or Religious Hatred that Constitutes Incitement to Discrimination, Hostility or Violence' (11 January 2013) UN Doc A/HRC/22/17/Add 4 ('Rabat Plan of Action 2013') [29]; ACHR (n 1), art 9 [2]; United Nations Educational, Scientific and Cultural Organization ('UNESCO'), 'Countering Online Hate Speech' (UNESCO Series on Internet Freedom, 2015) <http://unesdoc.unesco.org/images/0023/002332/233231e.pdf>

65. Under the six-part test laid down in the UN's Rabat Plan of Action, Darl's posts do not constitute hate speech.[116]

(i) Context

66. The posts were clearly made in the context of the upcoming national elections,[117] in the nature of political discourse, which is guaranteed protection under the right to freedom of expression.[118]

67. The hashtag "#WeWereHereFirst" is not a call for exclusion. It is a response to nationalist discourse regarding the original inhabitants of Sargon, a topic of debate even among eminent historians.[119] Debate surrounding historical events of a particularly serious nature should be able to take place freely, as it is an integral part of the freedom of expression to seek historical truth.[120]

68. The hashtag "#Phinished" was created after Bos's televised interview, where she called for the end of the weaponization of religion in politics and suggested discontinuing the teaching of the tenets of Phi in public schools.[121] She received significant praise on Natter, with many posts featuring the hashtag "#Phinished."[122] Thus, the meaning of "#Phinished" must be interpreted with the context in which it was created.

(ii) Speaker

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[116] Rabat Plan of Action 2013 (n 115).

[117] Fact pattern [39].

[118] ICCPR (n 1) arts 19, 25(b); General Comment no 34 (n 11) [11].

[119] Fact pattern [5].

[120] *Dink v Turkey* (n 111) [135]; General Comment no 34 (n 6) [49].

[121] Fact pattern [34].

[122] Fact pattern [35], [37].

69. Darl is a social media influencer, and his following only makes up 1.6% of Natter's users.[123] Moreover, it does not necessarily follow from the mere fact of one's online influence that his posts are more likely to incite violence.[124]

(iii) Intent

70. The intention behind Darl's posts was to contribute to the ongoing political discourse and to show his support for his preferred presidential candidate. This is shown through his use of the hashtag "#VoteBos" in all the removed posts.[125]

(iv) Content and form

71. The basis of the restriction was the hashtags themselves**.**[126] However, neither "#Phinished" nor "#WeWereHereFirst" contain any violent words nor calls to action.

72. The play on words in the hashtag "#Phinished" does not make the speech unlawful. Satire may be a valid form of social commentary even if—by its inherent features of exaggeration and distortion of reality—it naturally aims to provoke and agitate.[127] Figures of speech, hyperbole, and exaggeration are permitted as long as they do not overstep the limits of admissible criticism.[128]

(v) Extent of speech act

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[123] Fact pattern [37].

[124] *Chambers v Director of Public Prosecutions* [2012] EWHC 2157 (July 27, 2012) [31]–[32].

[125] Fact pattern [38].

[126] Fact pattern [36].

[127] *Vereinigung Bildender Künstler v Austria* App no 68354/01 (ECtHR, 25 January 2007) [33]; *Alves da Silva v Portugal* App no 41665/07 (ECtHR, 20 October 2009) [27]; *Eon v France* App no 26118/10 (ECtHR, 14 March 2013) [60]; *Ziembiński v Poland (No. 2)* App no 1799/07 (ECtHR, 5 July 2016) [45].

[128] *Kharlamov . Russia* App no 27447/07 (ECtHR, 8 October 2015) [32].

73. Darl's views were expressed in the course of the pluralistic nature of social media. In *Gündüz v Turkey*, the ECtHR held that the impugned statements were not hate speech upon taking into consideration the following: that the extremist views expressed by the applicant were already known and had been discussed; that they were counterbalanced by the intervention of the other participants in the program; and that they were expressed in the course of a pluralistic debate in which the applicant was actively taking part.[129]
74. The same can be said in this case, as Natter's interface similarly provides space for all its users to post their opinions.[130] Internet media content allows for the possibility for everyone to contribute to public debate.[131]

(vi) Likelihood, including imminence

75. To be restricted, expressions must not merely disturb public order but must also call for public violence.[132]
76. No harm can be reasonably expected from the hashtags "#Phinished" and "#WeWereHereFirst," as these statements are abstract and conceptual in nature and do not contain any call to action. Mere abstract advocacy or discourse is not the same as preparing a group for violent action and steeling it to such action.[133]
77. Considering all these factors, Darl's posts cannot be considered hate speech.

C. The removal of Darl's posts is neither necessary nor proportionate.

[129] *Gündüz v Turkey* (n 64) [51].

[130] Fact pattern [8].

[131] *Times Newspapers Ltd (nos. 1 and 2) v the United Kingdom* App nos 3002/03 and 23676/03 (ECHR 10 March 2009) [27]; *Ahmet Yildirim v Turkey* (n 13) [48]; *Delfi AS v Estonia* (n 64) [66].

[132] *Rabbae v Netherlands* (n 109) [6.7].

[133] *Brandenburg v Ohio* 395 US 444 (1969).

78. The restriction does not correspond to a pressing social need and is not proportionate to the legitimate aim pursued.[134]

1. The restriction is not necessary.

79. Darl's posts were a valid expression of his political opinions. There is no pressing social need to inhibit or restrict these posts as they are fully protected by Article 19 and Article 25(b) of the ICCPR.

2. The restriction is not proportionate.

80. The restriction is not proportionate because (a) the restriction is overbroad,[135] (b) the restriction is not the least intrusive means,[136] and (c) there is no reasonable balance between the general and individual interests at stake.[137]

a. The restriction is overbroad.

81. Permissible restrictions should always be limited to the specific impugned content itself.[138] A generic ban such as the prohibition of posts that use a certain hashtag is an extreme and disproportionate restriction on the right to freedom of expression.[139]

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[134] ICCPR (n 1) art 19; UDHR (n 1) art 19; *Gündüz v Turkey* (n 64) [37], [40]; *Velichkin v Belarus* (n 64) [7.3]; *Balsytė-Lideikienė v Lithuania* (n 64) [77]; *Animal Defenders International v United Kingdom* (n 64) [100]; *Delfi AS v Estonia* (n 64) [66]; *Lashmankin v Russia* (n 64) [317]; *Pastörs v Germany* (n 64) [48]; General Comment no 34 (n 6) [22], [33], [34].

[135] General Comment no 34 (n 6) [34]; December 2015 Report of UN Special Rapporteur Heiner Bielefeldt (n 16) [64].

[136] *Lashmankin v Russia* (n 64) [317]; General Comment 34 (n 11), [34].

[137] *Rodrigues da Silva and Hoogkamer v The Netherlands* (n 68) [39] and [44]; *Evans v United Kingdom* (n 68) [64]; *Perincek v Switzerland* (n 68) [75]; *Couderc and Hachette Filipacchi Associés v France* (n 68) [62]; *Medžlis Islamske Zajednice Brčko v Bosnia and Herzegovina* (n 68) [74], [77]; *Dareskizb Ltd v Armenia* (n 14) [36].

[138] General Comment no 34 (n 11) [43].

[139] ibid.

82. More speech than necessary was restricted when all posts with the hashtag "#Phinished" were removed proactively and indiscriminately.[140] According to a Report of the Special Rapporteur on the promotion and protection of the right to freedom of expression, the imposition of general restrictions for the use of similar upload filters "would enable the blocking of content without any form of due process."[141] Because such filters are unable to address the kind of natural language that constitutes hateful content, they can cause significant disproportionate outcomes.[142] Since the removals were merely based on the hashtags,[143] they operated as an upload filter. Natter users are not even given prior notice that they have committed a violation of the CSP before a content moderator takes down or stays the algorithm with respect to their posts.[144]

83. For instance, Darl's post stating, "Every single one of my posts has been taken down by Natter. What is wrong with saying 'We were here First' when #WeWereHereFirst? #VoteBos" was taken down.[145] This post has no potential to incite violence as it was merely questioning Natter's censorship.[146] This post would not even qualify as "Content liable to be taken down" under Natter's CSP.[147]

b. <u>The restriction is not the least intrusive means available.</u>

[140] Fact pattern [36].

[141] October 2019 Report of UN Special Rapporteur David Kaye (n 76) [34].

[142] ibid.

[143] Fact pattern [36].

[144] Clarifications [17].

[145] Fact pattern [38].

[146] Fact pattern [37].

[147] Fact pattern [14].

84. Less intrusive means could have been implemented instead of resorting to undue restriction of speech. Companies have tools to deal with content in human rights-compliant ways, in some respects a broader range of tools than that enjoyed by States.[148] This range of options enables them to tailor their responses to specific problematic content according to its severity and other factors.[149] Companies can affix warnings and labels to content, provide individuals with greater capacity to block other users, and promote counter-messaging.[150] Companies should publicly identify the remedies they will impose on those who have violated their hate speech policies.[151] Given that other tools were available, Sargon should not have upheld the removal of Darl's posts.

c. <u>There is no reasonable balance between the general and individual interests at stake.</u>

85. In this case, the restriction shows no reasonable balance between the applicant's right to freedom of expression with the protection of the right of the adherents of Phi not to be insulted on the grounds of their religious beliefs. The applicant's full exercise of freedom of expression is all the more crucial in the context of national elections. It is particularly important in the period preceding an election that opinions and information of all kinds are permitted to circulate freely.[152]

[148] October 2019 Report of UN Special Rapporteur David Kaye (n 76) [51].

[149] ibid.

[150] ibid.

[151] ibid [54].

[152] *Bowman v United Kingdom* (n 6) [42]; *Communist Party of Russia and Others v Russia* App no 29400/05 (ECtHR, 19 June 2012) [79].

86. Darl was prevented from meaningfully engaging in legitimate political speech during an election due to the systematic take-down of all his posts. This resulted in a violation of not only his right to freedom of expression under Article 19,[153] but also his right to free expression of his will as an elector under Article 25(b).[154]

87. Voters depend on the right to freedom of expression to receive full and accurate information, and they must be able to express their political affiliation without fear of censorship.[155] There is little scope for restrictions on political speech or on debate on questions of public interest.[156]

88. Considering that the removal of Darl's posts is not prescribed by law, does not pursue a legitimate aim, and is neither necessary nor proportionate, and given that the removal prevented Darl from expressing his will as a voter, Sargon's decision to uphold said restriction violated Darl's rights under Article 19 read with Article 25(b) of the ICCPR.

[153] ICCPR (n 1) art 19.

[154] ICCPR (n 1) art 25(b).

[155] *Savva Terentyev v Russia* (n 35) [62]; UNHRC, 'Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue' (2 July 2014) A/HRC/26/30 [11].

[156] *Savva Terentyev v Russia* (n 35) [62].

RELIEF SOUGHT

For the foregoing reasons, the Applicants respectfully request this Honorable Court to adjudge and declare that:

1. The State of Sargon violated Emilia Bos's rights under Article 19 read with Article 25(b) of the ICCPR by upholding the Natter Oversight Council's decisions to suspend Emilia Bos and permanently block her from Natter.
2. The State of Sargon violated Santos Darl's rights under Article 19 read with Article 25(b) of the ICCPR by upholding Natter's decision to remove every single post by Santos Darl from 31 May to 2 June 2021.

Respectfully submitted 24 November 2021,

702A

Agents for the Applicants