

THE 2021-2022 PRICE MEDIA LAW

MOOT COMPETITION

EMILIA BOS AND SANTOS DARL

(APPLICANTS)

V

SARGON

(RESPONDENT)

MEMORIAL FOR RESPONDENT

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LIST OF ABBREVIATIONS

ACHPR	African Charter on Human and Peoples' Rights
ACHR	American Convention on Human Rights
ACmHPR	African Commission on Human and Peoples' Rights
ACtHR	African Court of Human and Peoples' Rights
ADRDM	American Declaration of the Rights and Duties of Man
ASEAN	Association of Southeast Asian Nations
CERD	Committee on the Elimination of Racial Discrimination
CIS	Commonwealth of Independent States
COVID-19	Coronavirus Disease 2019
CSP	Community Standards Policy
DPS	Democratic Party of Sargon
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EU	European Union
HRC	United Nations Human Rights Committee
IACtHR	Inter-American Court of Human Rights
ICCPR	International Covenant on Civil and Political Rights
NOC	Natter Oversight Council
OB	Oversight Board

RSMA	Regulation of Social Media Act
SNF	Sargon National Front
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNGA	United Nations General Assembly
UNHRC	United Nations Human Rights Council
US	United States

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STATEMENT OF RELEVANT FACTS

SOCIO-POLITICAL BACKGROUND

- [1] Sargon is a largely-populated island nation spanning 60 million people with democratic elections every four years. The incumbent government was the Sargon National Front ('SNF'), helmed by Emilia Bos. The main opposition party is The Democratic Party of Sargon ('DPS').
- [2] The primary religion, Phi, is followed by over 60% of the population. Opinion polls indicate that a slight majority of Phi adherents lean towards DPS. The remaining portion of the population generally identify as agnostic.
- [3] Sargonians heavily utilise 'Natter' as their primary source of social media. Natter has amassed over 25 million users, including Bos and 'spiritual leader' Philemon Gen. Natter's reach surpasses even the mainstream media.

NATTER AND NATTER MATTER

- [4] Natter's functions include texts, audios, pictorial, and video content. Users may 'follow' other users on Natter, along with 'sharing' and 'liking' material posted by other users.
- [5] A separate page, known as Natter Matter allows users to view subject matter relevant to them. This is processed by an algorithm that analyses the timing, popularity, and relevance of a certain post to user's selected topics of interest.
- [6] Natter is self-regulated by its Community Standards Policy ('CSP'), enforced through a user-powered reporting mechanism. The CSP covers, inter alia, hate speech in Section 4 and elections in Section 8. Natter is empowered to suspend or permanently block users violating the CSP via Section 20.
- [7] Some 1000 content moderators are authorised to remove material posted by users after a report. The content moderators are monitored by senior reviewers.

- [8] Senior reviewers have discretionary powers to prevent content from being shown by users on Natter Matter, and to temporarily suspend users for continuous or serious violations of the CSP.
- [9] An Oversight Council (‘**NOC**’) comprising 5 experts in various fields was established pursuant to Section 12 of the Regulation of Social Media Act. They are tasked at presiding over reviewing decisions taken under the CSP, particularly the permanent blocking of users motioned by senior reviewers or reinstatement of removed content appealed by users.

THE SARGON PRESIDENTIAL ELECTIONS LEAD-UP

- [10] The SNF featured Bos running for re-election, with Philemon Gen leading the opposition under the DPS. Both candidates promoted their campaign via Natter.
- [11] Bos, with a following of 4 million users, centred their campaign on economic development, access to jobs, and welfare. Bos and Gen were partisan in terms of the nation's religious trajectory. The former aims to ‘*respond to growing religious extremism*’, with the latter hoping to ‘*revitalise spirituality within Sargon*’. Gen boasted a following of 7 million users.
- [12] Bos had been vocal on promoting secularism in Sargon, with suggestions to abolish Phi teachings in public schools. This received attention from Natter users, with most praising Bos's stance.
- [13] This catalysed ‘hashtags’ on Natter such as #Phinished and #WeWereHereFirst.

NATTER’S RESPONSE

- [14] In wake of user complaints. posts containing #Phinished were taken down by Natter content moderators. Further, the Natter Matter algorithm was stayed with posts containing the hashtag #WeWereHereFirst.

[15] Santos Darl was among the individuals whose posts were taken down. Darl is a social media influencer with a following of over 400,000. A total of 55 posts, containing either #Phinished or #WeWereHereFirst combined with #VoteBos, were taken down by Natter in the span of three days.

THE SARGON PRESIDENTIAL ELECTION RESULTS AND AFTERMATH

[16] With 80% of the votes counted, Gen led with 51% of the votes in their favour. This drew speculations from Bos on Natter that the election was tainted by fraud.

[17] After a temporary suspension of vote counting, the Election Commission clarified that no signs of electoral fraud were present. With that, 200 Bos supporters rallied outside the Commission's headquarters.

[18] A Natter post from Bos, including the phrase 'STOP THE PHRAUD!' was met with the 200 supporters becoming more animated, with some throwing projectiles at law enforcement officials. The crowd was dispersed by riot police.

[19] Bos's post was removed and her Natter profile was suspended. The NOC resolved to permanently block Bos from Natter on the ground of her '*repeated violations of sections 4 and 8 of the CSP*'.

[20] Darl lodged a complaint to the NOC against the removal of his posts by Natter moderators on the basis that the '*systematic take-down*' was tantamount to a suspension. The Council dismissed the complaint on the ground that Darl violated Section 4 of the CSP.

LEGAL PROCEEDINGS

[21] Bos and Darl appealed against the NOC's decisions at the Supreme Court of Sargon on the ground that their freedom of expression under Article 10 of the Constitution of Sargon was impeded.

[22] On 1 July 2021, the Supreme Court dismissed their appeals.

[23] Consequently, Bos and Darl filed applications before the Universal Court of Human Rights on the ground that their rights under Article 19 read with Article 25(b) of the International Covenant on Civil and Political Rights were violated.

STATEMENT OF JURISDICTION

Emilia Bos, Santos Darl, and the State of Sargon, which is a party to the International Covenant on Civil and Political Rights ('**ICCPR**'), have submitted their dispute to the Universal Court of Human Rights ('**this Court**') concerning Articles 19 and 25(b) of the ICCPR.

On the basis of the foregoing, this Court is requested 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 has 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?

- II. Whether Sargon has 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?

SUMMARY OF ARGUMENTS

I

Bos's right to freedom of expression under Article 19 read with Article 25(b) of the ICCPR was not violated by Sargon's decision to uphold the suspension and permanent ban of Bos's account on Natter. *Firstly*, the restriction was provided by law because Sections 4, 8, and 20 of Natter's CSP and Section 12 of the RSMA were accessible, sufficiently precise and did not grant unfettered discretion on Natter. *Secondly*, the restrictions were necessary and pursued two legitimate aims *i.e.* prevention of incitement of discrimination, hostility, or violence against Phi adherents, and prevention of disinformation from interfering or suppressing the Sargon's public right to free expression of opinions during elections. *Thirdly*, the restriction was proportionate because Bos's posts constitute and incitement of hostility and violence based on the six-element test of the *Rabat Plan of Action* (*i.e.* content, status, extent, context, intent, and incitement). The restriction was the least intrusive method since Bos was spared from any criminal conviction and investigation.

II

Darl's right to freedom of speech under Article 19 read with Article 25(b) of the ICCPR was not violated by Sargon's decision to uphold Natter's decision to remove his posts from 31 May to 2 June 2021. *First*, the removal was provided by law because Section 4 of the CSP and Section 12 of the RSMA were publicly accessible, sufficiently precise, and did not grant unfettered discretion on Natter. *Second*, the removal pursued a legitimate aim and addressed a pressing social need *i.e.* the protection of Phi adherents from discrimination and hostility. *Third*, the removal was necessary because Darl's posts constituted hate speech based on the six-element test of the *Rabat Plan of Action* (*i.e.* content, status, extent, context, intent, and

incitement). Natter's decision to individually remove Darl's posts containing the hashtags #Phinished and #WeWereHereFirst was less intrusive than suspending or permanently blocking Darl and therefore proportionate towards the legitimate aim pursued.

ARGUMENTS

I. SARGON DID NOT VIOLATE BOS'S RIGHTS UNDER ARTICLE 19 READ WITH ARTICLE 25(B) OF THE ICCPR BY UPHOLDING NOC'S DECISIONS TO SUSPEND AND PERMANENTLY BLOCK BOS FROM NATTER

- [1] On 5 June 2021, Bos was suspended from Natter.¹ Upon further escalation by Natter's senior reviewer,² NOC permanently blocked Bos from Natter on 15 June.³ Sargon's Supreme Court upheld the blocking and dismissed Bos's constitutional challenge.⁴
- [2] With all domestic remedies exhausted,⁵ Bos now seeks a declaration that Sargon violated Article 19 read with Article 25(b) of the ICCPR.⁶
- [3] Freedom of expression forms the cornerstone of every democratic society.⁷ This right is universally recognised in various human rights instruments (*i.e.* UDHR,⁸ ECHR,⁹

¹ Facts [54].

² Facts [60].

³ Facts [62].

⁴ Facts [70].

⁵ Facts [72].

⁶ Facts [73]-[74].

⁷ HRC, 'General Comment No 34 Article 19: Freedom of Opinion and Expression' (12 September 2011) CCPR/C/G34 ('**GC34**') [13]; *Handyside v UK* App no 5493/72 (ECtHR, 7 December 1976) ('*Handyside*') [49]; *Jersild v Denmark* App no 15890/89 (ECtHR, 23 September 1994) ('*Jersild*') [31]; *Lingens v Austria* App no 9815/82 (ECtHR, 8 July 1986) ('*Lingens*') [41]; *Oberschlick v Austria* App no 11662/85 (ECtHR, 25 May 1991) ('*Oberschlick*') [57]; *Castells v Spain* App no 11798/85 (ECtHR, 23 April 1992) ('*Castells*') [42]; *Goodwin v UK* App no 17488/9 (ECtHR, 27 March 1996) [39]; *Karhuvaara and Italehti v Finland* App no 53678/00 (ECtHR, 16 November 2004) [37]; *Busuioc v Moldova* App no 61513/00 (ECtHR, 21 December 2004) ('*Busuioc*') [58]; *Steel and Morris v UK* App no 68416/01 (ECtHR, 15 February 2005) ('*Steel*') [87]; *Hasanov and Majidli v Azerbaijan* App nos 9262/14 and 9717/14 (ECtHR, 7 October 2021) [53]; *Ingabire Victoire Umuhoza v Republic of Rwanda* App no 003/2014 (ACtHPR, 24 November 2017) ('*Umuhoza*') [119]; *Vladimir Velichkin v Belarus* Communication no 1022/2001 CCPR/C/85/D/1022/2001 (HRC, 23 November 2005) ('*Velichkin*') [7.3].

⁸ Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) art 19.

⁹ European Convention for the Protection of Human Rights and Fundamental Freedoms (adopted 1950, entered into force 3 September 1953) art 10.

ADRDM,¹⁰ ACHR,¹¹ ACHPR,¹² Arab Charter,¹³ ASEAN Declaration,¹⁴ and CIS Convention)¹⁵ and *lex specialis* regimes (*i.e.* children,¹⁶ migrants,¹⁷ and disabled¹⁸).

[4] Freedom of expression is inextricably linked with the right to free elections.¹⁹ During elections, a free marketplace of ideas on political issues between citizens, candidates, and elected representatives is essential.²⁰ Every citizen is entitled to debate, criticise, and oppose public affairs, publish political material, campaign for elections, and advertise political ideas.²¹

[5] However, such freedom is not absolute, and has special duties and responsibilities.²² Restrictions are permissible so long as it's compatible with the test of legality,

¹⁰ American Declaration of the Rights and Duties of Man (adopted 2 May 1948) art 4.

¹¹ American Convention on Human Rights (adopted 22 November 1969, entered into force 18 July 1978) art 13.

¹² African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) art 9.

¹³ Arab Charter on Human Rights (adopted 22 March 2004, entered into force 15 March 2008) art 26.

¹⁴ ASEAN Human Rights Declaration (adopted 18 November 2012) art 23.

¹⁵ CIS Convention on Human Rights and Fundamental Freedoms (adopted 22 May 1995, entered into force 11 August 1998) art 11.

¹⁶ Convention on the Rights of the Child (adopted 20 November 1989, entered in force 2 September 1990) UNGA Res 44/25 art 13(1).

¹⁷ International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (adopted 18 December 1990, entered into force 1 July 2003) UNGA Res 45/158 (ICRMW) art 13.

¹⁸ Convention on the Rights of Persons with Disabilities (adopted 13 December 2006, entered into force on 3 May 2008) UNGA Res 61/106 ('**CPRD**'), art 21.

¹⁹ *Bowman v UK* App no 24839/94 (ECtHR, 19 February 1998) ('**Bowman**') [42]; *Mathieu-Mohin and Clerfayt v Belgium* App no 9267/81 (ECtHR, 2 March 1987) [54]; *Lingens* (n 7) [41]-[42]; *Orlovskaya Iskra v Russia* App no 42911/08 (ECtHR, 21 February 2017) ('**Iskra**') [110].

²⁰ *Korneenko v Belarus* Communication no 1553/2007 CCPR/C/95/D/1553/2007 (HRC, 20 March 2009).

²¹ HRC, 'General Comment No 25: Article 25 (Participation in Public Affairs and the Right to Vote) The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service' (12 July 1996) CCPR/C/21/Rev.1/Add.7 ('**GC25**') [25].

²² GC34 (n 7) [21].

legitimacy, and proportionality, as affirmed by human right bodies (*i.e.* HRC,²³ ECtHR,²⁴ IACtHR,²⁵ ACtHPR/ACmHPR²⁶) and eminent experts in the field (*i.e.* Special Rapporteurs²⁷ and the Facebook Oversight Board²⁸).

A. THE PERMANENT BLOCKING OF BOS WAS PROVIDED BY LAW

[6] The legality criterion requires restrictions to have basis in domestic law.²⁹ Restrictions are deemed ‘*provided by law*’ when the law is [i] accessible to the public,³⁰ [ii]

²³ GC34 (n 7) [22]; *Velichkin* (n 7) [7.3]; *Womah Mukong v Cameroon* Communication no 458/1991 CCPR/C/51/D/458/1991 (HRC, 10 August 1994) (‘*Mukong*’) [9.7]; *Malcom Ross v Canada* Communication no 736/1997 CCPR/C/70/D/736/1997 (HRC, 26 October 2000) (‘*Malcolm*’) [11.2]; *Jong-Kyu Sohn v Republic of Korea* Communication no 518/1992 CCPR/C/54/D/518/1992 (HRC, 3 August 1995) (‘*Jong-Kyu Sohn*’) [10.4].

²⁴ *Avaz Zeynalov v Azerbaijan* App nos 37816/12 and 25260/14 (ECtHR, 22 July 2021) [99]; *Yezhov and Others v Russia* App no 22051/05 (ECtHR, 29 June 2021) [25]; *Milosavljevic v Serbia* App no 57574/14 (ECtHR, 25 May 2021) [47]; *Perinçek v Switzerland* App no 27510/08 (ECtHR, 15 October 2015) (‘*Perinçek*’) [124]; *Delfi AS v Estonia* [GC] App no 64569/09 (ECtHR, 16 June 2015) (‘*Delfi*’) [119]; *Murat Vural v Turkey* App no 9540/07 (ECtHR, 21 January 2015) [59]; *Ceylan v Turkey* App no 23556/94 (ECtHR, 8 July 1999) [24]; *The Sunday Times v UK* App no 6538/74 (ECtHR, 26 April 1979) (‘*Sunday Times*’) [45]; *Handyside* (n 7) [49].

²⁵ *Ivcher-Bronstein v Peru* Series C no 74 (IACtHR, 6 February 2001) [154]-[155]; *Francisco Martorell v Chile* Case 11.230 Report no 11/96 (IACtHR, 3 May 1996) [53]-[55]; *Hector Felix Miranda v Mexico* Case 11.739 Report no 5/99 (IACtHR, 13 April 1999) [43]; *Juan Pablo Olmedo v Chile* Series C no 73 (IACtHR, 5 February 2001).

²⁶ *Sebastien Germain Ajavon v Republic of Benin* App no 013/2017 (ACtHPR, 28 November 2019) [119], [122]-[123]; *Umuhoza* (n 7) [134]; *Lohé Issa Konaté v Burkina Faso* App no 004/2013 (ACtHPR, 5 December 2014) (‘*Konaté*’) [125].

²⁷ UNHRC, ‘Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Expression, Irene Khan’ (13 April 2021) A/HRC/47/25 [42]; IACHR ‘Report of the Special Rapporteur for Freedom of Expression, Catalina Botero Marino’ (30 December 2009) OEA/Ser L/V/II Doc 51 [58]-[64]; UN Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, and the Organization of American States (OAS) Special Rapporteur on Freedom of Expression, ‘Joint Declaration on Freedom of Expression and Elections in the Digital Age’ (30 April 2020) [1(a)(iii)]; UNHRC, ‘Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Expression, David Kaye’ (23 April 2020) A/HRC/44/49 [2]; UNHRC, ‘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 [24].

²⁸ Case Decision 2020-003-FB-UA (OB, 28 January 2021) [8.3.1]; Case Decision 2020-002-FB-UA (OB, 28 January 2021) [8.3]; Case Decision 2020-006-FB-FBR (OB, 28 January 2021) [8.3]; Case Decision 2020-007-FB-FBR (OB, 12 February 2021).

²⁹ *Cumhuriyet Vakfi and Others v Turkey* App no 28255/07 (ECtHR, 8 October 2013) [50]; *Ekin Association v France* App no 39288/98 (ECtHR, 17 July 2001) (‘*Ekin*’) [44]; *Refah Partisi (The Welfare Party) and Others v Turkey* App nos 41340/98, 41342/98, 41343/98 and 41344/98 (ECtHR, 13 February 2003) (‘*Refah Partisi*’) [57].

³⁰ GC 34 (n 7) [25]; *Rekvényi v Hungary* App no 25390/94 (ECtHR, 20 May 1999) (‘*Rekvényi*’) [34]; *Öztürk v Turkey* [GC] App no 22479/93 (ECtHR, 28 September 1999) (‘*Öztürk*’) [54]; *Lindon, Otchakovsky-Laurens and July v France* App nos 21279/02 and 36448/02 (ECtHR, 22 October 2007) (‘*Lindon*’) [41]; *Sunday Times* (n 24)

formulated with sufficient precision,³¹ and [iii] consistent with the rule of law.³²

i. Natter's CSP and Sargon's RSMA are accessible

- [7] Laws may be embodied within parliamentary acts,³³ administrative decrees,³⁴ and unwritten law.³⁵
- [8] Natter's CSP forms the '*basic code of conduct*' for all users.³⁶ The CSP is accessible via the '*Help Center*' tab on Natter.³⁷
- [9] In August 2020, Sargon enacted the RSMA.³⁸ On 1 January 2021, Natter established the NOC as the oversight body required under Section 12 of the RSMA.³⁹
- [10] Accordingly, Bos has full access to the CSP and RSMA.

[49]; *Groppeara Radio AG and Others v Switzerland* App no 10890/84 (ECtHR, 28 March 1990) [68]; *Silver and Others v UK* App nos 5947/72, 6205/73, 7052/75, 7061/75, 7107/75, 7113/75 and 7136/75 (ECtHR, 25 March 1983) ('*Silver*') [88]; *M.M. v UK* App no 24029/07 (ECtHR, 13 November 2012) [193].

³¹ GC34 (n 7) [25]; *de Groot v The Netherlands* Communication no 578/1994 CCPR/C/54/D/578/1994 (HRC, 14 July 1995) [4.2]-[4.3]; *Hashman and Harrup v UK* App no 25594/94 (ECtHR, 25 November 1999) [31]; *Rekvényi* (n 30) [34]; *Hasan and Chaush v Bulgaria* App no 30985/96 (ECtHR, 26 October 2000) ('*Hasan*') [84].

³² *Kruslin v France* App no 11801/85 (ECtHR, 24 April 1990) ('*Kruslin*') [30]; *Malone v UK* App no 8691/79 (ECtHR, 2 August 1984) ('*Malone*') [67]; *Big Brother Watch and Others v UK* App nos 58170/13, 62322/14 and 24960/15 (ECtHR, 13 September 2018) ('*Big Brother Watch*') [305]; *Benedik v Slovenia* App no 62357/14 (ECtHR, 24 April 2018) ('*Benedik*') [125]; *Ooo Informatsionnoye Agentstvo Tambov-Inform v Russia* App no 43351/12 (ECtHR, 18 August 2021) ('*Tambov-Inform*') [73]; *Magyar Kétfarkú Kutya Párt v Hungary* App no 201/17 (ECtHR, 20 January 2020) ('*Párt*') [93]; *Selahattin Demirtas v Turkey* (no. 2) [GC] App no 14305/17 (ECtHR, 22 December 2020) ('*Demirtas*') [249]; *Amann v Switzerland* [GC] App no 27798/95 (ECtHR, 16 February 2000) [56]; *Rotaru v Romania* [GC] App no 28341/95 (ECtHR, 4 May 2000) ('*Rotaru*') [55]; *S and Marper v UK* [GC] App nos 30562/04 and 30566/04 (ECtHR, 4 December 2008) [95].

³³ GC34 (n 7) [24]; *Kruslin* (n 32) [28]; *Sunday Times* (n 24) [45].

³⁴ *De Wilde, Ooms and Versyp v Belgium* App no 21906/04 (ECtHR, 18 June 1971) [93]; *Barthold v Germany* App no 8734/79 (ECtHR, 25 March 1985) [46].

³⁵ *Kruslin* (n 32) [29]; *Sunday Times* (n 24) [44]; *Chappell v UK* App no 10461/83 (ECtHR, 30 March 1989) [52]; *Casado Coca v Spain* App no 15450/89 (ECtHR, 24 February 1994) [43].

³⁶ Facts [13].

³⁷ Clarifications [15].

³⁸ Facts [21].

³⁹ Facts [23].

ii. Sections 4 and 8 of CSP are formulated with sufficient precision

[11] Laws must possess an objective ‘*quality*’.⁴⁰ Substance prevails over form.⁴¹ Laws must be formulated with sufficient precision to enable individuals in regulating their conduct accordingly.⁴² The level of precision required – which cannot provide for every eventuality – largely depends on the content of the law, the field it is designed to cover, and number and status of those to whom it is addressed.⁴³

[12] The NOC permanently blocked Bos due to serious violations of Sections 4⁴⁴ and 8⁴⁵ of CSP. Both provisions are sufficiently precise.

a. Section 4 of CSP prohibits hate speech

[13] Section 4 of CSP prohibits ‘*attacks against people on the basis of a characteristic, such as race, ethnicity, national origin, disability, religious affiliation, caste, sexual orientation, sex, gender identity, and serious disease*’.⁴⁶ This mirrors the ‘*protected characteristics*’ in Facebook’s Community Standards on hate speech.⁴⁷

[14] The term ‘*attack*’ includes ‘*violent or dehumanising speech, harmful stereotypes,*

⁴⁰ *Kafkaris v Cyprus* App no 21906/04 (ECtHR, 12 February 2008) (‘*Kafkaris*’) [140]; *Satakunnan Markkinapörssi Oy and Satamedia Oy v Finland* [GC] App no 931/13 (ECtHR, 27 June 2017) (‘*Satakunnan*’) [142]; *Cantoni v France* App no 17862/91 (ECtHR, 11 November 1996) (‘*Cantoni*’) [29]; *Coeme and Others v Belgium* App nos 32492/96, 32547/96, 32548/96, 33209/96 and 33210/96 (ECtHR, 18 October 2000) [145]; *Achour v France* App no 67335/01 (ECtHR, 29 March 2006) [42].

⁴¹ *Kafkaris* (n 40) [139]; *Leyla Şahin v Turkey* [GC] App no 44774/98 (ECtHR, 10 November 2005) (‘*Leyla Şahin*’) [88].

⁴² *Demirtas* (n 32) [250]; *Párt* (n 32) [94]; *Delfi* (n 24) [120]-[122]; *Sunday Times* (n 24) [49]; GC34 (n 7) [25].

⁴³ *Satakunnan* (n 40) [144]; *Párt* (n 32) [98]; *Delfi* (n 24) [122]; *Kudrevičius and others v Lithuania* App no 37553/05 (ECtHR, 15 October 2015) [110].

⁴⁴ Facts [63].

⁴⁵ Facts [64].

⁴⁶ Facts [14].

⁴⁷ ‘Facebook Community Standards: Hate speech’ (Facebook) <<https://transparency.fb.com/en-gb/policies/community-standards/hate-speech/>> accessed on 22 November 2021.

statements of superiority or inferiority, expressions of contempt, disgust or dismissal, cursing, and calls for exclusion or segregation'.⁴⁸ The same is enumerated by Facebook.⁴⁹

[15] The legal consequences of one's action must be reasonably foreseeable.⁵⁰ However, they need not be foreseeable with absolute certainty, as the law cannot be excessively rigid and must be able to evolve with changing circumstances.⁵¹

[16] Due to CSP's general application over all Natter users and the peculiar challenges posed by hate speech,⁵² the lack of granularity is reasonable.⁵³ Any uncertainty arising from alternative interpretations are left to be determined by Sargon's courts.⁵⁴

[17] Hence, Section 4 of CSP is sufficiently precise.

b. Section 8 of CSP prohibits electoral disinformation

[18] Section 8 of CSP has two prongs. The first prohibits '*deliberate misrepresentation of the facts with regard to dates, locations, times, methods, and outcomes of elections, or*

⁴⁸ Facts [14].

⁴⁹ Facebook Community Standards: Hate speech (n 47) .

⁵⁰ *Gachechiladze v Georgia* App no 2591/19 (ECtHR, 22 October 2021) [46]; *Tambov-Inform* (n 32) [73]; *Konaté* (n 26) [126], [128]; *Sunday Times* (n 24) [49]; *Rekvényi* (n 30) [34]; *Kokkinakis v Greece* App no 14307/88 (ECtHR, 25 May 1993) ('*Kokkinakis*') [40]; *Delfi* (n 24) [121]; *Wingrove v UK* App no 17419/90 (ECtHR, 26 November 1996) ('*Wingrove*') [40]; *Editorial Board of Pravoye Delo and Shtekel v Ukraine* App no 33014/05 (ECtHR, 5 May 2011) ('*Editorial Board of Pravoye Delo and Shtekel*') [51]-[52]; *Dmitriyevskiy v Russia* App no 42168/06 (ECtHR, 3 October 2017) ('*Dmitriyevskiy*') [78]; *Umuhoza* (n 7) [136].

⁵¹ *Delfi* (n 24) [121]; *Lindon* (n 30) [41]; *Centro Europa 7 S.R.L. and Di Stefano v Italy* [GC] App no 38433/09 (ECtHR, 7 June 2012) ('*Centro Europa*') [141].

⁵² Iginio Gagliardone and others, *Countering Online Hate Speech* (UNESCO Publishing 2015) 13–15; *Öztürk* (n 30) [55].

⁵³ *Öztürk* (n 30) [55].

⁵⁴ *Delfi* (n 24) [127]; *Centro Europa* (n 51) [140]; *Gorzelik and Others v Poland* App no 44158/98 (ECtHR, 17 February 2004) [67]; *Busuioc* (n 7) [54]; *Otto-Preminger-Institut v Austria* App no 13470/87 (ECtHR, 20 September 1994) [45]; *Chorherr v Austria* App no 13308/87 (ECtHR, 25 August 1993) ('*Chorherr*') [25]; *Öztürk* (n 30) [55].

the eligibility of candidates at an election'.⁵⁵ The second prohibits calls for actions or aspirational statements '*advocating for violence due to voting, voter registration or the administration or outcome of an election*'.⁵⁶

[19] In essence, Section 8 takes aim at the growing prevalence of '*fake news*' which has come under heavy scrutiny by the EU Commission,⁵⁷ UN Special Rapporteurs,⁵⁸ and OSCE.⁵⁹ Since 2018, leading tech companies have signed the *EU Code of Practice on Disinformation* (i.e. Facebook, Google, Twitter, Microsoft and TikTok).⁶⁰ Aptly put by Věra Jourová (EU Vice President for Values and Transparency), the dangers of online disinformation are '*fast evolving*' and necessitates '*collective action to empower citizens and protect the democratic information space*'.⁶¹

[20] Naturally, the proliferation of '*fake news*' legislations are equally troubling as the concept of falsity is '*extraordinarily elusive*'⁶² and lacks any '*universally accepted definition*'.⁶³ National courts frequently strike down general legislations prohibiting

⁵⁵ Facts [14].

⁵⁶ Facts [14].

⁵⁷ EU Code of Practice on Disinformation (2018).

⁵⁸ Special Rapporteur 2021 (n 27) [1]-[5].

⁵⁹ UN Special Rapporteur on Freedom of Opinion and Expression and others, 'Joint Declaration on Freedom of Expression and "Fake News", Disinformation and Propaganda' (3 March 2017) ('**Joint Declaration 2017**').

⁶⁰ 'Code of Practice on Disinformation' (European Commission, 1 October 2021) <<https://digital-strategy.ec.europa.eu/en/policies/code-practice-disinformation>> accessed on 22 November 2021.

⁶¹ 'Commission presents guidance to strengthen the Code of Practice on Disinformation' (European Commission, 26 May 2021) <https://ec.europa.eu/commission/presscorner/detail/en/ip_21_2585> accessed on 22 November 2021.

⁶² Special Rapporteur 2020 (n 27) [42].

⁶³ Special Rapporteur 2021 (n 27) [9].

legislation as unconstitutional (e.g. Canada,⁶⁴ India,⁶⁵ Uganda,⁶⁶ Zambia,⁶⁷ Zimbabwe,⁶⁸ and Gambia⁶⁹). Similarly, recent laws prohibiting ‘fake news’ on COVID-19 (e.g. Russia,⁷⁰ Hungary,⁷¹ Azerbaijan,⁷² Romania,⁷³ Bosnia and Herzegovina,⁷⁴ and Armenia⁷⁵) have been strongly condemned.⁷⁶

[21] Nevertheless, any concern that Section 8 of CSP is vague,⁷⁷ arbitrary,⁷⁸ and susceptible

⁶⁴ *R v Zundel* [1992] 2 SCR 731; Criminal Code (RSC, 1985, c. C-46) (Canada), s 181.

⁶⁵ *Shreya Singhal v Union of India* (2013) 12 SCC 73; Information Technology Act 2000 (India), s 66A(b).

⁶⁶ *Charles Onyango Obbo and Anor v Attorney General (Constitutional Appeal 2 of 2002)* [2004] UGSC 81; Penal Code Act (Cap 120) (Uganda), s 50.

⁶⁷ *Chipenzi v The People* [2014] ZMHC 112; Penal Code Act (Cap 87) (Zambia), s 67.

⁶⁸ *Chavunduka v Minister of Home Affairs* [2000] JOL 6540; Law and Order (Maintenance) Act (Cap 11:07) (Zimbabwe), s 50(2)(a).

⁶⁹ *Gambia Press Union v Attorney General* SC Civil Suit No. 1/2014; *Federation of African Journalists (FAJ) and others v The Gambia* ECW/CCJ/JUD/04/18 (ECWCCJ, 13 March 2018); Criminal Code (Act no 25 of 1933) (Gambia), s 59.

⁷⁰ Federal Law on Amendments to the Criminal Code of the Russian Federation and Articles 31 and 151 of the Criminal Procedure Code of the Russian Federation (no 100-FZ of 1 April 2020) (Russia), art 1.

⁷¹ Criminal Code (Act 100 of 2012) (Hungary), s 337(2).

⁷² Law on Information, Informatization, and Protection of Information (Information Law) (3 April 1998) (amended by Law No. 30-VIQD on 17 March 2020) (Azerbaijan), art 13-2.

⁷³ Decree on the establishment of the state of emergency in the territory of Romania (no 195) (16 March 2020) (Romania), art 2.

⁷⁴ Decree on Spreading of Panic and False News in a State of Emergency (19 March 2020) (Republika Srpska); Decision on Prohibiting Spreading of Panic and Disorder (7 April 2020) (Republika Srpska).

⁷⁵ Decree on the State of Emergency (24 March 2020) (Armenia).

⁷⁶ Joint Declaration 2017 (n 59) [2(a)]; ‘Press freedom must not be undermined by measures to counter disinformation about COVID-19’ (Council of Europe Portal, 3 April 2020) <<https://www.coe.int/en/web/commissioner/-/press-freedom-must-not-be-undermined-by-measures-to-counter-disinformation-about-covid-19>> accessed on 22 November 2021.

⁷⁷ Joint Declaration 2017 (n 59) [2(a)]; Special Rapporteur 2020 (n 27) [49].

⁷⁸ *Editorial Board of Pravoye Delo and Shtekel* (n 50) [52]; *Kafkaris* (n 40) [140]; *Kablis v Russia* App nos 48310/16 and 59663/17 (ECtHR, 30 April 2019) [92], [97]; *Nepomnyashchiy v Russian Federation* Communication no 2318/2013 CCPR/C/123/D/2318/2013 (HRC, 17 July 2018) [7.7].

to abuse⁷⁹ is unfounded.

[22] *First*, Section 8 of CSP is narrowly focused on combatting voter interference or suppression during elections. It is common for States to enact such legislations, particularly against threats of use of force⁸⁰ and false information on candidates.⁸¹ Both Facebook⁸² and Twitter⁸³ have stringent policies on removal of false or misleading information on voting locations, eligibility, and outcomes.

[23] *Second*, the term ‘*deliberate misrepresentation*’ in Section 8 of CSP incorporates a strict *mens rea* requirement.⁸⁴ Contrastingly, a Canadian legislation prohibiting false statements on electoral candidates⁸⁵ was recently struck down as unconstitutional⁸⁶ due to the removal of the word ‘*knowingly*’ dispensing with proof of knowledge of falsity.⁸⁷

[24] Hence, Section 8 of CSP is sufficiently precise.

iii. Section 12 of RMSA provided sufficient judicial oversight over Natter’s discretion on content moderation

[25] Where a law grants discretion to competent authorities, the scope of such discretion and manner of its exercise must be indicated with sufficient clarity to give the individual

⁷⁹ Special Rapporteur 2020 (n 27) [40], [42].

⁸⁰ Election Offences Act 1954 (Act 5) (Malaysia), s 9(1).

⁸¹ Omnibus Election Code (Philippines), s 261(z)(11).

⁸² ‘Facebook’s Policies for Elections and Voting: What You Need to Know’ (Facebook, December 2020) <<https://about.fb.com/wp-content/uploads/2020/12/Facebooks-Policies-for-Elections-and-Voting.pdf>> accessed on 22 November 2021.

⁸³ ‘Civic integrity policy’ (Twitter) <<https://help.twitter.com/en/rules-and-policies/election-integrity-policy>> accessed on 22 November 2021.

⁸⁴ Facts [14].

⁸⁵ Elections Act (SC 2000, c. 9) (Canada), s 9(1).

⁸⁶ Charter of Rights and Freedom (Canada), s 2(b).

⁸⁷ *Canadian Constitution Foundation v Attorney General of Canada* 2021 ONSC 1224 [69], [71], [75].

adequate protection against arbitrary interference.⁸⁸

[26] Section 12 of RMSA requires social media platforms to establish a ‘*transparent and independent*’ oversight mechanism to curb ‘*hate speech, cyber-bullying, and religious extremism*’.⁸⁹ Sufficient safeguards ensure compliance with the rule of law.⁹⁰

[27] **First, independence** is secured by entrusting oversight to ‘*persons who are not paid employees of Natter, and who are reputed experts in relevant fields*’.⁹¹ Natter appointed five experts across different fields (law, media, religious studies, sociology, and technology) to sit on the NOC.⁹²

[28] **Second, due process** is secured by clear procedures. The NOC’s jurisdiction can be invoked in three ways: permanent blocking referral by senior reviewers, suspension appeal by users, and policy issue referral by Natter’s management.⁹³ Decisions are appealable to Sargon’s courts.⁹⁴

[29] **Third, transparency** is secured by NOC’s website accepting complaints⁹⁵ and

⁸⁸ *Demirtas* (n 42) [249]; *Párt* (n 32) [94]; *Navalnyy v Russia* [GC] App nos 29580/12, 36847/12, 11252/13, 12317/13 and 43746/14 (ECtHR, 15 November 2018) (*‘Navalnyy’*) [115]; *Roman Zakharov v Russia* App no 47143/06 (ECtHR, 4 December 2015) [230]; *Olsson v Sweden* App no 10465/83 (ECtHR, 24 March 1988) [61]; *Malone* (n 32) [67]; *Sanoma Uitgevers B.V. v The Netherlands* App no 38224/03 (ECtHR, 14 September 2010) (*‘Uitgevers’*) [82]; *Sunday Times* (n 24) [49]; *Tolstoy Miloslavsky v UK* App no 18139/91 (ECtHR, 13 July 1995) [37]; *Hasan* (n 31) [84]; *Maestri v Italy* App no 39748/98 (ECtHR, 17 February 2002) [83]; *Gillow v UK* App no 9063/80 (ECtHR, 24 November 1986) [51]; *Rotaru* (n 32) [52]; *Liu v Russia* App no 42086/05 (ECtHR, 6 December 2007) [56].

⁸⁹ Facts [21].

⁹⁰ *Kruslin* (n 32) [30]; *Malone* (n 32) [67]; *Big Brother Watch* (n 32) [305]; *Benedik* (n 32) [125]; *Tambov-Inform* (n 32) [73]; *Párt* (n 32) [93]; *Demirtas* (n 32) [249].

⁹¹ Clarifications [33].

⁹² Facts [23].

⁹³ Facts [24].

⁹⁴ Facts [26].

⁹⁵ Facts [24].

publishing all decisions.⁹⁶ Since new laws are bound to have an element of uncertainty,⁹⁷ such public database serves to elucidate obscure points and dispel doubts regarding the CSP.⁹⁸

[30] Hence, the RSMA does not vest Natter unfettered discretion on content moderation.

B. THE PERMANENT BLOCKING OF BOS PURSUED LEGITIMATE AIMS

[31] Freedom of expression may only be restricted for (i) the respect of rights or reputations of others, or (ii) protection of national security, public order, public health or public morals.⁹⁹ Such exceptions must be narrowly construed.¹⁰⁰

[32] For a restriction to be deemed necessary,¹⁰¹ it must correspond with a pressing social need.¹⁰² A direct and immediate connection between the expression and the threat must be established¹⁰³ by convincing and compelling evidence.¹⁰⁴

⁹⁶ Facts [25].

⁹⁷ *Savva Terentyev v Russia* App no 10692/09 (ECtHR, 28 August 2018) ('*Savva Terentyev*') [58]; *Dmitriyevskiy* (n 50) [82].

⁹⁸ *Öztürk* (n 30) [55]; *Jorgic v Germany* App no 74613/01 (ECtHR, 12 July 2007) [101].

⁹⁹ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 ('**ICCPR**'), art 19(3); GC34 (n 7) [23]; *Velichkin* (n 7) [7.3]; *Handyside* (n 7) [49].

¹⁰⁰ *Nemtsov v Russia* App no 1774/11 (ECtHR, 31 July 2014) ('*Nemtsov*') [72].

¹⁰¹ *Mouvement raëlien suisse v Switzerland* [GC] App no 16354/06 (ECtHR, 13 July 2012) [48]; *Animal Defenders International v UK* [GC] App no 48876/08 (ECtHR, 22 April 2013) ('*Animal Defenders International*') [100]; *Stoll v Switzerland* [GC] App no 69698/01 (ECtHR, 10 December 2007) ('*Stoll*') [101]; *Perinçek* (n 24) [196]; *Wingrove* (n 50) [53]; *Lyashko v Ukraine* App no 21040/02 (ECtHR, 10 August 2006) ('*Lyashko*') [47]; *Unabhängige Initiative Informationsvielfalt v Austria* App no 28525/95 (ECtHR, 26 February 2002) [35].

¹⁰² *Perinçek* (n 24) [196]; *Lingens* (n 7) [39]; *Mustafa Erdoğan and Others v Turkey* App nos 346/04 and 39779/04 (ECtHR, 27 May 2014) [34]; *Lyashko* (n 101) [47]; *Müller v Switzerland* App no 10737/84 (ECtHR, 24 May 1988) [32]; *Animal Defenders International* (n 101) [100]; *Iskra* (n 19) [106]; *Herrera-Ulloa v Costa Rica* Series C no 107 (IACtHR, 2 July 2004) ('*Herrera-Ulloa*') [122]; *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts 13 and 29 American Convention on Human Rights)* Series A no 5 (IACtHR, 13 November 1985) [46].

¹⁰³ GC34 (n 7) [35]; *Shin v Republic of Korea* Communication no 926/2000 CCPR/C/80/D/926/2000 (HRC, 16 March 2004) [7.2]; *Jong-Kyu Sohn* (n 23) [6.2]; *Adimayo M. Aduayom v Togo* Communication nos 422/1990 423/1990 and 424/1990 CCPR/C/55/D/422-424/1990 (HRC, 12 July 1996) [7.4].

¹⁰⁴ *Ouranio Toxo v Greece* App no 74989/01 (ECtHR, 20 October 2005) [36]; *Nemtsov* (n 100) [72]; *Makhmudov v Russia* App no 35082/04 (ECtHR, 26 July 2007) [64], [70].

[33] The permanent blocking of Bos from Natter pursued two legitimate aims.

[34] *First*, Article 20(2) of ICCPR prohibits ‘any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence’.¹⁰⁵ Similar to how laws enacted pursuant to Article 20(2) are permissible restrictions to Article 19,¹⁰⁶ Article 10(4) of Sargon’s Constitution stipulates that freedom of expression does not extend to ‘incitement of imminent violence’ and ‘advocacy of hatred’.¹⁰⁷ Ultimately, the overarching aim of hate speech laws is to protect vulnerable groups from deep-rooted discrimination¹⁰⁸ (e.g. ethnic minorities¹⁰⁹ and immigrants¹¹⁰). Such laws complement the principle of non-discrimination,¹¹¹ the protection of public order,¹¹² and right to life of others.¹¹³ *In casu*, banning Bos from Natter was necessary to protect Phi adherents from imminent harm.¹¹⁴

[35] *Second*, Article 25(b) of ICCPR guarantees every citizen’s right to vote and be elected

¹⁰⁵ *Gündüz v Turkey* App no 35071/97 (ECtHR, 14 June 2004) (‘*Gündüz*’) [40], [41]; *Jersild* (n 7) [30].

¹⁰⁶ GC34 (n 7) [48]; UNHRC, ‘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) A/HRC/22/17/Add.4 (‘**Rabat Plan of Action**’) [14]; UNHRC, ‘Report of the Special Rapporteur on freedom of religion or belief, Heiner Bielefeldt’ (23 December 2015) A/HRC/31/18 [57].

¹⁰⁷ Facts [67].

¹⁰⁸ CPRD (n 18), art 8(1)(b); UNHRC, ‘Report of the Special Rapporteur on freedom of religion or belief, Ahmed Shaheed’ (5 March 2019) A/HRC/40/58 [33]; *Savva Terentyev* (n 97) [76]; *Féret v Belgium* App no 15615/07 (ECtHR, 16 July 2009) (‘*Féret*’) [69]-[73], [78]; *Vejdeland and Others v Sweden* App no 1813/07 (ECtHR, 9 February 2012) (‘*Vejdeland*’) [54].

¹⁰⁹ *Soulas and Others v France* App no 15948/03 (ECtHR, 10 July 2008) [36]-[41]; *Féret* (n 108) [69]-[73], [78]; *Le Pen v France* App no 18788/90 (ECtHR, 20 April 2010) [1]; *Norwood v UK* App no 23131/03 (ECtHR, 16 November 2004) (‘*Norwood*’) 4.

¹¹⁰ *Balsytė-Lideikienė v Lithuania* App no 72596/01 (ECtHR, 4 November 2008) [78]; *Pavel Ivanov v Russia* App no 35222/04 (ECtHR, 20 February 2007) [1].

¹¹¹ ICCPR (n 99), art 26.

¹¹² Rabat Plan of Action (n 106) [14]; Special Rapporteur 2015 (n 106) [25].

¹¹³ UNHRC ‘Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, Frank La Rue’ (17 April 2013) A/HRC/23/40 [25]; *Delfi* (n 24) [48].

¹¹⁴ Facts [63].

at elections.¹¹⁵ A free and fair election is critical to reflect the free will of electors in their choice of representatives¹¹⁶ and facilitate peaceful transfer of political power.¹¹⁷ In the period preceding or during elections, restrictions may be imposed to secure the ‘free expression of the opinion of the people in the choice of the legislature’.¹¹⁸ *In casu*, banning Bos from Natter was necessary to protect the smooth running of the voting count and transition of presidency to Gen.¹¹⁹

C. THE PERMANENT BLOCKING OF BOS WAS PROPORTIONATE

[36] The principle of proportionality is embodied under Article 19(3) of the ICCPR¹²⁰ and Article 10(5) of Sargon’s Constitution.¹²¹ The permanent blocking of Bos from Natter was [i] supported by relevant and sufficient reasons;¹²² and [ii] proportionate to the

¹¹⁵ ICCPR (n 99), art 25(b); *Mohamed Nasheed v Maldives* Communication nos 2270/2013 and 2851/2016 CCPR/C/122/D/2270/2013, CCPR/C/122/D/2851/2016 (HRC, 4 April 2018) [8.6].

¹¹⁶ GC25 (n 21) [9]; Organization for Security and Co-operation in Europe (OSCE), ‘Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE’ (29 June 1990), art 5.1; Protocol to the ECHR (entered into force 1 November 1998), art 3.

¹¹⁷ ECOWAS Protocol on Democracy and Good Governance (adopted December 2001), art 1(b).

¹¹⁸ *Oran v Turkey* App nos 28881/07 and 37920/07 (ECtHR, 15 April 2014) [52]; *Bowman* (n 19) [43]; *Hirst v UK (no. 2)* [GC] App no 74025/01 (ECtHR, 6 October 2005) [81]; *TV Vest AS & Rogaland Pensjonistparti v Norway* App no 21132/05 (ECtHR, 11 December 2008) [67]; *Société de Conception de Presse et d’Édition and Ponson v France* App no 26935/05 (ECtHR, 5 March 2009) [57], [63].

¹¹⁹ Facts [64].

¹²⁰ GC34 (n 7) [34]; *Yashar Agazade and Rasul Jafarov v Azerbaijan* Communication no 2205/2012 CCPR/C/118/D/2205/2012 (HRC, 3 February 2017) [7.4]; *Mohamed Rabbae v the Netherlands* Communication no 2124/2011 CCPR/C/117/D/2124/2011 (HRC, 18 November 2016) (*‘Mohamed Rabbae’*) [10.4]; *Marques v Angola* Communication no 1128/2002 CCPR/C/83/D/1128/2002 (HRC, 29 March 2005) [3.9].

¹²¹ Facts [67].

¹²² *Uj v Hungary* App no 23954/10 (ECtHR, 19 July 2011) [25]-[26]; *Sapan v Turkey* App no 44102/04 (ECtHR, 8 June 2010) [35]-[41]; *Gözel and Özer v Turkey* App nos 43453/04 and 31098/05 (ECtHR, 6 July 2010) [58]; *Scharsach and News Verlagsgesellschaft mbH v Austria* App no 39394/98 (ECtHR, 13 November 2003) [46]; *Cheltsova v Russia* App no 44294/06 (ECtHR, 13 June 2017) [100]; *Mariya Alekhina and Others v Russia* App no 38004/12 (ECtHR, 17 July 2018) (*‘Alekhina’*) [264]; *Handyside* (n 7) [50]; *Lingens* (n 7) [40]; *Jersild* (n 7) [31]; *Zana v Turkey* App no 18954/91 (ECtHR, 25 November 1997) (*‘Zana’*) [51]; *Editorial Board of Pravoye Delo and Shtekel* (n 50) [49]; *Barfod v Denmark* App no 11508/85 (ECtHR, 22 February 1989) [28]; *Stoll* (n 101) [101]; *Uitgevers* (n 88) [81].

legitimate aims pursued.¹²³

i. Bos committed serious violations of CSP

[37] Bos was permanently blocked on Natter after committing serious violations of Sections 4¹²⁴ and 8¹²⁵ of CSP. A common thread underpins both violations. As observed by UN Special Rapporteur Irene Khan in 2021: ‘*Disinformation is often used to foment hatred and violence*’.¹²⁶ Similarly, Section 8(b) of CSP prohibits content ‘*advocating for violence*’ concerning ‘*the administration or outcome of an election*’.¹²⁷

[38] Concomitantly, the liability of Bos under both Sections 4 and 8 of CSP should be examined through the six factors identified in the *Rabat Plan of Action*¹²⁸ – the standard adopted by the CERD¹²⁹, UN Special Rapporteurs,¹³⁰ and ECtHR.¹³¹

a. Bos made coded calls for violence (Content and Form)

[39] The element of **content and form**¹³² refers to the substance of the ideas and information

¹²³ GC34 (n 7); *Animal Defenders International* (n 101) [105]; *Schweizerische Radio-und Fernsehgesellschaft SRG v Switzerland* App no 34124/06 (ECtHR, 21 June 2012) (*‘Fernsehgesellschaft’*) [56]; *Otegi Mondragon v Spain* App no 2034/07 (ECtHR, 15 March 2011) (*‘Otegi Mondragon’*) [49]; *Lyashko* (n 101) [47]; *Perna v Italy* App no 48898/99 (ECtHR, 25 July 2001) (*‘Perna’*) [38]; *Nikula v Finland* App no 31611/96 (ECtHR, 21 March 2002) (*‘Nikula’*) [47]; *Herrera-Ulloa* (n 102) [123].

¹²⁴ Facts [63].

¹²⁵ Facts [64].

¹²⁶ Special Rapporteur 2021 (n 27) [43].

¹²⁷ Facts [14].

¹²⁸ Rabat Plan of Action (n 106); Special Rapporteur 2021 (n 27) [43].

¹²⁹ CERD, ‘General Recommendation No 35 (Combating racist hate speech)’ (26 September 2013) CERD/C/GC/35 (*‘GR35’*) [15].

¹³⁰ UNGA, ‘Promotion and protection of the right to freedom of opinion and expression’ (9 October 2019) A/74/486 (*‘UNGA A/74/486’*) [14]; Special Rapporteur 2015 (n 106) [57].

¹³¹ *Savva Terentyev* (n 97) [66]; *Perinçek* (n 24) [204]-[206]; *Stomakhin v Russia* App no 52273/07 (ECtHR, 9 May 2018) [96].

¹³² Rabat Plan of Action (n 106) [29(d)].

expressed, as well as the style in which they are conveyed.¹³³ Hate speech is not confined to overtly explicit remarks, but may employ indirect language¹³⁴ and non-verbal expressions¹³⁵ (e.g. symbols,¹³⁶ images,¹³⁷ and behaviour at public gatherings¹³⁸). In short, hate speech can be embedded in ‘*coded language*’.¹³⁹

[40] Freedom of expression allows a degree of exaggeration or provocation.¹⁴⁰ Religious adherents are expected to tolerate denial by others of their religious beliefs and even the propagation of doctrines hostile to their faith.¹⁴¹

[41] Nevertheless, the threshold is crossed when the expression calls for violence¹⁴² or is capable of stirring up prejudice and upsetting religious peace.¹⁴³ Ultimately, the test is whether the expression attacks religious believers by attacking the religion’s sacred

¹³³ *Jersild* (n 7) [31]; *Oberschlick* (n 7) [57].

¹³⁴ *Karácsony and Others v Hungary* [GC] App nos 42461/13 and 44357/13 (ECtHR, 17 May 2016) (‘*Karácsony*’) [140]; *Demirtaş* (n 42) [245]; *Pastörs v Germany* App no 55225/14 (ECtHR, 3 January 2020) [38].

¹³⁵ GR35 (n 129) [7], [16]; EU: Council of the EU, ‘Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law’ (28 November 2008), art 1(b).

¹³⁶ *Nix v Germany* App no 35285/16 (ECtHR, 13 March 2018) (‘*Nix*’) [47].

¹³⁷ *Norwood* (n 109) 4.

¹³⁸ *Šimunić v Croatia* App no 20373/17 (ECtHR, 22 January 2019) [38], [44]-[45].

¹³⁹ *Kilin v Russia* App no 10271/12 (ECtHR, 11 May 2021) [73]; *Karastelev and Others v Russia* App no 16435/10 (ECtHR, 6 October 2020) [45]; European Commission against Racism and Intolerance, ‘ECRI General Policy Recommendation No 15 on Combating Hate Speech’ (adopted 8 December 2015) [15].

¹⁴⁰ *Mamère v France* App no 12697/03 (ECtHR, 7 November 2006) [25]; *Steel* (n 7) [90]; *Oberschlick* (n 7) [38]; *Bladet Tromsø and Stensaas v Norway* App no 21980/93 (ECtHR, 20 May 1999) (‘*Bladet*’) [59]; *Jersild* (n 7) [31]; *Konaté* (n 26) [155].

¹⁴¹ *Otto-Preminger-Institut* (n 54) [47]; *E.S. v Austria* App no 38450/12 (ECtHR, 25 October 2018) (‘*E.S.*’) [42]; *Aydin Tatlav v Turkey* App no 50692/99 (ECtHR, 2 May 2006) (‘*Aydin Tatlav*’) [27].

¹⁴² *Sürek v Turkey (no. 4)* App no 24762/94 (ECtHR, 8 July 1999) (‘*Sürek*’) [60]; *Erbakan v Turkey* App no 59405/00 (ECtHR, 6 July 2006) [56]; *Lindon* (n 30) [56]-[58]; *Otegi Mondragon* (n 23) [54]; *Vejdeland* (n 108) [55].

¹⁴³ *E.S.* (n 141) [57].

tenets (e.g. Prophet Mohamad of Islam).¹⁴⁴

[42] Bos's posts on the election night (4 June) were loaded with incendiary words:

Time	Bos's Posts	Imputation
12.00am	<i>'...the election has been undermined by undemocratic and extremist forces. STOP THE FRAUD!!!'</i> ¹⁴⁵	Gen's supporters are stereotyped as religious extremists
12.35am	<i>'The Election Commission now suspects that FRAUD has been committed...'</i> ¹⁴⁶	Gen's supporters are accused of voter fraud
1.05am	<i>'...They are going to let the religious extremists win. STOP THE PHRAUD! #PHINISHED!'</i> ¹⁴⁷	Gen's supporters are referred in terms derogatory against the Phi religion

[43] Moreover, manifestly untrue statements are not protected forms of expression,¹⁴⁸ especially those made in bad faith.¹⁴⁹ Bos's posts, when construed literally, implicate Phi adherents in manipulating the election outcome through fraud.

[44] Hence, Bos's posts amounted to a call for violence against Phi adherents.

¹⁴⁴ *Aydin Tatlav* (n 141) [28]; *İ.A. v Turkey* App no 42571/98 (ECtHR, 13 September 2005) [29].

¹⁴⁵ Facts [47].

¹⁴⁶ Facts [49].

¹⁴⁷ Facts [52].

¹⁴⁸ *Medžlis Islamske Zajednice Brčko and Others v Bosnia and Herzegovina* [GC] App no 17224/11 (ECtHR, 27 June 2017) [117]; *Garaudy v France* App no 65831/01 (ECtHR, 24 June 2003); *Giniewski v France* App no 64016/00 (ECtHR, 31 January 2006) [52]; *E.S.* (n 141) [55].

¹⁴⁹ *Kita v Poland* App no 57659/00 (ECtHR, 8 July 2008) [43]; *Kwiecień v Poland* App no 51744/99 (ECtHR, 9 January 2007) [54]; *Vides Aizsardzības Klubs v Latvia* App no 57829/00 (ECtHR, 27 May 2004) [46].

b. Bos was a highly influential political leader (Status)

[45] **Status** refers to the standing of the speaker in the context of the audience.¹⁵⁰ Speakers with a large following and clout attract stricter scrutiny, especially public figures.¹⁵¹

[46] During the election, Bos stood as incumbent President of Sargon and Leader of SNF.¹⁵² This put her on the same pedestal as former US President Trump of whom the Facebook Oversight Board deemed as enjoying a ‘*high position of trust*’ and ‘*high degree of influence*’ which ‘*not only imbued his words with greater force and credibility but also created risk that his followers would understand that they could act with impunity*’.¹⁵³

[47] Bos commanded a huge following on Natter (originally at 4 million).¹⁵⁴ Her social media influence increased rapidly in the days preceding the election – the television interview on 31 May¹⁵⁵ caused a spike of one million followers within 24 hours.¹⁵⁶

c. Bos’s posts were disseminated widely (Extent)

[48] **Extent** refers to the means of dissemination, and the size and magnitude of the audience.¹⁵⁷

[49] By election day (4 June), Bos had amassed a formidable following on Natter (5 million).¹⁵⁸ On election night, her posts at 12am and 12.35am went viral on Natter Matter due to widespread sharing – resulting to senior reviewers triggering an

¹⁵⁰ Rabat Plan of Action (n 106) [29(b)]; *Perinçek* (n 24) [234].

¹⁵¹ *Gündüz* (n 105) [43].

¹⁵² Facts [1].

¹⁵³ Case Decision 2021-001-FB-FBR (OB, 5 May 2021).30.

¹⁵⁴ Facts [30].

¹⁵⁵ Facts [34].

¹⁵⁶ Facts [35].

¹⁵⁷ Rabat Plan of Action (n 106) [29(e)].

¹⁵⁸ Facts [35].

algorithmic pause on both posts at 12.50am.¹⁵⁹

d. Bos posted at the peak of a tense election (Context)

[50] **Context** refers to the prevailing socio-political background.¹⁶⁰ Provocative speech uttered during a tense security situation or atmosphere of hostility risks exacerbating violence.¹⁶¹ Put simply, time and place is everything.¹⁶²

[51] The 4 June presidential election in Sargon was highly divisive along tribal lines. Phi adherents formed the majority of Sargon's population (60%), and mostly favoured DPS (Gen) over SNF (Bos).¹⁶³ Both presidential candidates focused their political campaign on sensitive social issues – Bos on restoring religious purity,¹⁶⁴ Gen on historical curricula reform.¹⁶⁵

[52] At the peak of a tightly contested election, Bos let loose a string of provocative posts on Natter.¹⁶⁶ By 11.45pm, Gen held a slim but comfortable lead (51%) with 80% votes counted.¹⁶⁷

¹⁵⁹ Facts [50].

¹⁶⁰ Rabat Action Plan (n 106) [29(a)]; *E.S.* (n 141) [50]; *Gündüz* (n 105) [43]-[49].

¹⁶¹ *Savva Terentyev* (n 97) [78].

¹⁶² *Hachette Filipacchi Associés v France* App no 71111/01 (ECtHR, 14 June 2007) [47]; *Perinçek* (n 24) [219]; *Lehideux and Isorni v France* App no 55/1997/839/1045 (ECtHR, 23 September 1998) ('*Lehideux and Isorni*') [55]; *Editions Plon v France* App no 58148/00 (ECtHR, 18 May 2004) [53]; *Monnat v Switzerland* App no 73604/01 (ECtHR, 21 September 2006) [64]; *Vajnai v Hungary* App no 33629/06 (ECtHR, 8 July 2008) [49]; *Orban and Others v France* App no 20985/05 (ECtHR, 15 January 2009) [52]; *Smolorz v Poland* App no 17446/07 (ECtHR, 16 October 2012) [38]; *Leroy v France* App no 36109/03 (ECtHR, 2 October 2008) [45].

¹⁶³ Facts [2].

¹⁶⁴ Facts [33].

¹⁶⁵ Facts [34].

¹⁶⁶ Facts [42]-[43].

¹⁶⁷ Facts [44].

[53] After Bos’s double posts in quick succession at 12am¹⁶⁸ and 12.45am,¹⁶⁹ a crowd started to gather outside the Election Commission headquarters.¹⁷⁰ At 1.00am, the Election Commission declared that there was no evidence of fraud and resumed vote-counting.¹⁷¹ Instead of backing down, Bos shot out a third post (‘*STOP THE PHRAUD! #PHINISHED!*’).¹⁷²

[54] The chronology of events neatly demonstrates how Bos’s posts increased in provocation as tension escalated.

e. Bos intended to incite the protestors (Intent)

[55] **Intent** requires more than mere negligence or recklessness.¹⁷³ The test is how the speaker’s immediate audience would reasonably interpret the post (objective), and not the speaker’s actual intent (subjective).¹⁷⁴

[56] It could be reasonably inferred that the deliberate misspelling of the word ‘PHRAUD’ was to direct hatred and hostility towards Phi adherents.¹⁷⁵

[57] Bos’s belated apology at 5pm on 5 June¹⁷⁶ came long after her third post (16 hours)¹⁷⁷ and Election Commission’s declaration of Gen as the election winner (8 hours).¹⁷⁸ Her

¹⁶⁸ Facts [47].

¹⁶⁹ Facts [49].

¹⁷⁰ Clarifications [56].

¹⁷¹ Facts [51].

¹⁷² Facts [52].

¹⁷³ Rabat Plan of Action (n 106) [29(c)]; UNGA A/74/486 (n 130) [14(c)]; Special Rapporteur 2019 (n 108) [34].

¹⁷⁴ *Nix* (n 136) [51]-[52]; *Tagiyev and Huseynov v Azerbaijan* App no 13274/08 (ECtHR, 5 March 2020) (‘*Tagiyev*’) [45], [48].

¹⁷⁵ Facts [52].

¹⁷⁶ Facts [56].

¹⁷⁷ Facts [54].

¹⁷⁸ Facts [55].

half-hearted apology that she ‘*may have inadvertently encouraged people to take law into their own hands*’ rings hollow in light of her demands for investigation ‘*into the composition of the Commission and possible religious prejudice at an institutional level*’.¹⁷⁹

[58] Ultimately, what matters is how Bos’s supporters would react towards her Natter posts. A clear-cut command to ‘*STOP THE PHRAUD!*’ accompanied with a photograph of protestors outside of the Election Commission headquarters¹⁸⁰ would likely be perceived as a call to escalate force against the electoral officials inside.

**f. Bos ought to have known the likelihood of imminent harm
(Imminence)**

[59] **Imminence** requires ‘*a reasonable probability that the speech would succeed in inciting actual action against the target*’.¹⁸¹

[60] Bos’s continual posting at the end of the vote count (even as protestors gathered at the Election Building headquarters) eerily resembles former US President Trump’s social media incitement during the US Capitol insurrection in January 2021.¹⁸²

‘The posts were made during a dynamic and fluid period of ongoing violence. There was a clear immediate risk of harm to life, electoral integrity and political participation. The violence at the Capitol started within an hour of the rally organised through the use of Facebook and other social media. Indeed, even as Mr Trump was posting, the rioters were

¹⁷⁹ Facts [56].

¹⁸⁰ Facts [52].

¹⁸¹ Rabat Plan of Action (n 106) [29(f)]; GR35 (n 129) [16]; *Jersild* (n 7) [14]; *Prosecutor v Nahimana et al* Case No ICTR-99-52-A (28 November 2007) (‘**Prosecutor**’) [720]; *Board of Trade v Owen* [1957] 1 All ER 411 [416]; Stefan Sottiaux, ‘Bad Tendencies’ in the ECtHR’s “Hate Speech” Jurisprudence’ 7(1) *European Constitutional Law Review* [62]-[63].

¹⁸² Case Decision 2021-001-FB-FBR (n 153) 31.

rampaging through the halls of Congress....’

[61] Any right-thinking person in the shoes of Bos would reasonably foresee¹⁸³ that violence would likely ensue from continually feeding the false narrative that Sargon’s presidency was ‘*stolen*’ by electoral fraud.¹⁸⁴

ii. *The permanent blocking of Bos was the least intrusive measure*

[62] Further, permanently blocking Bos on Natter was the least intrusive means to combat hate speech and electoral interference.¹⁸⁵

[63] *First*, Bos was investigated but eventually not charged of any crime¹⁸⁶ (despite Section 400 of Sargon’s Penal Code criminalising hate speech¹⁸⁷). Further, she has not been disqualified from running for future elections.¹⁸⁸ Hence, her delinquency has not attracted criminal sanctions, typically reserved as a measure of last resort.¹⁸⁹

[64] *Second*, Bos is not completely muzzled. There is no alternative social media platform as popular as Natter in Sargon.¹⁹⁰ Nevertheless, social media content ‘*does not have the same synchronicity or impact as broadcasted information*’ on traditional media (radio

¹⁸³ *McLeod v UK* App no 24755/94 (ECtHR, 23 September 1998) (‘**McLeod**’) [38]; *Alekhina* (n 122) [103].

¹⁸⁴ Case Decision 2021-001-FB-FBR (n 153) [8.1].

¹⁸⁵ *Lindon* (n 30) [45]; *Perna* (n 123) [39]; *Nikula* (n 123) [47]; *Lyashko* (n 101) [47]; *Animal Defenders International* (n 101) [105]; *Otegi Mondragon* (n 23) [49]; *Fernsehgesellschaft* (n 123) [56].

¹⁸⁶ Facts [57].

¹⁸⁷ Facts [22].

¹⁸⁸ *Zornić v Bosnia-Herzegovina* App no 3681/06 (ECtHR, 15 July 2014) [43]; *Podkolzina v Latvia* App no 46726/99 (ECtHR, 9 April 2002) [36].

¹⁸⁹ Rabat Plan of Action (n 129) [34]; *Malcolm* (n 23) [11.6]; UN Commission for Human Rights, ‘The Siracusa Principles on the Limitation and Derogation of Provisions in the ICCPR’ (1984) E/CN4/1985/4, principle 11; HRC, ‘General Comment No 22: Article 18 (Freedom of Thought, Conscience or Religion)’ (30 July 1993) CCPR/C/21/Rev.1/Add.4 [8]; GC34 (n 7) [34].

¹⁹⁰ Clarifications [63].

and television).¹⁹¹ This is borne out by Bos's followers on Natter increasing by 1 million due to a television interview,¹⁹² whereas her Natter posts had no discernible effect on her following. Absence from Natter would not seriously impair her political profile.

[65] *Third*, Natter's decision to ban Bos was made only after a series of violations of CSP.¹⁹³

The moderation team's initial response was measured and gradual – Bos's first and second posts were put on algorithmic pause,¹⁹⁴ and Bos's third post was removed due to multiple complaints.¹⁹⁵ Some electoral laws treat dissemination of disinformation capable of misleading voters as a ground of disqualification of candidacy.¹⁹⁶

[66] *Fourth*, Natter's decision serves as a powerful deterrence to irresponsible social media usage. Three other users were banned from Natter due to hate speech.¹⁹⁷ Banning Bos for the same violation – especially in more egregious circumstances – bears testament to Natter's commitment to transparency and independence,¹⁹⁸ without fear or favour towards politicians, consonant with the principle of non-discrimination.¹⁹⁹

¹⁹¹ *Animal Defenders International* (n 101) [100]; *Stoll* (n 101) [119].

¹⁹² Facts [34]-[35].

¹⁹³ Facts [54], [60], [63], [64].

¹⁹⁴ Facts [50].

¹⁹⁵ Facts [54].

¹⁹⁶ *Krasnov and Skuratov v Russia* App nos 17864/04 and 21396/04 (ECtHR, 19 July 2007) [51].

¹⁹⁷ Facts [25].

¹⁹⁸ Facts [21].

¹⁹⁹ ICCPR (n 99), art 26; *Actions pour la Protection des Droits de l'Homme (APDH) v Côte d'Ivoire* App no 001/2014 (ACtHPR, 18 November 2016) [142].

II. SARGON DID NOT VIOLATE DARL’S RIGHTS UNDER ARTICLE 19 READ WITH ARTICLE 25(B) OF THE ICCPR BY UPHOLDING NATTER’S DECISION TO REMOVE ALL HIS POSTS FROM 31 MAY TO 2 JUNE 2021

[67] From 31 May to 2 June 2021, Natter’s moderators removed 55 posts by Darl.²⁰⁰ Darl’s appeal against the removal was dismissed by the NOC²⁰¹ and Sargon’s Supreme Court.²⁰²

[68] Again, the compatibility of Sargon’s decision to uphold the removal with Article 19 read with Article 25(b) of ICCPR must be examined through the universal three-part test of legality, legitimacy, and proportionality.²⁰³

A. THE REMOVAL OF DARL’S POSTS WAS PROVIDED BY LAW

[69] The test of legality encompasses three aspects: [i] accessibility; [ii] sufficient precision; and [iii] rule of law.²⁰⁴

[70] Since Sargon’s treatment of Darl also fell within the ambit of Section 4 of CSP²⁰⁵ and Section 12 of RSMA,²⁰⁶ all previous arguments concerning Bos have equal force here.²⁰⁷ Supplemental arguments peculiar to Darl’s factual circumstances will be further

²⁰⁰ Facts [38].

²⁰¹ Facts [65]-[66].

²⁰² Facts [70].

²⁰³ See Memorial [5] above.

²⁰⁴ See Memorial [6] above.

²⁰⁵ Facts [65].

²⁰⁶ Facts [61].

²⁰⁷ See Memorial [7]-[30] above.

expounded.

i. Natter's CSP and Sargon's RSMA are accessible to Darl

[71] Darl is a social media influencer (400,000 followers on Natter)²⁰⁸ and prolific Natter user (55 posts within three days).²⁰⁹

[72] Hence, Darl would have been well-versed with Natter's CSP²¹⁰ and keenly aware of the enactment of RSMA in August 2020.²¹¹

ii. Section 4 of CSP and Section 12 of RSMA are formulated with sufficient precision

[73] The degree of sufficient precision to enable individuals to regulate their conduct²¹² and foresee the '*formalities, conditions, restrictions or penalties*' attached to such conduct²¹³ largely depends on the field that the law is designed to cover.²¹⁴

[74] Natter's CSP is a '*basic code of conduct*' which '*sets out what content is permitted and prohibited*'.²¹⁵ For every post removed,²¹⁶ Darl received a notification from Natter:

²⁰⁸ Facts [37].

²⁰⁹ Facts [38].

²¹⁰ Facts [13].

²¹¹ Facts [21].

²¹² GC34 (n 7) [25]; HRC, 'CCPR General Comment No 16: Article 17 (Right to Privacy), The Right to Respect of Privacy, Family, Home and Correspondence, and Protection of Honour and Reputation' (8 April 1988) [3]; *Uitgevers* (n 88) [82]; *Olafsson v Iceland* App no 58493/13 (ECtHR, 16 March 2017) [36]; *Chauvy v France* App no 64915/01 (ECtHR, 29 June 2004) ('*Chauvy*') [43]; *Lindon* (n 30) [41]; *Kokkinakis* (n 50) [40]; *Gaweda v Poland* App no 26229/95 (ECtHR, 14 March 2002) [39]; *Usón Ramírez v Venezuela* Series C no 207 (IACtHR, 20 November 2009) [56]-[57].

²¹³ *Editorial Board of Pravoye Delo and Shtekel* (n 50) [52]; *Kafkaris* (n 40) [140].

²¹⁴ *Lupsa v Romania* App no 10337/04 (ECtHR, 8 June 2006) ('*Lupsa*') [37]; *Editorial Board of Pravoye Delo and Shtekel* (n 50) [52]; *Centro Europa* (n 51) [142]; *Silver* (n 30) [88]; *Chorherr* (n 54) [25].

²¹⁵ Facts [13].

²¹⁶ Facts [38], [65].

*‘This post was removed due to violation of [Section 4] of [CSP]’.*²¹⁷

[75] Section 4 of CSP²¹⁸ is a hate speech provision closely identical in terms with Facebook’s Community Standards²¹⁹ (particularly, on the definitions of ‘*protected characteristics*’ and ‘*attack*’).²²⁰ As a social media influencer, Darl is expected to exercise a high degree of caution in undertaking his professional activities.²²¹ Guidance can be drawn from Facebook’s standards:

Term	Explanation and Examples
Dehumanising speech	Comparisons, generalisations or unqualified behavioural statements to or about <ul style="list-style-type: none">• Insects• Animals culturally perceived as intellectually or physically inferior• Filth, bacteria, disease and faeces• Sexual predator• Subhumanity• Violent and sexual criminals
Harmful stereotypes	Dehumanising comparisons that have historically been used to attack, intimidate or exclude specific groups, and often linked with offline violence

²¹⁷ Clarifications [50].

²¹⁸ Facts [14].

²¹⁹ See Memorial [13]-[14] above.

²²⁰ Facebook Community Standards: Hate speech (n 47).

²²¹ *Karácsony* (n 134) [125]; *Chauvy* (n 212) [43]-[45]; *Lindon* (n 30) [35]; *Satakunnan* (n 40) [145].

<p>Statements of inferiority</p>	<ul style="list-style-type: none"> • Physical deficiencies: hygiene (<i>e.g.</i> filthy) and physical appearance (<i>e.g.</i> ugly) • Mental deficiencies: intellectual capacity (<i>e.g.</i> stupid), education (<i>e.g.</i> illiterate), mental health (<i>e.g.</i> retarded) • Moral deficiencies: negative character traits (<i>e.g.</i> liar), derogatory terms (<i>e.g.</i> whore) • Other statements of inferiority: inadequacy (<i>e.g.</i> worthless), deviation (<i>e.g.</i> abnormal)
<p>Expressions of contempt, disgust, or dismissal</p>	<ul style="list-style-type: none"> • Contempt: Self-admission to intolerance on the basis of protected characteristics (<i>e.g.</i> homophobic, islamophobic), expressions that a protected characteristic shouldn't exist • Disgust: Expressions suggesting that the target causes sickness (<i>e.g.</i> vomit), expressions of repulsion or distaste (<i>e.g.</i> yuck) • Dismissal: Expressions of hate
<p>Cursing</p>	<ul style="list-style-type: none"> • Reference to genitalia (<i>e.g.</i> d**k) • Profanity (<i>e.g.</i> b***h)
<p>Exclusion</p>	<ul style="list-style-type: none"> • Explicit (expelling certain groups) • Political (denying the right to political participation) • Economic (denying access to economic entitlements) • Social (denying access to spaces)

[76] Aside from curbing hate speech, Section 12 of RMSA mandates Natter to curb ‘cyber-

bullying’ and *‘religious extremism’* without defining their scope.²²² Both activities are not criminalised under Sargon’s Penal Act.²²³ However, any vagueness in such terms are irrelevant. The jurisdiction of a supervisory court is *‘not to review domestic law in the abstract’* but rather *‘to determine whether the way in which it was applied to the applicant’*.²²⁴ *In casu*, NOC found Darl’s posts amounting to hate speech (*i.e.* promoting exclusion of Phi adherents and insinuating superiority of *‘returnees’*).²²⁵

[77] Hence, both Section 4 of CSP and Section 12 of RMSA are sufficiently precise.

iii. Section 12 of RSMA is compatible with the rule of law

[78] Compatibility with the rule of law²²⁶ requires governments to afford legal protection against arbitrary interference with freedom of expression,²²⁷ particularly by providing sufficient guidance to competent authorities charged with the execution of laws.²²⁸

[79] There is a disturbing trend of national laws granting broad discretionary powers to social media sites to remove content without judicial oversight (*e.g.* Russia,²²⁹

²²² Facts [21].

²²³ Facts [22].

²²⁴ *Perinçek* (n 24) [136]; *Navalnyy* (n 88) [121]; *Yumak and Sadak v Turkey* App no 10226/03 (ECtHR, 8 July 2008) [73]; *Herzberg v Finland* Communication no 61/1979 CCPR/C/OP/1 (HRC, 2 April 1982) [9.2].

²²⁵ Facts [65].

²²⁶ *Kruslin* (n 32) [30]; *Malone* (n 32) [67]; *Big Brother Watch* (n 32) [305]; *Benedik* (n 32) [125].

²²⁷ *Lupsa* (n 214) [34]; *Al-Nashif v Bulgaria* App no 50963/99 (ECtHR, 20 June 2002) [119]; *Uitgevers* (n 88) [82]; *Ahmet Yildirim v Turkey* App no 3111/10 (ECtHR, 18 December 2012) (*‘Ahmet Yildirim’*) [59]; *Hasan* (n 31) [84].

²²⁸ *Marina Kockish v Belarus* (24 July 2014) Communication no 1985/2010 CCPR/C/111/D/1985/2010 [8.5]; HRC, ‘Concluding Observations on Kyrgyzstan’s Initial Report’ (24 July 2000) CCPR/CO/69/KGZ [21]; Special Rapporteur 2021 (n 27) [40]; *Gooding v Wilson* 405 US 518 (1972) 522.

²²⁹ Federal Law on Information, Information Technologies and Information Protection (no 149 of 27 July 2006) (Russia).

Pakistan,²³⁰ and Kenya²³¹). As observed by UN Special Rapporteur Irene Khan, delegation of ‘*speech police*’ functions to intermediaries may result to excessive censorship by intermediaries erring at the side of caution and fearful of sanctions.²³²

Nevertheless, such concerns do not materialise here.

[80] *First*, the NOC consist of independent experts.²³³ The religious studies expert is a ‘*reputed and independent academic with expertise in Phi*’.²³⁴ Further, the NOC’s decisions are appealable to Sargon’s courts on constitutional grounds.²³⁵ Such *ex post facto* judicial review provides sufficient safeguards against bias²³⁶ and abuse.²³⁷

[81] *Second*, Section 12 of the RSMA merely imposes a fine of USD10,000²³⁸ on social media platforms failing ‘*to establish ‘transparent and independent’ oversight mechanisms to curb online hate speech*’.²³⁹ In stark contrast, Germany’s *NetzDG* law makes failure to removal of ‘*manifestly unlawful*’ content within 24 hours²⁴⁰ punishable by a maximum fine of €50 million.²⁴¹ Hence, the risk of ‘*collateral censorship*’²⁴² is

²³⁰ Citizens Protection (Against Online Harm) Rules 2020 (Pakistan), art 4.

²³¹ Guidelines for Prevention of Dissemination of Undesirable Bulk Political SMS and Social Media Content via Electronic Communications Networks 2017 (Kenya), art 13.

²³² Special Rapporteur 2021 (n 27) [58].

²³³ Facts [23].

²³⁴ Clarifications [59].

²³⁵ Facts [26].

²³⁶ Case Decision 2021-03-FB-UA (OB, 28 January 2021) [8.3(c)]; Article 29 Working Party, ‘Guidelines on Automated individual decision-making’ (adopted on 3 October 2017) 28.

²³⁷ *Ekin* (n 29) [61]; *Glas Nadezhda Eood and Elenkov v Bulgaria* App no 14134/02 (ECtHR, 11 October 2007) [46]; *Lupsa* (n 214) [34]; *Rotaru* (n 32) [55], [59].

²³⁸ Clarifications [4].

²³⁹ Facts [21].

²⁴⁰ Act to Improve Enforcement of the Law in Social Networks (Network Enforcement Act) (Germany), s 3(2).

²⁴¹ Network Enforcement Act (n 240), s 4(2).

²⁴² Jack Balkin, ‘Old-School/New-School Speech Regulation’ (2014) 127 Harvard Law Review 2296 2309; Giovanni Sartor, ‘Providers’ liabilities in the new EU Data Protection Regulation: A threat to Internet freedoms?’ (2013) 3 International Data Privacy Law 1 7; *Delfi* (n 24) (Joint Dissenting Opinion of Judges Sajó and Tsotsoria) [17]-[20].

minimal since Natter’s moderators are under no legal compulsion to remove content.

B. THE REMOVAL OF DARL’S POSTS PURSUED A LEGITIMATE AIM

[82] As previously canvassed, any restriction to freedom of expression must pursue a legitimate aim corresponding to a pressing social need.²⁴³ Whilst political speech may deserve heightened protection from censorship,²⁴⁴ the speaker cannot overstep the boundaries of protecting the rights of others.²⁴⁵

[83] Darl’s posts were removed for violating Section 4 of CSP.²⁴⁶ The decision to uphold the removal is consistent with Sargon’s constitutional framework and international obligations to prohibit advocacy of hatred under Article 20(2) of ICCPR.²⁴⁷

[84] Further, as the ultimate guarantor of religious pluralism, Sargon has a duty of neutrality and impartiality to ensure that conflicting religious groups co-exist and tolerate each other peacefully.²⁴⁸ Darl’s anti-Phi rhetoric was justifiably removed due to being antithetical to the spirit of mutual tolerance.²⁴⁹ This is analogous to Facebook’s removal of a user post describing Azerbaijanians as ‘tarziks’ (nomads without any history) against

²⁴³ See Memorial [32]-[33] above.

²⁴⁴ *Sürek* (n 142) [61]; *Lindon* (n 30) [46]; *Lingens* (n 7) [42]; *Castells* (n 7) [43]; *Wingrove* (n 50) [58]; *Axel Springer AG v Germany* App no 39954/08 (ECtHR, 7 February 2012) [90]; *Bladet* (n 140); *Perinçek* (n 24) [83]; *Sergey Kuznetsov v Russia* App no 10877/04 (ECtHR, 23 October 2008) [47]; *Bédat v Switzerland* App no 56925/08 (ECtHR, 29 March 2016) [49].

²⁴⁵ *Steel* (n 7) [90]; *Constantinescu v Romania* App no 28871/95 (ECtHR, 27 June 2000) [72]; *News Verlagsgesellschaft mbH v Austria* App no 39394/98 (ECtHR, 13 November 2003) [26]; *Oberschlick* [29]; *Otegi Mondragon* (n 123) [54].

²⁴⁶ Facts [65].

²⁴⁷ See Memorial [35] above.

²⁴⁸ *Leyla Şahin* (n 41) [107]-[108]; *Sinan Isik v Turkey* App no 21924/05 (ECtHR, 2 February 2010) (‘*Sinan Isik*’) [45]; *Manoussakis and Others v Greece* App no 18748/91 (ECtHR, 26 September 1996) [47]; *Metropolitan Church of Bessarabia and Others v Moldova* App no 45701/99 (ECtHR, 13 December 2001) [123]; *Kokkinakis* (n 50) [33]; *S.A.S. v France* App no 43835/11 (ECtHR, 1 July 2014) [123]-[128]; *Refah Partisi* (n 29) [94].

²⁴⁹ *Sinan Işık* (n 248) [45]; *Serif v Greece* App no 38178/97 (ECtHR, 14 December 1999) [53]; *Platform “Ärzte Für Das Leben” v Austria* App no 10126/82 (ECtHR, 21 June 1988); *Otto-Preminger-Institut* (n 54) [52]; *Wingrove* (n 50) [48].

the long-standing feud between Azerbaijan and Armenia over the enclave of Nagornon-Karabakh.²⁵⁰

[85] Hence, the removal of Darl’s posts pursued two legitimate aims.²⁵¹

C. THE REMOVAL OF DARL’S POSTS WAS PROPORTIONATE

[86] The proportionality analysis is two-fold: [i] relevancy and sufficiency of legal basis for removal (hate speech); and [ii] exhaustion of other least intrusive measures.²⁵²

i. Darl advocated hatred against Phi adherents

[87] The determination of whether Darl’s posts constitute hate speech turns upon the universal six-part test of the *Rabat Plan of Action*.²⁵³

a. Darl made coded calls of hostility (Content and Form)

[88] **Content** refers to the style and substance of ideas disseminated.²⁵⁴ Darl resorted to vulgar and derogatory terms calculated to insult and humiliate Phi adherents amounting to ‘*wanton denigration*’ rising to the level of hatred.²⁵⁵

[89] Although couched in cryptic allegorical terms,²⁵⁶ the meaning behind the hashtags #Phinished and #WeWereHereFirst in Darl’s 55 Natter posts between 31 May and 2 June 2021²⁵⁷ would be self-evident to any Sargon citizen – that the true natives of

²⁵⁰ Case Decision 2020-003-FB-UA (n 29).

²⁵¹ ICCPR (n 99) arts 20(2) and 25(b).

²⁵² See Memorial [37] above.

²⁵³ See Memorial [25]-[26] above.

²⁵⁴ *Savva Terentyev* (n 97) [39]; *Jersild* (n 7) [31].

²⁵⁵ *Savva Terentyev* (n 97) [68]; *Párt* (n 32) [76]; *Skalka v Poland* App no 43425/98 (ECtHR, 27 May 2003) [34].

²⁵⁶ *Karataş v Turkey* [GC] App no 23168/94 (ECtHR, 8 July 1999) [49]-[52].

²⁵⁷ Facts [38].

Sargon are the ‘*returnees*’ rather than Phi adherents.²⁵⁸ Such alternative historical narrative is devoid of archaeological proof and finds tenuous support in historians’ subjective interpretation of ‘*historical texts and oral tradition*’.²⁵⁹

[90] Darls’ contempt and disgust against Phi adherents is evinced by the venomous rhetoric: ‘*Do we look away when these Phaithful interlopers harm women and children*’.²⁶⁰ Phi adherents are colloquially known as ‘phaithful’.²⁶¹ Such strong innuendo against Phi adherents engaging in violence or abuse is highly degrading.²⁶²

b. Darl had high social media influence (Status)

[91] **Status** refers to the speaker’s standing relative to the target audience.²⁶³ In *Mahi*, public statements inciting violence by a teacher being a symbol of authority to young impressionable students was deemed punishable by law.²⁶⁴

[92] Darl’s rise to prominence is reflected by his activities on Natter:²⁶⁵

- (a) A total of 400,000 followers on Natter;
- (b) Self-styled ‘Proud Returnee’ in the profile;
- (c) Often posts original content with the hashtags #Phinished and #WeWereHereFirst; and

²⁵⁸ Facts [6].

²⁵⁹ Facts [5].

²⁶⁰ Facts [38].

²⁶¹ Facts [2].

²⁶² *E.S.* (n 141) [53]-[54].

²⁶³ Rabat Plan of Action (n 106) [29]; *Perinçek* (n 24) [234]; *Gündüz* (n 105) [43]; *Refah Partisi* (n 29) [115]; *Zana* (n 122) [50]; *Ojala and Etukeno Oy v Finland* App no 69939/10 (ECtHR, 14 January 2014) [52]; *Almeida Leitão Bento Fernandes v Portugal* App no 25790/11 (ECtHR, 12 June 2015) [51]-[52]; *Petrenco v Moldova* App no 20928/05 (ECtHR, 4 October 2010) [60].

²⁶⁴ *Mahi v Belgium* App no 57462/19 (ECtHR, 7 July 2020) [31]-[32].

²⁶⁵ Facts [37].

(d) Posts regularly featured on Natter Matter due to popularity.

[93] Hence, Darl wields a high degree of authority, influence, and credibility amongst the ‘returnees’ in Sargon.²⁶⁶

**c. Darls’ posts were widely disseminated on Natter
(Extent)**

[94] **Extent** refers to the size and magnitude of the audience.²⁶⁷ The Internet provides an unprecedented platform that amplifies speech.²⁶⁸ Concomitantly, online hate speech can disseminate more rapidly and widely, and persistently remain online, far superseding the reach of traditional press.²⁶⁹

[95] Natter is the most popular social media platform in Sargon²⁷⁰ without any comparable peer.²⁷¹ Natter has the highest reach on both social media and mainstream media.²⁷²

[96] The recurring appearance of Darl’s posts on Natter Matter amplifies their reach.²⁷³ Indeed, even Darl’s radio silence speaks volume of his impact. The disappearance of Darl’s posts²⁷⁴ and profile²⁷⁵ had attracted the attention and sympathy of Bos.²⁷⁶

[97] Hence, if left unrestrained, Darl’s frenetic posting on Natter is likely to reverberate

²⁶⁶ Case Decision 2021-001-FB-FBR (n 153) 30.

²⁶⁷ Rabat Plan of Action (n 106) [29(e)].

²⁶⁸ *Ahmet Yildirim* (n 227) [48]; *Times Newspaper Ltd v UK (nos 1 and 2)* App nos 3002/03 and 23673/03 (ECtHR, 10 March 2009) [27].

²⁶⁹ *Delfi* (n 24) [110]; *Editorial Board of Pravoye Delo and Shtekel* (n 50) [63]; *Párt* (n 32) [62].

²⁷⁰ Facts [7].

²⁷¹ Clarifications [63].

²⁷² Facts [7].

²⁷³ Facts [37].

²⁷⁴ Facts [38].

²⁷⁵ Facts [39].

²⁷⁶ Facts [40].

throughout Sargon during the election.

d. Darl's posts were deliberately timed to influence voters during the election (Context)

[98] **Context** refers to the timing and placement of the publication.²⁷⁷

[99] In the week leading up to the presidential election, Darl posted 55 times on Natter with the hashtag #VoteBos in a span of just three days.²⁷⁸ Such posts included the hashtags #Phinished and #WeWereHereFirst interchangeably.²⁷⁹

[100] Most significantly, Darl's posts coincided with Bos's television interview on 31 May denouncing Gen for weaponising religion, proposing to abolish teachings on Phi from public schools, and pledging to reform Sargon's history curricula.²⁸⁰

[101] Hence, Darl's quick-fire posting between 31 May and 2 June lit a '*spark in a powder keg*'²⁸¹ culminating to Bos's explosive rants on election night.²⁸²

e. Darl intended to incite hostility against Phi adherents (Intent)

[102] **Intent** refers to deliberation to incite hostility, discrimination, or violence.²⁸³

[103] From an objective viewpoint,²⁸⁴ Darl's posts served the dual purpose of promoting Bos in the election (#VoteBos) whilst championing the superiority of '*returnees*' over Phi

²⁷⁷ See Memorial [51] above.

²⁷⁸ Facts [27], [38].

²⁷⁹ Facts [38].

²⁸⁰ Facts [34].

²⁸¹ *S. Rangarajan v P.J. Ram* [1989] (2) SCR 204 226.

²⁸² Facts [53]-[55].

²⁸³ *Rabat Plan of Action* (n 106) [29]; *Perinçek* (n 24) [232]-[233]; *Nachova and Others v Bulgaria* App nos 43577/98 and 43579/98 (ECtHR, 6 July 2005) [160]; *Jersild* (n 7) [35].

²⁸⁴ *Nix* (n 136) [51]-[52]; *Tagiyev* (n 174) [45], [48].

adherents (#WeWereHereFirst and #Phinished).²⁸⁵

f. Darl ought to have known the likelihood of imminent harm (Imminence)

[104] **Imminence** refers to the likelihood of hostility ensuing.²⁸⁶ Since incitement is an inchoate crime, it is immaterial that Darl's posts did not immediately result to actual hostility inflicted upon Phi adherents (online or offline).²⁸⁷ The test is of '*reasonable probability*' of hostility occurring.²⁸⁸

[105] There is an indirect but sufficient nexus between Darl's posts and the tragic events unfolding on election night. Bos's supporters who protested violently outside the Election Commission headquarters wore t-shirts and caps with the slogan 'Phinished!'.²⁸⁹ Bos's third (and most explosive post) climaxed with a crashing crescendo: '*STOP THE PHRAUD! #Phinished!*'.²⁹⁰

[106] Hence, Darl's deliberate choice of hashtags had materialised into '*fighting words*'.²⁹¹

ii. The removal of Darl's posts was the least intrusive measure

[107] Lastly, restrictions to freedom of expression must be proportionate to achieve their

²⁸⁵ *Dink v Turkey* App no 2668/07 (ECtHR, 14 September 2010) [135]; *Chauvy* (n 212) [69]; *Lehideux and Isorni* (n 162) [55].

²⁸⁶ *Rabat Plan of Action* (n 106) [29(f)]; *McLeod* (n 183) [38]; *Alekhina* (n 122) [103].

²⁸⁷ *Rabat Plan of Action* (n 106) [29(f)]; Wibke Kristin Timmermann, 'Incitement in international criminal law' (2006) 88(864) *International Review of the Red Cross* <https://international-review.icrc.org/sites/default/files/irrc_864_6_0.pdf> accessed on 22 November 2021.

²⁸⁸ *Rabat Plan of Action* (n 106) [29(f)]; GR35 (n 129) [16]; *Jersild* (n 7) [14]; *Prosecutor* (n 181) [720]; Stefan Sottiaux, 'Bad Tendencies' in the ECtHR's "Hate Speech" Jurisprudence' 7(1) *European Constitutional Law Review* [62]-[63]; *Board of Trade* (n 181) [416].

²⁸⁹ Facts [51].

²⁹⁰ Facts [52].

²⁹¹ *Chaplinsky v New Hampshire* 315 US 568 (1942) 572; *NAACP v Claiborne Hardware Co.* 458 US 886 (1982) 927; *R.A.V. v City of St. Paul* 505 US 377 (1992) 382; *Coleman v Power* [2004] 220 CLR 1 13.

protective function²⁹² and employ the least intrusive measure.²⁹³

[108] *First*, no criminal charge or investigation was brought against Darl under Section 400 of the Penal Act which criminalises hate speech.²⁹⁴ This is consistent with Sargon’s margin of discretion under Article 20(2) of ICCPR, to convict or not to convict perpetrators of hate speech according to the specific context of each case.²⁹⁵

[109] *Second*, Natter merely resolved to remove all posts by Darl containing the two incriminating hashtags.²⁹⁶ Contrary to Darl’s assertion,²⁹⁷ such removal did not have the same effect as suspension since Darl retained the ability to create new posts, follow other users, and view or like other users’ posts²⁹⁸ (whereas a suspended user cannot access their profile entirely²⁹⁹). On 2 June, two days before election, Darl voluntarily deactivated his profile.³⁰⁰

[110] All in all, Darl was let off the hook rather lightly despite playing with fire.

²⁹² UNHRC, ‘General Comment No 31 [80], The Nature of the General Legal Obligation Imposed on State Parties to the Covenant’ (26 May 2004) CCPR/C/21/Rev.1/Add.3 [6].

²⁹³ *Smith and Grady v UK* App nos 33985/96 and 33986/96 (ECtHR, 27 September 1999) [102]; *Szuluk v UK* App no 36936/05 (ECtHR, 3 June 2009) [19]; *Kimel v Argentina* Series C no 177 (IACtHR, 3 May 2008) [74]; *R v Oakes* [1986] 1 SCR 103, [70]; *Bank Mellat v HM Treasury* [2013] UKSC 39, [20]; William Schabas, *The European Convention on Human Rights: A Commentary* (2nd edn OUP 2017) 406.

²⁹⁴ Facts [22], [47].

²⁹⁵ *Mohamed Rabbae* (n 120) [10.5]-[10.7].

²⁹⁶ Facts [38].

²⁹⁷ Facts [61].

²⁹⁸ Facts [8].

²⁹⁹ Clarifications [41].

³⁰⁰ Facts [39].

PRAYER

For the foregoing reasons, the Respondent respectfully requests this Honourable Court to adjudge and declare the following:

- I. Sargon did not violate 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.
- II. Sargon did not violate 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,

709R,

Counsel for Respondent.