
THE 2023-2024 MONROE E. PRICE
INTERNATIONAL MEDIA LAW MOOT COURT COMPETITION

Una and OneAI

(*Applicants*)

v.

Cero

(*Respondent*)

MEMORIAL FOR APPLICANTS

Word Count for Arguments Section: 4,994

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II. 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**
AfCHPR	**African Court on Human and Peoples' Rights**
AI	**Artifical Intelligence**
CC	**Constitutional Court of Cero**
Clarifications	**The 2023/2024 Price Media Law Moot Court Clarification Answers**
Compromis	**The 2023/2024 Price Media Law Moot Court Competition Case**
Constitution	**The Constitution of Cero**
Court	**The Chamber of the Universal Court of Human Rights known as The Universal Freedom of Expression Court**
CTA	**Counter-Terrorism Act of Cero**
DRC	**Digital Regulatory Commission**
DSA	**Digital Safety Act of Cero**
ELA	**Enos Liberation Army**
ERW	**Enos Rights Watch**
ECHR	**European Convention on Human Rights**
ECtHR	**European Court of Human Rights**
FoE	**Freedom of Expression**

HC	**High Court of Cero**
IACmHR	**Inter-American Commission on Human Rights**
IACtHR	**Inter-American Court of Human Rights**
ICCPR	**International Covenant on Civil and Political Rights**
OHCHR	**Office of the High Commissioner for Human Rights**
OSCE	**Organisation for Security and Co-operation in Europe**
OAS	**Organisation of American States**
the alleged attack	**the detoniation at a Cerovian weapons manufacturing facility on the morning of 18 March 2023**
the Post	**Una's 11.00 AM Facebook post on 17 March 2023**
UDHR	**Universal Declaration of Human Rights**
UN	**United Nations**
UNGA	**United Nations General Assembly**
UNHRC	**United Nations Human Rights Council**
UNTS	**United Nations Treaty Series**

III. LIST OF SOURCES, AUTHORITIES

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IACmHR, 'Freedom of Expression and the Internet' (2013) OEA/SER L/II CIDH/RELE/IN F11/13	54, 77
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IACtHR 'Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism' (13 November 1985) Advisory Opinion OC. 5/85 Series A No 5	56, 76
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IV. STATEMENT OF RELEVANT FACTS

Cero

1. Cero is a country with a population of approximately 50 million people, which has recorded its highest-ever economic growth in 2022 and became the first 'high income' nation in its region. Cero's successful technology and arms manufacturing industries are widely credited for this rapid economic growth.[1]

2. Cero's Constitution recognises the right to freedom of expression (Article 9) and sets out when a restriction is permissible: if it is provided by law and necessary for: respect the rights or reputations of others; protection of public order or public health; or protecting national, regional, or international peace and security.

3. The Constitution also sets out duties and responsibilities for everyone – meaning both legal and natural persons (Article 20) – towards their family and society, the state, and the international community (Article 19). The Constitution also provides remedies for the infringement of constitutional rights (Article 21) and compliance with international law (Article 22).[2]

4. In 2018, Cero enacted the Digital Safety Act to, among other objectives, regulate the use of social media and the offering of social media services within Cero. Digital Safety Act defines an offence for encouraging others on any digital device or social media platform to commit, prepare, or instigate acts of terrorism and specifies its liability system and penalties that can be imposed (Section 28).[3] The Digital Safety Act also

[1] Compromis 1.

[2] Compromis 2-4.

[3] Compromis 5.

establishes the Digital Regulatory Commission, which is empowered to monitor and receive complaints on the possible violations of Digital Safety Act and is authorised to prepare a report, and then forward it to the law enforcement authorities for appropriate legal action (Section 77).[4] Digital Safety Act determines 'terrorism' and 'glorification' too (Section 100).[5]

OneAI

5. Cero is home to OneAI, a technology company that has developed some of the most sophisticated AI programs in the world. On 1 January 2022, OneAI launched a beta-version of a new opensource AI tool called RMSM ('run-my-social-media'), which is designed to automatically generate content on behalf of its user and can be plugged into social media.[6]

6. The RMSM tool requires training through several steps. First, it requires the user to answer 40 questions related to the user's habits, preferences, economic, social and political views, and cultural background. Then, for a three-month period, the tool monitors and analyses the user's social media activity. Finally, it makes post-suggestions to the user. At the beta stage, the content is posted only if the user approves the content. However, the RMSM tool does not prevent a user from posting directly; when such posts are made, it continues to learn from the user's behaviour.[7] Approved suggested contents appear on social media with a 'suggested' label, but the user can

[4] Compromis 6.

[5] Compromis 7.

[6] Compromis 8.

[7] Compromis 9.

deselect this option.[8] A ‘settings’ button on the RMSM application permits a user to control the frequency themes and topics on which the user would like RMSM to make and schedule ‘suggestions’. A user can deselect this option, choosing not to label ‘suggested’ content as such. In late 2021, after two years of negotiating, OneAI entered into agreements with all the major tech companies to permit this beta version of RMSM to be used on their platforms as a plug-in. OneAI demonstrated that 99.3% of its AI-generated content complied with the relevant community standards of the platform on which the content was posted and claimed that this percentage would improve to 100% when it launched its market version. RMSM beta-version was launched on 1 January 2022 and became popular on 1 December 2022, OneAI announced the launch of the market version on 1 January 2023, with a USD 9.99 / month payment, 80% of 1M beta users subscribed to paid service.[9]

7. In the market version, the RMSM tool is able to autogenerate content and post it without prior approval from the user; OneAI claimed that this content is 100% compliant with the community standards of the social media platform. Users could access the RMSM settings to control the frequency of ‘autogenerated’ content, list preferences for themes and topics on which the user would like RMSM to produce ‘autogenerated’ content, and schedule such content. Autogenerated content also has a label, but it can be opted out. In summary, each user has three options: to select ‘suggested’ posts, or ‘autogenerated’ posts option, or to post directly.[10]

[8] Compromis 10.

[9] Compromis 11-12.

[10] Compromis 13-14.

Una

8. Una is a Cerovian model and social media influencer, Cero's Most Influential Person in 2022, with 13 million Instagram (6 million is from Cero) and 4 million Facebook (2 million is from Cero) followers, who became popular from producing short videos on fashion, culture, and tourist destinations in Cero. She has several endorsement contracts with luxury brands. Una regularly posts on political issues such as women's rights, and LGBTQIA+, and she is a vocal critic of arms trade. She makes close to USD 200,000 / month through her online engagements.[11]

9. Una began using the RMSM beta version from its release – at that time, 40% of her content was suggested by RMSM, Una opted out of the labelling. Then, on 1 January 2023, she subscribed to the market version, and on 15 January, she decided to select the 'autogenerate' option. She added themes such as 'fashion', 'luxury', 'Women's rights', 'LGBTQIA+', 'Anti-war' and 'Anti-guns' to her preferences. She also opted out labelling, so her followers could not differentiate between her own posts and the autogenerated contents.[12]

10. Over the next few months, Una closely monitored the 'autogenerated' posts on her social media feeds and was satisfied that they captured her preferences. She scheduled one 'autogenerated' post on Instagram at 9.00 AM every day and one 'autogenerated' post on Facebook at 11.00 AM every day. The 'autogenerated' posts ensured that Una's Instagram feed was regularly featuring the hotel and its facilities.[13]

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[11] Compromis 15.

[12] Compromis 16-17.

[13] Comrpomis 18.

Enos

11. Enos is a low-income country with a population of approximately 20 million and shares a border with Cero. Since 2012 Enos has experienced a brutal armed conflict between the Enosian military and an armed rebel group (Enosian Liberation Army, ELA). The Enosian government has described ELA as a 'terrorist organisation'; on the contrary, the rebels claim that they are 'fighting for democracy' and enjoy notable support – according to a nationwide survey carried out in 2020 by Enos Polls 40% – among the Enosian population.[14]

12. Additionally, the current government in Cero maintains good relations with the Enosian government. In 2020, due to the Regional Defence Pact signed by the two counties, Cero remained Enos's largest supplier of defence technology and military equipment, despite Cerovian habitants sympathising with ELA's cause and ceasefire. In light of these, Cero has not designated ELA as a terrorist organisation under its Counter-Terrorism Act.[15]

13. In early March 2023, the fighting intensified, and on 10 March, the rebels retreated to the coastal Enosian town of Naut. Then they got surrounded by the Enosian military, which began to use heavy artillery fire to force the rebels to surrender – most of these weaponry were obtained from Cero.[16] By mid-March, around 25,000 Enosian civilians from Naut were trapped alongside the rebels. Reports, photographs and videos showing dead and injured civilians circulated on social media. Supporters of ELA used this handle to call on the international community to intervene and stop 'war crimes'

[14] Compromis 19.

[15] Compromis 20.

[16] Compromis 21.

perpetrated by the Enosian military. Conversely, the Enosian government maintained that the military was adopting a 'zero civilian casualty' policy and that any collateral damage to civilian targets was purely due to ELA's policy of intermingling with civilians and using civilians as 'human shields'.[17]

14. In parallel with all this, social media users in Cero called on the Cerovian government to intervene and negotiate a ceasefire to end the 'humanitarian crisis'. Some users also criticised the Cerovian government for selling weapons to the Enosian government and called them to cease all military ties with Enos.[18]

15. On the morning of 14 March, Una posted a video of herself f on Instagram calling for a ceasefire in Naut. Una used several hashtags. The post went viral, and some of those who shared the post used the additional hashtag #✊Ela – this '✊' emoji is often associated with solidarity. Then, on 16 March, while the situation in Naut worsened, Enos Rights Watch, a reputed non-governmental organisation based in Enos, claimed that 'unofficial estimates' of the civilian death toll was around three thousand. The report prompted another wave of social media posts in Cero, and some users began to use the term 'genocide' to describe the crisis.[19] Later that day, Una posted a picture of herself on both Instagram and Facebook with the caption: 'The genocide must stop!' with several hashtags including #✊Ela. The post went viral and was shared by

[17] Compromis 22.

[18] Compromis 23.

[19] Compromis 24-25.

thousands of followers using the same hashtags. None of Una's content relating to Naut was removed by Instagram or Facebook.[20]

16. At 9.00 AM on 17 March 2023, the RMSM feature on Una's Instagram handle autogenerated and published a post with a picture of her and the caption: 'Stop the genocide! #💚Naut #StopArmingEnos #✊Ela'. Una reviewed this published post at around 9.35 AM and retained it on her feed.[21]

The Controversial Post

17. Then, at 11.00 AM on 17 March, the RMSM feature on Una's Facebook page autogenerated and published the following post: 'The genocide must stop! I stand in solidarity with ELA. #💚Naut #StopArmingEnos #✊Ela'. While the Post was liked and shared by many users, it also encountered some negative comments, as some users commented that Una was supporting 'terrorists'. Una was not active on Facebook between 10.45 AM and 12.15 PM because she travelled and had poor mobile phone service reception. Then, at around 12.15 PM, Una reviewed the Post and deleted it due to backlash. After that, Una did not post any further content on social media related to the Enosian crisis.[22]

18. The next morning, Cero National Network reported that 'unidentified saboteurs' had detonated a small bomb at a Cerovian weapons manufacturing facility close to the border with Enos, causing an explosion at around 2.00 AM.[23] Cerovian Ministry of

[20] Compromis 26.

[21] Compromis 27.

[22] Compromis 28.

[23] Compromis 29.

Defence claimed that initial investigations pointed to 'ELA sympathisers' as the likely perpetrators of the attack, on the contrary ELA denied responsibility for the attack. The statement was carried on several independent news channels in Cero and was circulated on social media.[24]

19. By the end of May, the Enosian military overran ELA in Naut. Enosian government claimed that 'very few civilians were lost in the tactical operation'; however, according to the statement of Enos Rights Watch, nearly five thousand civilians and four thousand rebels had died during the operation. In mid-June, the United Nations Human Rights Council adopted a resolution calling for an independent fact-finding mission led by the Office of the High Commissioner for Human Rights to 'inquire into civilian and combatant deaths and the possible occurrence of war crimes during military operations in Naut, Enos'. A vast majority of Council members voted in favour of the resolution, Enos and Cero – both members of the Council – voted against the resolution.[25]

Domestic legal proceedings

20. On the 18th and 19th March, the Digital Regulatory Commission received dozens of complaints that Una has glorified terrorism, and some of them claimed that Una's Post was connected to the terrorist attack too. On the 20th, March Digital Safety Act submitted a report to the Cerovian Criminal Investigation Department recommending Una's prosecution under section 28 of the Digital Safety Act.[26]

[24] Compromis 29.

[25] Compromis 30.

[26] Compromis 31.

21. On the 21st of March, Una was summoned for inquiry, where she explained that she had not intentionally posted the phrase: 'I stand in solidarity with ELA', which had offended some users. Una claimed that her Post did not glorify terrorism in the first place, it was not, in any event, generated by her, and she cannot be held liable for it. She argued that the AI tool had overstepped the mark and that legal action should have been taken against OneAI. Later that day, Una issued a short statement of sorry, the post was autogenerated, and that she would take necessary legal actions against OneAI; however, she has not done that since.[27] No further information or statements were published until then due to that the findings of a military commission of inquiry had been 'classified on the grounds of national security'.[28]

22. The next day, the Cerovian Criminal Investigation Department summoned OneAI; the company maintained that the '#✊Ela' meant 'solidarity with ELA' and that the autogenerated Post was entirely in line with Una's previous content. In addition, it was fully compliant with Facebook's policy on 'Dangerous Organisations and Individuals' and was not flagged for any violation, including praising or glorifying terrorism.[29]

23. On the 25th, the Cerovian Criminal Investigation Department decided to institute legal action against both Una and OneAI in a joint prosecution under Section 28 of the Digital Safety Act. Thereafter, both Una and OneAI immediately filed petitions to the Constitutional Court of Cero, complaining that their freedom of expression was violated. Moreover, Una claimed that prosecution was arbitrary, unfair and unreasonable and was motivated by the government's geopolitical and economic

[27] Compromis 32-33.

[28] Compromis 40.

[29] Compromis 34.

interests. OneAI claimed that it has the right to impart information and ideas via AI tools and that the prosecution violated this right. However, the Constitutional Court of Cero decided to hear both petitions after the trials.[30]

24. On 13 April, both of them were found guilty of 'recklessly publishing content that indirectly encouraged acts of terrorism by glorifying an entity that committed acts of terrorism'; they have jointly produced and, therefore, jointly responsible for the content. Una was sentenced to pay a fine of USD 1,500, with a suspended prison sentence of 1 year; OneAI was sentenced to pay a fine of USD 50,000. On top of all this, the High Court of Cero prohibited Una from using any social media platform and OneAI from offering the RMSM tool for one month.[31]

25. Both applicants appealed against the decision; both appeals were dismissed on 25 April.[32] On 1 May, the Constitutional Court of Cero reached the final verdict: in a split decision – 3-2 – dismissed both petitions on the basis that restrictions imposed on the basis that the restrictions imposed on the petitioners' freedom of expression were 'permissible under the law', and it also noted that the applicants had relevant constitutional duties too.[33]

26. Una's conviction sparked considerable debate on social media in Cero. Many users came forward in support of Una, whereas many others called for her boycott and for her to be 'cancelled'. By 25 May, Una had lost 90% of her endorsement contracts and 6

[30] Compromis 35.

[31] Compromis 36.

[32] Compromis 37.

[33] Compromis 38.

million Instagram and 2 million Facebook followers, her monthly income decreased to USD 10,000 / month. The number of subscribers of RMSM dwindled to 200,000.[34]

Universal Court of Human Rights

27. The Universal Court of Human Rights exercises exclusive jurisdiction to receive and consider applications from persons alleging the violation of rights recognised in the ICCPR.[35] Cero ratified the ICCPR without reservations in 2000.[36]

28. Una and OneAI have exhausted all domestic remedies. They filed applications before the Universal Court of Human Rights alleging violations of Article 19 of the ICCPR.[37]

[34] Compromis 39.

[35] Compromis 41.

[36] Compromis 4.

[37] Compromis 42.

V. STATEMENT OF JURISDICTION

Una and OneAI (Applicants) have applied to the Universal Freedom of Expression Court, the special Chamber of the Universal Court of Human Rights, hearing issues relating to the violation of rights recognised in the Article 19 of the ICCPR.

Una and OneAI filed a petition before Cero's Constitutional Court complaining that the State of Cero had violated their rights under Cero's Constitution. The Court heard their pending petitions together and decided to dismiss both petitions.

Una and OneAI exhausted their domestic appeals.

This Honourable Court has jurisdiction as the final arbiter over all regional courts where parties have exhausted all domestic remedies.

The Applicants request this Honourable Court to issue a judgment in accordance with relevant international law, including the ICCPR, the UDHR, Conventions, jurisprudence developed by relevant courts, and principles of international law.

VI. QUESTIONS PRESENTED

The questions presented, as certified by this Honourable Court, are as follows:

1. Whether the State of Cero, by convicting and sentencing Una under the Digital Safety Act, and specifically by imposing a one-month ban on her use of social media, violated her right to the freedom of expression recognised by Article 19 of the ICCPR.
2. Whether the State of Cero, by convicting and sentencing OneAI under the Digital Safety Act, and specifically by imposing a one-month ban on its service, 'RMSM', violated its right to the freedom of expression, including the freedom to impart information and ideas, recognised by Article 19 of the ICCPR.

VII. SUMMARY OF ARGUMENTS

THE STATE OF CERO, BY CONVICTING AND SENTENCING UNA UNDER THE DIGITAL SAFETY ACT, AND SPECIFICALLY BY IMPOSING A ONE-MONTH BAN ON HER USE OF SOCIAL MEDIA, VIOLATED HER RIGHT TO THE FREEDOM OF EXPRESSION RECOGNISED BY ARTICLE 19 OF THE ICCPR

As a popular Cerovian social media influencer, Una exercised her freedom of expression on the Internet, participating in discussions concerning political issues. Cero's interference on Una's freedom of expression is incompatible with the ICCPR, as it was not prescribed by law, not in pursuance of a legitimate aim, and was neither necessary nor proportionate.

First, the interference was not prescribed by law as it was not reasonably foreseeable for Una and did not provide adequate safeguards against unfettered discretion. As DSA employs overly broad and vague terms in defining the elements of the alleged terrorism-related offence, it was not reasonably foreseeable for Una to be held liable under it. Furthermore, despite the same definition of terrorism within DSA and CTA, its application lacks consistency within Cero regarding the classification of ELA. Moreover, the sanctions were uncertain either for Una as DSA failed to provide an upper limit for the duration and precise conditions for determining the scope of a potential ban on use. Cero failed to establish adequate legal protection against arbitrary interferences allowing authorities to conduct the proceedings in accordance with Cero's geopolitical and economic interests. DSA failed to indicate with sufficient clarity the scope of the discretion and the manner of its exercise granted for courts applying it. Adequate procedural safeguards were neither provided allowing the imposition of criminal sanctions in a summary trial in less than two months without the comprehensive examination of the facts, as the findings regarding the alleged attack had been classified.

Second, the interference did not pursue any legitimate aim exhaustively provided by the ICCPR but rather served Cero's geopolitical and economic interests. Cero failed to demonstrate based on real causes that Una's Post created a clear and imminent danger, therefore public order and national security interests cannot be invoked. The existence of a clear harm to the rights of others was not demonstrated either as Cero failed to prove any links between Una's expression and the alleged attack, which did not result in any casualties. Nevertheless, Cero's Constitution does not align with the ICCPR, because it provides broader basis for restrictions, namely in the interest of regional and international peace and security.

Third, Cero's interference was not necessary in a democratic society, as it did not correspond to a pressing social need, was not suitable to pursue its legitimate aim, was not the least intrusive instrument and was not proportionate to the sacrificed right.

Firstly, Cero failed to justify a pressing social need based on relevant and sufficient reasons. Una's Post did not glorify terrorism, instead she spoke out against the bloodshed and expressed her compassion for the victims following her previous posts drawing attention to an ongoing humanitarian crisis. Hence, it cannot be considered as incitement to any violent act.

Secondly, the imposed fine amounting to less than 1% of Una's monthly income did not correspond to her financial situation, thus it per se could not be suitable to deter her from posting further. By imposing an appropriate financial penalty, the suspended prison and the ban could have been avoided.

Thirdly, Cero failed to adopt the criminal conviction with the greatest care. The imposition of a suspended prison sentence for the criticism of the state in a public debate is not compatible with the ICCPR. Moreover, the imposed general and unconditional ban on use constitutes an impermissible prior restraint on her freedom of expression. Alternatively, less intrusive

instruments were available to achieve Cero's alleged legitimate aims, thus failing the criteria of necessity.

Fourthly, looking at the case as a whole and considering all relevant circumstances of Una's restricted speech, the interference was not proportionate and caused a chilling effect. Una's expression enjoys an elevated level of protection as political speech of a non-professional journalist informing the public about an ongoing armed conflict. Taking into consideration the elevated level of protection of Una's expression and her conduct following the alleged infringement, the nature and severity of the imposed sanctions, especially the one-month ban, are not reasonable and proportionate, as they destroyed Una's reputation, career, financial situation and social image. Moreover, as Una is a human rights defender speaking out against possible war crimes and the ongoing humanitarian crisis, her prosecution is not compatible with the ICCPR either. The imposed sanctions also deterred the society from speaking out on important public matters causing a chilling effect.

THE STATE OF CERO, BY CONVICTING AND SENTENCING ONEAI UNDER THE DIGITAL SAFETY ACT, AND SPECIFICALLY BY IMPOSING A ONE-MONTH BAN ON ITS SERVICE, 'RMSM', VIOLATED ITS RIGHT TO THE FREEDOM OF EXPRESSION, INCLUDING THE FREEDOM TO IMPART INFORMATION AND IDEAS, RECOGNISED BY ARTICLE 19 OF THE ICCPR

OneAI exercises its right to freedom of expression, including the right to impart information and ideas through its internet-based information disseminating service, RMSM. Cero's interference on OneAI's freedom of expression is incompatible with the ICCPR, as it was not prescribed by law, not in pursuance of a legitimate aim, and was neither necessary nor proportionate.

First, the interference was not prescribed by law as it was not reasonably foreseeable for OneAI and did not provide adequate safeguards against unfettered discretion. DSA's imprecise, overbroad and vague wording impeded OneAI from reasonably foreseeing its criminal liability regarding a terrorism-related offence. Cero's failure to provide an upper limit for the duration and precise conditions for determining the scope of a potential ban under the DSA made the degree of the sanction not foreseeable for OneAI either. Moreover, adequate protection against arbitrary interferences was not provided, allowing authorities to conduct the proceedings arbitrarily in accordance with Cero's geopolitical and economic interests. DSA failed to indicate with sufficient clarity the scope of the discretion and the manner of its exercise granted for courts applying it. Notably, the inconsistent application of the term of terrorism in DSA and CTA regarding ELA caused arbitrary interference for OneAI. Furthermore, adequate procedural safeguards were neither provided, allowing the imposition of criminal sanctions in a summary trial in less than two months without the comprehensive examination of the facts, as the findings regarding the alleged attack had been classified.

Second, the interference did not pursue any legitimate aim exhaustively provided by the ICCPR but rather served Cero's geopolitical and economic interests. Cero failed to demonstrate based on real causes that the Post created a clear and imminent danger, therefore public order and national security interests cannot be invoked. The existence of a clear harm to the rights of others was not demonstrated either, as Cero failed to prove any links between the Post and the alleged attack, which did not result in any casualties. Nevertheless, Cero's Constitution does not align with the ICCPR implementing a broader basis for restrictions, namely in the interest of regional and international peace and security.

Third, Cero's interference was not necessary in a democratic society, as it did not correspond to a pressing social need, was not suitable to pursue its legitimate aim, was not the least intrusive instrument and was not proportionate to the sacrificed right.

Firstly, Cero failed to justify a pressing social need based on relevant and sufficient reasons. The Post generated by RMSM did not glorify terrorism or encourage the commission of any violent action. Notably, Cero has not designated ELA as a ‘terrorist’ organisation over the 11 years of the conflict. The protection of the rights of others, national security and public order is the obligation and responsibility of the state through active measures. The sanctions imposed by Cero are not in response to a threat posed by OneAI but rather to its failure to perform its own obligations, thus arbitrarily interfering with OneAI's FoE.

Secondly, the implemented measures were not suitable considering that once the ban has expired, the algorithm continues to work in the same way generating posts based on its user’s previous posts and habits imitating their style. Alternatively, Cero could have taken suitable steps to prevent potentially dangerous terrorism-related postings by envisaging joint cooperation.

Thirdly, the imposed restrictions are overbroad and are not the least intrusive instrument amongst those that might achieve their protective function. Cero intervened using one of the most severe measures by imposing a ban on RMSM, constituting an impermissible prior restraint. Cero failed to ensure tight control over the ban’s scope and imposed a general and unconditional ban on an internet-based information disseminating service, which is clearly incompatible with the ICCPR.

Fourthly, taking into account the nature and severity of the imposed sanctions on OneAI, the interference was not proportionate and caused a chilling effect. OneAI developed and operated RMSM with constant due diligence fully complying with the relevant social media platform’s community standards. Consistently, the Post was not flagged or removed for any violation by Facebook. Although RMSM generated a one-sentence post relating to an organisation of uncertain classification, available to the public only for a very limited time, Cero imposed the

upper limit of the fine. Furthermore, it imposed a ban severely tarnishing OneAI’s reputation and causing significant losses threatening OneAI’s economic foundations. The severity of the imposed fine and the ban's financial implications resulting in the loss of 75% of the RMSM subscribers, caused a chilling effect on OneAI’s freedom of expression carrying the risk of self-censorship on the Internet.

Consequently, the Applicants submit that the interference was not necessary in a democratic society. Therefore, the freedom of expression of the Applicants shall prevail.

VIII. ARGUMENTS

ISSUE A – THE STATE OF CERO, BY CONVICTING AND SENTENCING UNA UNDER THE DIGITAL SAFETY ACT, AND SPECIFICALLY BY IMPOSING A ONE-MONTH BAN ON HER USE OF SOCIAL MEDIA, VIOLATED HER RIGHT TO THE FREEDOM OF EXPRESSION RECOGNISED BY ARTICLE 19 OF THE ICCPR

1. FoE[38] serves as the cornerstone of every free and democratic society,[39] enshrined in the ICCPR[40] and echoed in the regional human rights conventions.[41] It is essential for a healthy and vibrant society and to foster its moral and intellectual development.[42]
2. The Internet has become a principal means individuals exercise their right to FoE. It provides essential tools for participation in discussions concerning political issues.[43]

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[38] International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) art 19; Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR) art 19; European Convention on Human Rights (adopted 4 November 1950, entered into force 3 September 1953) 213 UNTS 1932 (ECHR) art 10; American Convention on Human Rights (adopted 22 November 1969, entered into force 18 July 1978) (ACHR) art 13; African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) (ACHPR) art 9.

[39] *Handyside v the United Kingdom* App no 5493/72 (ECtHR, 7 December 1976) [49]; *Perna v Italy* App no 48898/99 (ECtHR, 6 May 2003) [39]; *Steel and Morris v the United Kingdom* App no 68416/01 (ECtHR,15 May 2005) [87]; *Monnat v Switzerland* App no 73604/01 (ECtHR, 21 September 2006) [55]; *Hachette Filipacchi Associes v France* App no 71111/01 (ECtHR, 12 November 2007) [40]; *Stoll v Switzerland* App no 69698/01 (ECtHR, 10 December 2007) [101]; *Mouvement Raëlien Suisse v Switzerland* App no 16354/06 (ECtHR, 13 July 2012) [48]; *Bédat v Switzerland* App no 56925/08 (ECtHR, 29 March 2016) [48]; *Medžlis Islamske Zajednice Brčko and Others v Bosnia and Herzegovina* App no 17224/11 (ECtHR, 27 June 2017) [75]; *Sébastien Germain Marie Aïkoue Ajavon v Republic of Benin* App no 062/2019 (AfCHPR, 4 December 2020) [119]; *Houngue Éric Noudehouenou v Republic of Benin* App no 028/2020 (AfCHPR, 1 December 2022) [106]; UNHRC, 'General Comment No 34, Article 19, Freedoms of Opinion and Expression' (12 September 2011) UN Doc CCPR/C/GC/34 [2]; *Adimayo M. Aduayom, Sofianou T. Diasso and Yawo S. Dobou v Togo* CCPR/C/51/D/422/1990, 423/1990, 424/1990 (UNHRC, 12 July 1996) [7(4)]; *Tae-Hoon Park v Republic of Korea* CCPR/C/57/D/628/1995 (UNHRC, 20 October 1998) [10.3]; *Media Rights Agenda and Others v Nigeria* Comm nos 105/93, 128/94, 130/94, 152/96 (ACmHPR, 31 October 1998) [54]; *Vladimir Viktorovich Shchetko v Belarus* CCPR/C/87/D/1009/2001 (UNHRC, 11 July 2006) [7.3]; *Stephen Benhadj v Algeria* CCPR/C/90/D/1173/2003 (UNHRC, 20 July 2007) [8.10].

[40] ICCPR art 19.

[41] ECHR art 10; ACHR art 13; ACHPR art 9.

[42] *Ingabire Victoire Umuhoza v Rwanda* App no 003/2014 (AfCHPR, 7 December 2018) [133].

[43] *Times Newspapers Ltd v the United Kingdom* (Nos 1, 2) App nos 3002/03, 23676/03 (ECtHR, 10 March 2009) [27]; *Ahmet Yıldırım v Turkey* App no 3111/10 (ECtHR, 18 March 2013) [54]; *Cengiz and Others v Turkey* App nos 48226/10, 14027/11 (ECtHR, 1 December 2015) [49]; *Vladimir Kharitonov v Russia* App no 10795/14

The particular importance of Una's case is that it pertains to the interference with Una's social media Post, generated using AI,[44] thereby emphasising its profound implications for her FoE in the era of online platforms and AI.

3. Cero violated Una's right to FoE by convicting and sentencing her, especially by imposing a one-month ban on her use of social media, as the Post fell within the scope of FoE. Therefore, the unlawfulness of the interference must be assessed under Article 19 of the ICCPR, in accordance with international standards. The three-part cumulative test must be applied to establish that the interference was i) not prescribed by law, ii) not in pursuance of a legitimate aim, iii) neither necessary nor proportionate. These

(ECtHR, 23 June 2020) [33]; *Melike v Turkey* App no 35786/19 (ECtHR, 15 June 2021) [49]; *Sanchez v France* App no 45581/15 (ECtHR, 15 May 2023) [158].

[44] Compromis 28.

requirements have been endorsed by the UNHRC,[45] the ECtHR,[46] the IACtHR,[47] the AfCHPR[48] and the ACmHPR.[49]

i) The interference was not prescribed by law

4. For an interference to be prescribed by law, a) an act must be accessible and reasonably foreseeable[50] and b) adequate safeguards against arbitrary interferences must be available.[51]

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[45] UNHRC, 'General Comment No 34, Article 19, Freedoms of Opinion and Expression' (12 September 2011) UN Doc CCPR/C/GC/34 [35]; *Womah Mukong v Cameroon* CCPR/C/51/D/458/1991 (UNHRC, 10 August 1994) [9.7]; *Sohn v Republic of Korea* CCPR/C/54/D/518/1992 (UNHRC, 19 July 1995) [10.4]; *Robert Faurisson v France* CCPR/C/58/D/550/1993 (UNHRC, 8 November 1996) [9.4]; *Malcolm Ross v Canada* CCPR/C/70/D/736/1997 (UNHRC, 18 October 2000) [11.2]; *Velichkin v Belarus* CCPR/C/85/D/1022/2001 (UNHRC, 20 October 2005) [7.3]; *Yashar Agazade and Rasul Jafarov v Azerbaijan* CCPR/C/118/D/2205/2012 (UNHRC, 27 October 2016) [7.4]; UNHRC, 'Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression' (16 May 2011) UN Doc A/HRC/17/27 [24]; UNHRC, 'Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression' (10 August 2011) UN Doc A/66/290 [15]; UNHRC, 'Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression' (17 April 2013) UN Doc A/HRC/23/40 [29].

[46] *Handyside v the United Kingdom* App no 5493/72 (ECtHR, 7 December 1976) [49]; *The Sunday Times v the United Kingdom* (No 1) App no 6538/74 (ECtHR, 26 April 1979) [45]; *Ceylan v Turkey* App no 23556/94 (ECtHR, 8 July 1999) [24]; *Murat Vural v Turkey* App no 9540/07 (ECtHR, 21 January 2015) [59]; *Perinçek v Switzerland* App no 27510/08 (ECtHR, 15 October 2015) [124]; *Sanchez v France* App no 45581/15 (ECtHR, 15 May 2023) [123].

[47] *Herrera-Ulloa v Costa Rica* Series C No 107 (IACtHR, 2 July 2004) [120]; IACmHR, 'Report of the Special Rapporteur for Freedom of Expression' (2009) OEA/SER L/V/II Doc 51 [231]-[233]; IACmHR, 'Freedom of Expression and the Internet' (2013) OEA/SER L/II CIDH/RELE/IN F11/13 [54]-[64]; *Francisco Martorell v Chile* Case 11.230 (IACmHR, 3 May 1996) [55];

[48] *Sébastien Germain Marie Aïkoue Ajavon v Republic of Benin* App no 062/2019 (AfCHPR, 4 December 2020) [117]-[120]; *Houngue Éric Noudehouenou v Republic of Benin* App no 028/2020 (AfCHPR, 1 December 2022) [104]-[107].

[49] *INTERIGHTS v Mauritania* Comm no 242/01 (ACmHPR, 4 June 2004) [78]-[79]; *Zimbabwe Lawyers for Human Rights & Institute for Human Rights and Development in Africa v Zimbabwe* Comm no 294/04 (ACmHPR, 3 April 2009) [80]; *Kenneth Good v the Republic of Botswana* Comm no 313/05 (ACmHPR, 26 May 2010) [187]; *Egyptian Initiative for Personal Rights and INTERIGHTS v Egypt* Comm no 323/06 (ACmHPR, 12 October 2013) [248]; ACmHPR, 'Declaration of Principles of Freedom of Expression and Access to Information in Africa' (2019) Principle 9.

[50] *Goodwin v the United Kingdom* App no 17488/90 (ECtHR, 27 March 1996) [31]; *Tammer v Estonia* App no 41205/98 (ECtHR, 4 April 2001) [37]; *Chauvy and Others v France* App no 64915/01 (ECtHR, 29 September 2004) [43]; *Houngue Éric Noudehouenou v Republic of Benin* App no 028/2020 (AfCHPR, 1 December 2022) [109]; UNHRC, 'General Comment No 34, Article 19, Freedoms of Opinion and Expression' (12 September 2011) UN Doc CCPR/C/GC/34 [25].

[51] *Silver and Others v the United Kingdom* App nos 5947/72, 6205/73, 7052/75, 7061/75, 7107/75, 7113/75, 7136/75 (ECtHR, 25 March 1983) [90]; *Malone v the United Kingdom* App no 8691/79 (ECtHR, 2 August 1984)

a) The law envisaging the interference was not reasonably foreseeable for Una

5. Foreseeability not only requires that the impugned measure has a legal basis in domestic law,[52] but also refers to the quality of the law in question.[53] For a restriction to be envisaged by law, a provision must be sufficiently precise[54] as to the rule's constraints, limitations, and penalties[55] to enable the individuals to anticipate the consequences a given action may entail and thus regulate their conduct accordingly.[56] DSA failed to

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[67]; *Claude-Reyes et al v Chile* Series C No 151 (IACtHR, 19 September 2006) [89]; *Magyar Kétfarkú Kutya Párt v Hungary* App no 201/17 (ECtHR, 20 January 2020) [93]; UN Economic and Social Council, UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, 'Siracusa Principles on the Limitation and Derogation of Provisions in the ICCPR' (1984) UN Doc E/CN 4/1984/4 [16], [18]; UNHRC, 'General Comment No 34, Article 19, Freedoms of Opinion and Expression' (12 September 2011) UN Doc CCPR/C/GC/34 [25].

[52] *The Sunday Times v the United Kingdom* (No 1) App no 6538/74 (ECtHR, 26 April 1979) [47]; *Malone v the United Kingdom* App no 8691/79 (ECtHR, 2 August 1984) [66]; *Leander v Sweden* App no 9248/81 (ECtHR, 26 March 1987) [50]; *Olsson v Sweden* (No 1) App no 10465/83 (ECtHR, 24 March 1988) [61]; *Tolstoy Miloslausky v the United Kingdom* App no 18139/91 (ECtHR, 13 July 1995) [37]; *Ahmet Yıldırım v Turkey* App no 3111/10 (ECtHR, 18 March 2013) [57]; *Magyar Kétfarkú Kutya Párt v Hungary* App no 201/17 (ECtHR, 20 January 2020) [93]; *Taner Kılıç v Turkey* (No 2) App no 208/18 (ECtHR, 10 October 2022) [154].

[53] *The Sunday Times v the United Kingdom* (No 1) App no 6538/74 (ECtHR, 26 April 1979) [49]; *Kruslin v France* App no 11801/85 (ECtHR, 24 April 1990) [27]; *Kafkaris v Cyprus* App no 21906/04 (ECtHR, 12 February 2008) [140]; *Sanoma Uitgevers BV v the Netherlands* App no 38224/03 (ECtHR, 14 September 2010) [81]; *Ahmet Yıldırım v Turkey* App no 3111/10 (ECtHR, 18 March 2013) [57]; *Sanchez v France* App no 45581/15 (ECtHR, 15 May 2023) [124].

[54] *The Sunday Times v the United Kingdom* (No 1) App no 6538/74 (ECtHR, 26 April 1979) [49]; *Malone v the United Kingdom* App no 8691/79 (ECtHR, 2 August 1984) [66]; *Müller and Others v Switzerland* App no 10737/84 (ECtHR, 24 May 1988) [29]; *Tolstoy Miloslausky v the United Kingdom* App no 18139/91 (ECtHR, 13 July 1995) [37]; *Vogt v Germany* App no 17851/91 (ECtHR, 26 September 1995) [48]; *Wingrove v the United Kingdom* App no 17419/90 (ECtHR, 25 November 1996) [40]; *Lindon, Otchakovsky-Laurens and July v France* App nos 21279/02, 36448/02 (ECtHR, 22 October 2007) [41]; *Kafkaris v Cyprus* App no 21906/04 (ECtHR, 12 February 2008) [140]; *Usón Ramírez v Venezuela* Series C No 207 (IACtHR, 20 November 2009) [55]; *Sanoma Uitgevers BV v the Netherlands* App no 38224/03 (ECtHR, 14 September 2010) [81], [83]; *Editorial Board of Pravoye Delo and Shtekel v Ukraine* App no 33014/05 (ECtHR, 5 August 2011) [52]; *RTBF v Belgium* App no 50084/06 (ECtHR, 15 September 2011) [115]; *Altuğ Taner Akçam v Turkey* App no 27520/07 (ECtHR, 25 January 2012) [87]; *Ahmet Yıldırım v Turkey* App no 3111/10 (ECtHR, 18 March 2013) [57]; UN Economic and Social Council, UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, 'Siracusa Principles on the Limitation and Derogation of Provisions in the ICCPR' (1984) UN Doc E/CN 4/1984/4 [17]; UNHRC, 'General Comment No 34, Article 19, Freedoms of Opinion and Expression' (12 September 2011) UN Doc CCPR/C/GC/34 [25]; *Tomás Eduardo Cirio v Uruguay* Case 11.500 (IACmHR, 27 October 2006) [64].

[55] UNHRC, 'General Comment No 34, Article 19, Freedoms of Opinion and Expression' (12 September 2011) UN Doc CCPR/C/GC/34 [25]; *Leonardus Johannes Maria de Groot v the Netherlands* CCPR/C/54/D/578/1994 (UNHRC, 14 July 1994) [4.2].

[56] *The Sunday Times v the United Kingdom* (No 1) App no 6538/74 (ECtHR, 26 April 1979) [49]; *Wingrove v the United Kingdom* App no 17419/90 (ECtHR, 25 November 1996) [40]; *Larissis and Others v Greece* App no 23372/94 (ECtHR, 24 February 1998) [40]; *Sanoma Uitgevers BV v the Netherlands* App no 38224/03 (ECtHR, 14 September 2010) [81]; *RTBF v Belgium* App no 50084/06 (ECtHR, 15 September 2011) [115]; *Altuğ Taner*

meet these requirements of legality, which are particularly important when determining criminal sanctions.[57]

6. First, it does not use strict and unequivocal terms, clearly restricting any punishable behaviours[58] It employs overly broad and vague terms[59] in defining the content encompassed within the offence, such as 'likely to be understood by a reasonable person'. It lacks a clear standard for defining a 'reasonable person' or setting a specific likelihood threshold.[60]
7. Moreover, counter-terrorism measures should clearly define terrorism-related offences to avoid unnecessary and disproportionate interference in the FoE.[61] Terms such as 'glorifying', 'justifying' or 'encouraging' terrorism should not be used.[62] DSA applying

Akçam v Turkey App no 27520/07 (ECtHR, 25 January 2012) [87]; *Ahmet Yıldırım v Turkey* App no 3111/10 (ECtHR, 18 March 2013) [57].

[57] *Castillo Petruzzi and Others v Peru* Series C No 52 (IACtHR, 30 May 1999) [121]; *Herrera-Ulloa v Costa Rica* Series C No 107 (IACtHR, 2 July 2004) [117]; *Ricardo Canese v Paraguay* Series C No 111 (IACtHR, 31 August 2004) [72]; *Palamara-Iribarne v Chile* Series C No 135 (IACtHR, 22 November 2005) [79]; *Kimel v Argentina* Series C No 177 (IACtHR, 2 May 2008) [63]; *Usón Ramírez v Venezuela* Series C No 207 (IACtHR, 20 November 2009) [55]; IACtHR 'Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism' (13 November 1985) Advisory Opinion OC. 5/85 Series A No 5 [39]-[40].

[58] *Castillo Petruzzi and Others v Peru* Series C No 52 (IACtHR, 30 May 1999) [121]; *Kimel v Argentina* Series C No 177 (IACtHR, 2 May 2008) [63]; *Usón Ramírez v Venezuela* Series C No 207 (IACtHR, 20 November 2009) [55].

[59] *Lindon, Otchakovsky-Laurens and July v France* App nos 21279/02, 36448/02 (ECtHR, 22 October 2007) [41]; *Centro Europa 7 S.r.l. and Di Stefano v Italy* App no 38433/09 (ECtHR, 7 June 2012) [141]; *Karácsony and Others v Hungary* App nos 42461/13, 44357/13 (ECtHR, 17 May 2016) [126].

[60] Compromis 5.

[61] *Sanchez v France* App no 45581/15 (ECtHR, 15 May 2023) [136]; UNHRC, 'General Comment No 34, Article 19, Freedoms of Opinion and Expression' (12 September 2011) UN Doc CCPR/C/GC/34 [34], [46].

[62] Compromis 5, 7; UNHRC, 'General Comment No 34, Article 19, Freedoms of Opinion and Expression' (12 September 2011) UN Doc CCPR/C/GC/34 [46]; Joint Declaration on Defamation of Religions, and Anti-Terrorism and Anti-Extremism Legislation (The UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media, the OAS Special Rapporteur on Freedom of Expression and the ACHPR Special Rapporteur on Freedom of Expression and Access to Information, 10 December 2008); Joint Declaration on Freedom of Expression and Responses to Conflict Situations (The UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media, the OAS Special Rapporteur on Freedom of Expression and the ACHPR Special Rapporteur on Freedom of Expression and Access to Information, 4 May 2015) [3].

such imprecise terms is vulnerable to broad, inconsistent and arbitrary application by state authorities.[63]

8. Second, despite the same definition of terrorism within DSA and CTA,[64] its application lacks consistency within Cero. Notably, Cero did not designate ELA as a terrorist organisation under CTA,[65] thus it was not reasonably foreseeable for Una to be held liable under DSA for glorifying terrorism.
9. Third, DSA fails to provide precise conditions for determining the scope of social media platforms covered by the restriction, nor does it define an upper limit for the duration of use restrictions. It therefore remains uncertain what type of sanction Una may face in the event of a violation, as DSA lacks the specificity to determine the extent of potential penalties.[66]
10. Consequently, it was not reasonably foreseeable for Una to be held liable for the alleged offences.

[63] *Altuğ Taner Akçam v Turkey* App no 27520/07 (ECtHR, 25 January 2012) [95]; UNHRC, 'Report of the United Nations High Commissioner for Human Rights on the Protection of Human Rights and Fundamental Freedoms While Countering Terrorism' (19 December 2014) UN Doc A/HRC/28/28 [48]; European Commission for Democracy Through Law of the Council of Europe, 'Opinion on the Federal Law on Combating Extremist Activity of the Russian Federation' (Council of Europe, 20 June 2012) [70], [74].

[64] Clarifications 21.

[65] Compromis 20.

[66] Compromis 5.

b) There were no adequate safeguards against unfettered discretion

11. Cero has not fulfilled its positive obligation to establish adequate safeguards against unfettered discretion,[67] resulting in Una's arbitrary, unfair, and unreasonable prosecution violating her right to fair trial.[68]

12. On the one hand, the broad and vague terms used in the legislation allowed Cero to conduct the legal proceedings in accordance with its geopolitical and economic interests, namely remaining the largest military equipment supplier to Enos.[69] DSA confers unfettered discretion for the restriction on FoE on those charged with its execution and does not provide sufficient guidance to enable them to ascertain what sorts of expressions are restricted.[70] Consequently, it resulted in sanctioning acts that may not truly be dangerous for the alleged legitimate aims,[71] thus failing to provide Una with adequate protection against arbitrary interference[72] and unfettered discretion.[73]

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[67] *Huvig v France* App no 11105/84 (ECtHR, 24 April 1990) [34]; *Margareta and Roger Andersson v Sweden* App no 12963/87 (ECtHR, 25 February 1992) [75]; *Maestri v Italy* App no 39748/98 (ECtHR, 17 February 2004) [30]; *Moiseyev v Russia* App no 62936/00 (ECtHR, 6 April 2009) [266]; *Sanoma Uitgevers BV v the Netherlands* App no 38224/03 (ECtHR, 14 September 2010) [82]; *Ahmet Yıldırım v Turkey* App no 3111/10 (ECtHR, 18 March 2013) [59].

[68] Compromis 35; ICCPR art 14.

[69] Compromis 20, 35.

[70] Compromis 5; UNHRC, 'General Comment No 34, Article 19, Freedoms of Opinion and Expression' (12 September 2011) UN Doc CCPR/C/GC/34 [25].

[71] *Keun-Tae Kim v Republic of Korea* CCPR/C/64/D/574/1994 (UNHRC, 4 January 1994) [3.3].

[72] *Malone v the United Kingdom* App no 8691/79 (ECtHR, 2 August 1984) [66]; *Leander v Sweden* App no 9248/81 (ECtHR, 26 March 1987) [50]-[51].

[73] *Huvig v France* App no 11105/84 (ECtHR, 24 April 1990) [34]; *Margareta and Roger Andersson v Sweden* App no 12963/87 (ECtHR, 25 February 1992) [75]; *Maestri v Italy* App no 39748/98 (ECtHR, 17 February 2004) [30]; *Moiseyev v Russia* App no 62936/00 (ECtHR, 6 April 2009) [266]; *Sanoma Uitgevers BV v the Netherlands* App no 38224/03 (ECtHR, 14 September 2010) [82]; *Ahmet Yıldırım v Turkey* App no 3111/10 (ECtHR, 18 March 2013) [59].

13. On the other hand, Cero failed to embed adequate procedural safeguards to prevent arbitrary encroachments on FoE.[74] The criminal sanctions were imposed in a summary trial and all proceedings, including remedies, were conducted in less than two months.[75] Moreover, the courts were not able to examine the facts comprehensively, as the findings regarding the alleged attack had been classified.[76]

14. Consequently, the interference was not prescribed by law.

ii) The interference did not pursue a legitimate aim

15. The ICCPR sets out exhaustively[77] the basis for any restriction on FoE. Although Cero has ratified the ICCPR without reservations,[78] Cero's Constitution does not align with the ICCPR, as it allows intervention for regional and international peace and security.[79]

[74] *Lombardi Vallauri v Italy* App no 39128/05 (ECtHR, 20 January 2010) [46]; *Cumhuríyet Vakfi and Others v Turkey* App no 28255/07 (ECtHR, 8 January 2014) [68].

[75] Compromis 28-38.

[76] Compromis 40; *Saure v Germany* App no 8819/16 (ECtHR, 08 February 2023) Dissenting Opinion of Judge Pavli, joined by Judges Ravarani and Zünd [8].

[77] Marc J Bossuyt, *Guide To The "Travaux Préparatoires" of the International Covenant on Civil and Political Rights* (Martinus Nijhoff Publishers 1987) 375; Manfred Nowak, *U.N.Covenant on Civil and Political Rights* (2nd edn, N.P. Engel 2005) 468-480; Agnes Callamard, 'Expert meeting on the links between articles 19 and 20 of the ICCPR: Freedom of expression and advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence' (OHCHR Experts Papers, Geneva, 2-3 October 2008).

[78] Compromis 4.

[79] Compromis 2.

16. Where public order and national security interests are invoked, it must be based on real causes, presenting certain and credible threat of a serious disturbance.[80] Cero failed to demonstrate[81] that the expression created a clear and imminent danger.[82]
17. Where the rights and reputations of others are allegedly harmed, the existence of a clear harm to the rights of others must be proven.[83] Cero failed to prove any links between Una's expression and the alleged attack with no casualties.[84]
18. Consequently, the interference did not pursue any legitimate aim.

iii) The interference was not necessary in a democratic society

19. For an interference to be necessary in a democratic society, it must a) correspond to a pressing social need, b) be suitable to pursue its legitimate aim, c) be the least intrusive instrument and d) proportionate to the sacrificed right.[85]

[80] Office of the Special Rapporteur for Freedom of Expression with the Inter-American Commission on Human Rights, Inter-American Legal Framework Regarding the Right to Freedom of Expression (2009) CIDH/RELE/INF. 2/09 [82]; ACmHPR, 'Declaration of Principles of Freedom of Expression and Access to Information in Africa' (2019) Principle 22.

[81] Compromis 31-38.

[82] *Gül and Others v Turkey* App no 4870/02 (ECtHR, 8 September 2010) [42]; *Kılıç and Eren v Turkey* App no 43807/07 (ECtHR, 29 February 2012) [29].

[83] *Ricardo Canese v Paraguay* Series C No 111 (IACtHR, 31 August 2004) [72].

[84] Compromis 29, 31-38.

[85] *Handyside v the United Kingdom* App no 5493/72 (ECtHR, 7 December 1976) [49]; *Hertel v Switzerland* App no 25181/94 (ECtHR, 25 August 1998) [47]; *Mouvement Raëlien Suisse v Switzerland* App no 16354/06 (ECtHR, 13 July 2012) [48]; *Animal Defenders International v the United Kingdom* App no 48876/08 (ECtHR, 22 April 2013) [100]; *Cumhuríyet Vakfi and Others v Turkey* App no 28255/07 (ECtHR, 8 January 2014) [68].

a) The interference did not correspond to a pressing social need as the Post did not glorify terrorism

20. Cero shall justify a pressing social need with relevant and sufficient reasons.[86] Where the justification for interference with discourse defending terrorism is examined, the national authorities shall make an acceptable assessment of the relevant facts.[87] Including the review of the interference in light of the case as a whole,[88] to analyse the content and the context of the impugned statements in which they were made, as well as the personality and function of the person making the statements.[89]
21. The interference did not correspond to a pressing social need for the following reasons.
22. First, the classification of ELA is ambiguous and inconsistent within the Cerovian legislation.[90] As HC pointed out, Cero has not designated ELA as a 'terrorist' organisation[91] over the 11 years of the conflict.[92] However, Cero convicted and

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[86] *Handyside v the United Kingdom* App no 5493/72 (ECtHR, 7 December 1976) [50]; *The Sunday Times v the United Kingdom* (No 1) App no 6538/74 (ECtHR, 26 April 1979) [62]; *Barthold v Germany* App no 8734/79 (ECtHR, 25 March 1985) [55]; *Lingens v Austria* App no 9815/82 (ECtHR, 8 July 1986) [40]; *Tønsbergs Blad AS and Haukom v Norway* App no 510/04 (ECtHR, 1 March 2007) [81]; *Satakunnan Markkinapörssi Oy and Satamedia Oy v Finland* App no 931/13 (ECtHR, 27 June 2017) [164]; *Erkizia Almandoz v Spain* App no 5869/17 (ECtHR, 22 September 2021) [37]; *Bouton v France* App no 22636/19 (ECtHR, 13 January 2023) [44].

[87] *Zana v Turkey* App no 18954/91 (ECtHR, 25 November 1997) [51]; *Yalçınkaya and Others v Turkey* App nos 25764/09, 25773/09, 25786/09, 25793/09, 25804/09, 25811/09, 25815/09, 25928/09, 25936/09, 25944/09, 26233/09, 26242/09, 26245/09, 26249/09, 26252/09, 26254/09, 26719/09, 26726/09, 27222/09 (ECtHR, 9 May 2016) [34]; *Erkizia Almandoz v Spain* App no 5869/17 (ECtHR, 22 September 2021) [37].

[88] *Lingens v Austria* App no 9815/82 (ECtHR, 8 July 1986) [40]; *Rizos and Daskas v Greece* App no 65545/01 (ECtHR, 27 May 2004) [40]; *Erkizia Almandoz v Spain* App no 5869/17 (ECtHR, 22 September 2021) [37].

[89] *Zana v Turkey* App no 18954/91 (ECtHR, 25 November 1997) [51]; *Fressoz and Roire v France* App no 29183/95 (ECtHR, 21 January 1999) [45]; *Erdoğdu and Ince v Turkey* App nos 25067/94, 25068/94 (ECtHR, 8 July 1999) [47]; *Demirel and Ateş v Turkey* App nos 10037/03, 14813/03 (ECtHR, 12 July 2007) [33]; *Perinçek v Switzerland* App no 27510/08 (ECtHR, 15 October 2015) [198], [204]-[207]; *Satakunnan Markkinapörssi Oy and Satamedia Oy v Finland* App no 931/13 (ECtHR, 27 June 2017) [164]; *Dicle v Turkey* (No 3) App no 53915/11 (ECtHR, 8 May 2022) [91]; *Rouillan v France* App no 28000/19 (ECtHR, 23 September 2022) [66].

[90] Arguments 8.

[91] Compromis 36.

[92] Compromis 19.

sentenced Una for an offence implying that ELA is a terrorist organisation.[93] Society is also polarised on this issue, as about 40% of the Enosians support and many Cerovians sympathise with ELA's cause.[94] The narrow 3-2 rejection of the Applicants' petition by the CC also underscores the divisive nature of the issue.[95]

23. Second, the doctrine of clear and imminent danger[96] is applied in cases with serious and threatening events endangering the right to life.[97] Una posted several times about the bloodshed in Naut, drawing attention to an ongoing humanitarian crisis.[98] Similarly, the Post begins with the phrase 'The genocide must stop!'.[99] In this context, it is obvious that the Post did not glorify terrorism, instead Una spoke out against the bloodshed and expressed her compassion for the victims of the conflict. Hence, it cannot be considered as incitement to any violent act.
24. Third, there was no clear harm to the rights of others.[100] The alleged attack committed by unidentified saboteurs had only caused minor damage to one building and a weapons cache not resulting in any casualties.[101] In addition, there is no evidence either that the perpetrators had intended to cause any harm to the rights of others.

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[93] Compromis 36.

[94] Compromis 19-20.

[95] Compromis 38.

[96] *Gül and Others v Turkey* App no 4870/02 (ECtHR, 8 September 2010) [42]; *Kılıç and Eren v Turkey* App no 43807/07 (ECtHR, 29 February 2012) [29].

[97] ECHR art 2.

[98] Compromis 24-28.

[99] Compromis 28.

[100] Arguments 17; *Ricardo Canese v Paraguay* Series C No 111 (IACtHR, 31 August 2004) [72].

[101] Compromis 29.

25. Fourth, Cero failed to prove conditio sine qua non between Una's Post and the alleged attack.[102] Although Cero claimed that initial investigations pointed to 'ELA sympathisers' as the likely perpetrators of the alleged attack, ELA issued a statement denying responsibility for it.[103]

26. Consequently, there was no pressing social need for interference.

b) The interference was not suitable to pursue its alleged legitimate aims

27. The imposed fine did not correspond to Una's financial situation,[104] as it amounted to less than 1% of her monthly income.[105] Such a modest fine per se could not be suitable to deter Una from posting further. By imposing an appropriate financial penalty, the suspended prison and the ban, arbitrarily repressing and holding Una in fear, could have been avoided.

28. Consequently, the restrictions imposed were not suitable to achieve the alleged aims.

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[102] Compromis 36.

[103] Compromis 29.

[104] *A and B v Norway* App nos 24130/11, 29758/11 (ECtHR, 15 September 2016) Dissenting Opinion of Judge Pinto de Albuquerque [74].

[105] Compromis 15, 36.

c) The interference was not the least intrusive instrument

29. Any action taken by the domestic authorities should be necessary.[106] A state shall adopt criminal convictions with the greatest care and apply them only ultima ratio.[107] This principle should be even more strictly enforced regarding media-specific offences.[108]
30. Una has the right to liberty and personal security.[109] Cero shall display restraint in resorting to criminal proceedings in its dominant position, particularly where other means are available for replying to criticisms.[110]
31. The imposed prison sentence on Una in the context of a public debate is not compatible with the FoE, as fundamental rights have not been seriously infringed.[111] Even if suspended, it cannot be considered the most moderate penalty.[112]

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[106] *Handyside v the United Kingdom* App no 5493/72 (ECtHR, 7 December 1976) [48]; *Fontevecchia and D'Amico v Argentina* Series C No 238 (IACtHR, 29 November 2011) [54].

[107] *Reichman v France* App no 50147/11 (ECtHR, 12 October 2016) [73]; *Lacroix v France* App no 41519/12 (ECtHR, 7 December 2017) [50]; *Tête v France* App no 59636/16 (ECtHR, 26 July 2020) [68]; *Bouton v France* App no 22636/19 (ECtHR, 13 January 2023) [48].

[108] *Cumpănă and Mazăre v Romania* App no 33348/96 (ECtHR, 17 December 2004) [115]; *Fatullayev v Azerbaijan* App no 40984/07 (ECtHR, 4 October 2010) [103]; *Saaristo and Others v Finland* App no 184/06 (ECtHR, 12 January 2011) [69]; *Atamanchuk v Russia* App no 4493/11 (ECtHR, 12 October 2020) [67].

[109] ICCPR art 9.

[110] *Castells v Spain* App no 11798/85 (ECtHR, 23 April 1992) [46]; *Incal v Turkey* App no 22678/93 (ECtHR, 9 June 1998) [54]; *Arslan v Turkey App* no 23462/94 (ECtHR, 8 July 1999) [46]; *Ceylan v Turkey* App no 23556/94 (ECtHR, 8 July 1999) [34]; *Gerger v Turkey* App no 24919/94 (ECtHR, 8 July, 1999) [48]; *Okçuoğlu v Turkey* App no 24246/94 (ECtHR, 8 July 1999) [46]; *Sürek v Turkey* (No 1) App no 26682/95 (ECtHR, 8 July 1999) [61]; *Fatih Taş v Turkey* App no 36635/08 (5 May 2011) [29].

[111] Compromis 36; *Sürek and Özdemir v Turkey* App nos 23927/94, 24277/94 (ECtHR, 8 July 1999) [63]; *Cumpănă and Mazăre v Romania* App no 33348/96 (ECtHR, 17 December 2004) [119]; *Feridun Yazar and Others v Turkey* App no 42713/98 (ECtHR, 23 December 2004) [27]; *Bingöl v Turkey* App no 36141/04 (ECtHR, 22 September 2010) [41]; *Otegi Mondragon v Spain* App no 2034/07 (ECtHR, 15 September 2011) [59]; *Rouillan v France* App no 28000/19 (ECtHR, 23 September 2022) [74]; *Bouton v France* App no 22636/19 (ECtHR, 13 January 2023) [53].

[112] *Bouton v France* App no 22636/19 (ECtHR, 13 January 2023) [54].

32. International practice generally prohibits prior restraints[113] as one of the most severe restrictions on FoE.[114] They are narrowly allowed only for a limited time to prevent abuse of power.[115] The ban imposed generally and unconditionally deprived Una from expressing her FoE via social media for one month.[116] Hence, the ban cannot be considered a permissible prior restraint based on its general nature and Cero's failure to establish an upper limit for its duration.[117]
33. Alternatively, less intrusive instruments were available to achieve Cero's aims, such as applying an appropriate fine that discourages Una from future posting. Another alternative would have been for Cero ordering her to turn on the labelling function,[118] thus Una's followers could differentiate between her own and autogenerated posts.
34. Consequently, the imposed sanctions, especially the suspended prison and the one-month ban were not the least intrusive instruments.

d) The interference was not proportionate and caused a chilling effect

35. Every formality, condition, restriction or penalty imposed in this sphere must be proportionate to the legitimate aim pursued.[119] To determine the proportionality of the

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[113] *Palamara-Iribarne v Chile* Series C No 135 (IACtHR, 22 November 2005) [78]; *Media Rights Agenda and Others v Nigeria* Comm nos 105/93, 128/94, 130/94, 152/96 (ACmHPR, 31 October 1998) [57].

[114] *New York Times Co v United States* 403 US 713-14 (1971).

[115] *Observer and Guardian v the United Kingdom* App no 13585/88 (ECtHR, 26 November 1991) [60]; *The Sunday Times v the United Kingdom* (No 2) App no 13166/87 (ECtHR, 26 November 1991) [51]; *Ekin Association v France* App no 39288/98 (ECtHR, 17 October 2001) [58]; *Editions Plon v France* App no 58148/00 (ECtHR, 18 August 2004) [42]; *Dammann v Switzerland* App no 77551/01 (ECtHR, 25 July 2006) [52]; *RTBF v Belgium* App no 50084/06 (ECtHR, 15 September 2011) [114]; *Ahmet Yıldırım v Turkey* App no 3111/10 (ECtHR, 18 March 2013) [47], [64]; *Cumhuríyet Vakfi and Others v Turkey* App no 28255/07 (ECtHR, 8 January 2014) [61].

[116] Compromis 36.

[117] Arguments 9.

[118] Compromis 14.

[119] *Handyside v the United Kingdom* App no 5493/72 (ECtHR, 7 December 1976) [49]; *The Sunday Times v the United Kingdom* (No 1) App no 6538/74 (ECtHR, 26 April 1979) [65]; *Lingens v Austria* App no 9815/82 (ECtHR,

restriction, it is the predominant practice of human rights tribunals to look at the case as a whole and consider all relevant circumstances of the restricted speech.[120]

da) Una's expression enjoys an elevated level of protection as political speech

36. First, FoE applies not only to information or ideas favourably regarded as inoffensive or indifferent but also to those that offend, shock or disturb.[121] Many users liked and shared Una's Post, yet negative comments appeared and some users reported her to DRC.[122] Even if some find the Post offensive or disturbing, it still falls under the high level of protection of FoE.[123]

8 July 1986) [41]; *Oberschlick v Austria* App no 11662/85 (ECtHR, 23 May 1991) [57]; *Oberschlick v Austria* (No 2) App no 20834/92 (ECtHR, 1 July 1997) [29].

[120] *Jersild v Denmark* App no 15890/89 (ECtHR, 23 September 1994) [31]; *News Verlags GmbH & Co. KG v Austria* App no 31457/96 (ECtHR, 11 April 2000) [52]; *Uj v Hungary* App no 23954/10 (ECtHR, 19 July 2011) [18].

[121] *Handyside v the United Kingdom* App no 5493/72 (ECtHR, 7 December 1976) [49]; *Fressoz and Roire v France* App no 29183/95 (ECtHR, 21 January 1999) [45]; *Janowski v Poland* App no 25716/94 (ECtHR, 21 January 1999) [30]; *Bladet Tromsø and Stensaas v Norway* App no 21980/93 (ECtHR, 20 May 1999) [62]; *Rekvényi v Hungary* App no 25390/94 (ECtHR, 20 May 1999) [42]; *Ceylan v Turkey* App no 23556/94 (ECtHR, 8 July 1999) [32]; *Karataş v Turkey* App no 23168/94 (ECtHR, 8 July 1999) [48]; *Sürek v Turkey* (No 1) App no 26682/95 (ECtHR, 8 July 1999) [58]; *Nilsen and Johnsen v Norway* App no 23118/93 (ECtHR, 25 November 1999) [43]; *Perna v Italy* App no 48898/99 (ECtHR, 6 May 2003) [39]; *Herrera-Ulloa v Costa Rica* Series C No 107 (IACtHR, 2 July 2004) [126]; *Orban and Others v France* App no 20985/05 (ECtHR, 15 April 2009) [52]; *Palomo Sánchez and Others v Spain* App nos 28955/06, 28957/06, 28959/06, 28964/06 (ECtHR, 12 September 2011) [53]; *Magyar Helsinki Bizottság v Hungary* App no 18030/11 (ECtHR, 8 November 2016) [187]; *Lagos del Campo v Peru* Series C No 340 (IACtHR, 31 August 2017) [117]; *Ingabire Victoire Umuhoza v Rwanda* App no 003/2014 (AfCHPR, 7 December 2018) [143]; *Savva Terentyev v Russia* App no 10692/09 (ECtHR, 4 February 2019) [69]; *Álvarez Ramos v Venezuela* Series C No 380 (IACtHR, 30 August 2019) [114]; *Erkizia Almandoz v Spain* App no 5869/17 (ECtHR, 22 September 2021) [37]; *Mohamed Rabbae, A.B.S and N.A. v the Netherlands* CCPR/C/117/D/2124/2011 (UNHRC, 14 July 2016) [10.4].

[122] Compromis 31.

[123] *Handyside v the United Kingdom* App no 5493/72 (ECtHR, 7 December 1976) [49]; *Orban and Others v France* App no 20985/05 (ECtHR, 15 April 2009) [52]; *Savva Terentyev v Russia* App no 10692/09 (ECtHR, 4 February 2019) [72]; *Standard Verlagsgesellschaft mbH v Austria* (No 3) App no 39378/15 (ECtHR, 7 March 2022) [93]; *Sanchez v France* App no 45581/15 (ECtHR, 15 May 2023) [148].

37. Second, debating public affairs is crucial in modern democracies,[124] especially on the causes of acts that might amount to war crimes or crimes against humanity; these discourses should be able to take place freely.[125] As to the public defence of war crimes, significance must be attached to whether the speech contributed to a debate of general interest.[126]

38. Consequently, the value placed on uninhibited expressions is particularly high in the circumstances of public debate,[127] irrespective of how unpalatable that perspective may be for the state,[128] hence there is little scope for restrictions on such speeches.[129] Una expressed her perspectives on a civil war waged against a corrupt, anti-democratic

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[124] *Communist Party of Turkey and Others v Turkey* App no 19392/92 (ECtHR, 30 January 1998) [57]; *Ricardo Canese v Paraguay* Series C No 111 (IACtHR, 31 August 2004) [72], [82]-[87]; *Centro Europa 7 S.r.l. and Di Stefano v Italy* App no 38433/09 (ECtHR, 7 June 2012) [129]; *Animal Defenders International v the United Kingdom* App no 48876/08 (ECtHR, 22 April 2013) [112]; *Party for a Democratic Society (DTP) and Others v Turkey* App nos 3840/10, 3870/10, 3878/10 (ECtHR, 6 June 2016) [74]; *Satakunnan Markkinapörssi Oy and Satamedia Oy v Finland* App no 931/13 (ECtHR, 27 June 2017) [124]; *Şahin Alpay v Turkey* App no 16538/17 (ECtHR, 20 June 2018) [180].

[125] *Dmitriyevskiy v Russia* App no 42168/06 (ECtHR, 29 January 2018) [106].

[126] *Orban and Others v France* App no 20985/05 (ECtHR, 15 April 2009) [49].

[127] UNHRC, 'General Comment No 34, Article 19, Freedoms of Opinion and Expression' (12 September 2011) UN Doc CCPR/C/GC/34 [13], [20], [34]; *Aduayom and Others v Togo* CCPR/C/51/D/422/1990, 423/1990, 424/1990 (UNHRC, 30 June 1994) [7.4.]; *Zeljko Bodrožić v Serbia and Montenegro* CCPR/C/85/D/1180/2003 (UNHRC, 3 November 2003) [7.2]; Jan Oster, *Media Freedom as a Fundamental Right* (Cambridge University Press 2015) 144.

[128] *Erdoğdu and Ince v Turkey* App nos 25067/94, 25068/94 (ECtHR, 8 July 1999) [52].

[129] *Thorgeir Thorgeirson v Iceland* App no 13778/88 (ECtHR, 25 June 1992) [64]; *Wingrove v the United Kingdom* App no 17419/90 (ECtHR, 25 November 1996) [58]; *Ceylan v Turkey* App no 23556/94 (ECtHR, 8 July 1999) [34]; *Erdoğdu and Ince v Turkey* App nos 25067/94, 25068/94 (ECtHR, 8 July 1999) [50]; *Gerger v Turkey* App no 24919/94 (ECtHR, 8 July 1999) [48]; *Sürek and Özdemir v Turkey* App nos 23927/94, 24277/94 (ECtHR, 8 July 1999) [60]; *Sürek v Turkey* (No 1) App no 26682/95 (ECtHR, 8 July 1999) [61]; *Öztürk v Turkey* App no 22479/93 (ECtHR, 28 September 1999) [66]; *Ivcher-Bronstein v Peru* Series C No 74 (IACtHR, 6 February 2001) [155]; *Murphy v Ireland* App no 44179/98 (ECtHR, 3 December 2003) [67]; *Gündüz v Turkey* App no 35071/97 (ECtHR, 14 June 2004) [43]; *Baka v Hungary* App no 20261/12 (ECtHR, 23 June 2016) [159]; *E.S. v Austria* App no 38450/12 (ECtHR, 18 March 2019) [42]; *Freitas Rangel v Portugal* App no 78873/13 (ECtHR, 11 April 2022) [50]; *Kenneth Good v the Republic of Botswana* Comm no 313/05 (ACmHPR, 26 May 2010) [198]; Jan Oster, *Media Freedom as a Fundamental Right* (Cambridge University Press 2015) 144.

regime,[130] resulting in the loss of thousands of civilians,[131] which is therefore considered a matter of public interest.

db) Una has fulfilled the role of public watchdog

39. FoE also embodies the public's right of access[132] to or to receive information,[133] including even state-held information.[134] This element of FoE is seriously harmed as the Post informed the public of the humanitarian crisis in Naut,[135] resulting in Una's criminal conviction.[136]

40. Where the views expressed do not constitute incitement to violence, the state cannot restrict them not even under the protection of national security or the prevention of disorder and crime.[137]

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[130] Compromis 19.

[131] Compromis 25, 30.

[132] ICCPR art 19 (2); *Autronic AG v Switzerland* App no 12726/87 (ECtHR, 22 May 1990) [45].

[133] *The Sunday Times v the United Kingdom* (No 1) App no 6538/74 (ECtHR, 26 April 1979) [65]; *Thorgeir Thorgeirson v Iceland* App no 13778/88 (ECtHR, 25 June 1992) [63]; *Bladet Tromsø and Stensaas v Norway* App no 21980/93 (ECtHR, 20 May 1999) [62]; *Colombani and Others v France* App no 51279/99 (ECtHR, 9 September 2002) [55]; *Cumpănă and Mazăre v Romania* App no 33348/96 (ECtHR, 17 December 2004) [95]; *Grinberg v Russia* App no 23472/03 (ECtHR, 21 October 2005) [24]; *Dupuis and Others v France* App no 1914/02 (ECtHR, 12 November 2007) [35]; *Hachette Filipacchi Associes v France* App no 71111/01 (ECtHR, 12 November 2007) [41]; *Times Newspapers Ltd v the United Kingdom* (Nos 1, 2) App nos 3002/03, 23676/03 (ECtHR, 10 March 2009) [40]; *Salumäki v Finland* App no 23605/09 (ECtHR, 29 July 2014) [46]; *Cojocaru v Romania* App no 32104/06 (ECtHR, 10 February 2015) [22]; *Rodolfo Robles Espinoza v Peru* Case 11.317 (IACmHR, 23 February 1999) [148]; *Law Offices of Ghazi Suleiman v Sudan* Comm no 288/99 (ACmHPR, 29 May 2003) [52].

[134] *Claude-Reyes et al v Chile* Series C No 151 (IACtHR, 19 September 2006) [77]; *Magyar Helsinki Bizottság v Hungary* App no 18030/11 (ECtHR, 8 November 2016) [61], [147]; *XYZ v Republic of Benin* App no 010/2020 (AfCHPR, 27 November 2020) [113]; *Nurbek Toktakunov v Kyrgyzstan* CCPR/C/101/D/1470/2006 (UNHRC, 28 March 2011) [7.4].

[135] Compromis 22-28.

[136] Compromis 36.

[137] *Karataş v Turkey* App no 23168/94 (ECtHR, 8 July 1999) [52], [54]; *Sürek and Özdemir v Turkey* App nos 23927/94, 24277/94 (ECtHR, 8 July 1999) [63]; *Sürek v Turkey* (No 1) App no 26682/95 (ECtHR, 8 July 1999) [60]; *Gözel and Özer v Turkey* App nos 43453/04, 31098/05 (ECtHR, 6 October 2010) [56]; *Nedim Şener v Turkey* App no 38270/11 (ECtHR, 8 October 2014) [116]; *Dilipak v Turkey* App no 29680/05 (ECtHR, 2 May 2016) [62];

41. Although there is no universal definition of journalism itself, international practice refers to a wide range of contributions to public debate and highlights the freedoms that are essential to the role of public watchdog.[138] The heightened level of protection is also accorded to non-professional journalists, as the function of popular social media users may also be assimilated to public watchdogs.[139]

42. The Internet has fostered the emergence of citizen journalism,[140] as political content ignored by the traditional media is often disseminated via websites to many users, who can view, share and comment upon the information. In mid-March, the Enosian military started to shell Naut when around 25.000 Enosian civilians were inside – reports, photographs and videos from the warzone depicting dead civilians appeared on and circulated social media by users repeatedly speaking out against the war crimes.[141] Therefore, instead of the traditional media, these social media users, as citizen journalists, acted as public watchdogs. Similarly, Una is considered a citizen journalist

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Şahin Alpay v Turkey App no 16538/17 (ECtHR, 20 June 2018) [179]; ACmHPR, 'Declaration of Principles of Freedom of Expression and Access to Information in Africa' (2019) Principle 22.

[138] *The Sunday Times v the United Kingdom* (No 2) App no 13166/87 (ECtHR, 26 November 1991) [50]; *Bladet Tromsø and Stensaas v Norway* App no 21980/93 (ECtHR, 20 May 1999) [59], [62]; *News Verlags GmbH & Co. KG v Austria* App no 31457/96 (ECtHR, 11 April 2000) [56]; *Pedersen and Baadsgaard v Denmark* App no 49017/99 (ECtHR, 17 December 2004) [71]; *Dupuis and Others v France* App no 1914/02 (ECtHR, 12 November 2007) [35]; *Campos Dâmaso v Portugal* App no 17107/05 (ECtHR, 24 July 2008) [31]; *Axel Springer AG v Germany* App no 39954/08 (ECtHR, 7 February 2012) [79]; *Bédat v Switzerland* App no 56925/08 (ECtHR, 29 March 2016) [51]; *Magyar Helsinki Bizottság v Hungary* App no 18030/11 (ECtHR, 8 November 2016) [165]; *Satakunnan Markkinapörssi Oy and Satamedia Oy v Finland* App no 931/13 (ECtHR, 27 June 2017) [126]; *Nurbek Toktakunov v Kyrgyzstan* CCPR/C/101/D/1470/2006 (UNHRC, 28 March 2011) [6.3], [7.4].

[139] *Magyar Helsinki Bizottság v Hungary* App no 18030/11 (ECtHR, 8 November 2016) [168]; *Falzon v Malta* App no 45791/13 (ECtHR, 20 June 2018) [57]; UN Plan of Action on the Safety of Journalists and the Issue of Impunity (adopted 12 April 2012) [1.5]; Recommendation CM/Rec(2016)4 of the Committee of Ministers to member States on the protection of journalism and safety of journalists and other media actors (adopted 13 April 2016) [4], II. Principles [10].

[140] *Cengiz and Others v Turkey* App nos 48226/10, 14027/11 (ECtHR, 1 December 2015) [52]; *Sanchez v France* App no 45581/15 (ECtHR, 15 May 2023) [160].

[141] Compromis 22-28.

regarding the humanitarian crisis in Naut, as she spoke out against possible war crimes committed by the Enosian military using the weapons supplied by Cero.[142]

43. Moreover, Una is considered a non-professional journalist in light of the number of her followers and the context of her posts.[143] The publication of information that a country's leaders regard as endangering national interests should not attract criminal charges for particularly serious offences such as assisting a terrorist organisation.[144] Therefore, Una per se could not have been criminally charged for her Post.

dc) Una's expression enjoys an elevated level of protection as a human rights defender

44. FoE includes the right to analyse critically and to oppose. This protection is broader when the statements are made by a person dealing with alleged human rights violations.[145] Human rights defenders play a special role in promoting and defending human rights; it is a part of their work to undertake awareness-raising activities on allegations of human rights violations.[146]

45. Una called for a ceasefire several times to end the genocide committed by the Enosian military[147] and disseminated information about possible human rights violations in Enos. ERW confirmed that 5,000 civilians and 4,000 rebels were killed in the attacks in Naut, and a UN investigation into possible war crimes was launched in mid-June.[148]

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[142] Compromis 20-22, 24-28, 30.

[143] Compromis 15, 19-28.

[144] *Şahin Alpay v Turkey* App no 16538/17 (ECtHR, 20 June 2018) [181].

[145] *Rodolfo Robles Espinoza v Peru* Case 11.317 (IACmHR, 23 February 1999) [148].

[146] *Taner Kılıç v Turkey* (No 2) App no 208/18 (ECtHR, 10 October 2022) [145].

[147] Arguments 43.

[148] Compromis 30.

Una promoted and strived to protect human rights at international levels, which is her declared right as an individual human rights defender.[149]

46. Consequently, Una actively engaged in a debate of public interest[150] and participated in socially beneficial endeavours.[151] Hence, her speech is entitled to an elevated level of protection.[152]

47. Moreover, as invoking national security provisions to prosecute human rights defenders for disseminating information of public interest is not compatible with the ICCPR,[153] thus the conviction of Una is not proportionate.

dd) The imposed sanctions were disproportionate

48. In evaluating proportionality, assessing the nature and severity of the imposed penalties[154] and the seriousness of their effects is essential.[155]

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[149] *Kivenmaa v Finland* CCPR/C/50/D/412/1990 (UNHRC, 7 March 1990) [9.3]; *Rodolfo Robles Espinoza v Peru* Case 11.317 (IACmHR, 23 February 1999) [148]; *Law Offices of Ghazi Suleiman v Sudan* Comm no 288/99 (ACmHPR, 29 May 2003) [52]; UNGA 'Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms' A/RES/53/144 (adopted 8 March 1999) art 6.

[150] Arguments 36-38.

[151] Arguments 39-45.

[152] *Sanchez v France* App no 45581/15 (ECtHR, 15 May 2023) [148]; ACmHPR, 'Declaration of Principles of Freedom of Expression and Access to Information in Africa' (2019) Principle 6.

[153] UNHRC, 'General Comment No 34, Article 19, Freedoms of Opinion and Expression' (12 September 2011) UN Doc CCPR/C/GC/34 [30].

[154] *Başkaya and Okçuoğlu v Turkey* App nos 23536/94, 24408/94 (ECtHR, 8 July 1999) [66]; *Ceylan v Turkey* App no 23556/94 (ECtHR, 8 July 1999) [37]; *Karataş v Turke*y App no 23168/94 (ECtHR, 8 July 1999) [53]; *Tammer v Estonia* App no 41205/98 (ECtHR, 4 April 2001) [69]; *Skałka v Poland* App no 43425/98 (ECtHR, 27 August 2003) [41]-[43]; *Cumpănă and Mazăre v Romania* App no 33348/96 (ECtHR, 17 December 2004) [111]; *Dammann v Switzerland* App no 77551/01 (ECtHR, 25 July 2006) [57]; *Pinto Pinheiro Marques v Portugal* App no 26671/09 (ECtHR, 22 April 2015) [46]; *Baka v Hungary* App no 20261/12 (ECtHR, 23 June 2016) [160].

[155] *Rouillan v France* App no 28000/19 (ECtHR, 23 September 2022) [74]-[77].

49. The severity of the imposed sanctions is not reasonable as, upon reviewing the Post, Una immediately deleted it, limiting its availability to approx. a mere hour[156] minimising the likelihood of it going viral. Notably, the Post was Una's first publication reported to the DRC[157] and she demonstrated full cooperation with the authorities throughout the entire process.[158] Moreover, Una voluntarily refrained from posting further regarding the Enosian crisis,[159] and issued an apology statement.[160]
50. Furthermore, the justification for interference with discourse defending national authorities shall also include an acceptable assessment of the personality and function of the person making the statements.[161] The gravity of this situation is heightened, as it not only involves the silencing of an influencer but also stifling a public watchdog who has brought attention to significant human rights violations.[162] Consequently, the public's right to access information[163] is also harmed, and the proportionality of the interference is even more concerning.
51. This ban was not a simple prohibition from social media, but it also rendered her unable to practise her profession. Therefore, not only was her FoE harmed, but also her right to property and her standard of living.[164]

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[156] Compromis 28.

[157] Clarifications 32.

[158] Compromis 31-38.

[159] Compromis 28.

[160] Compromis 33.

[161] Arguments 20.

[162] Arguments 39-47.

[163] ICCPR 19(2); *Autronic AG v Switzerland* App no 12726/87 (ECtHR, 22 May 1990) [45].

[164] UDHR arts 17 (1)-(2), 25.

52. Additionally, being convicted in a criminal trial[165] destroyed her reputation,[166] career, financial situation, and social image. Many users called for her boycott and for her to be cancelled.[167] In only one month, she lost 90% of her endorsement contracts and almost half of her followers.[168] Furthermore, her monthly income had also fallen to under USD 10,000 from USD 200,000, constituting a significant 95% decrease.[169]

53. Consequently, considering the severity and the nature of the imposed sanctions, the interference was not proportionate.

de) The interference caused a chilling effect

54. Ambiguous and thus unforeseeable laws[170] have a chilling effect on FoE[171] and constructive public debate.[172] Moreover, the excessive criminalisation of mere criticism, which is manifested in the offence of 'glorification of terrorism',[173] results in detracting from the development of a tolerant, pluralist, and democratic society.[174]

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[165] Compromis 36.

[166] ICCPR art 17 (1).

[167] Compromis 39.

[168] Compromis 15, 39.

[169] Compromis 15, 39.

[170] Arguments 5-10.

[171] *Delfi AS v Estonia* App no 64569/09 (ECtHR, 16 June 2015) Joint Dissenting Opinion of Judges Sajó and Tsotsoria [20].

[172] UNHRC, 'General Comment No 34, Article 19, Freedoms of Opinion and Expression' (12 September 2011) UN Doc CCPR/C/GC/34 [46]; International Commission of Jurists, 'Response to the European Commission Consultation on Inciting, Aiding or Abetting Terrorist Offences' (2007) 1.

[173] Arguments 7.

[174] UNHRC, 'Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression' (16 May 2011) UN Doc A/HRC/17/27 [26], [28].

55. Criminal sanctions paired with uncertainty about what expressions are illegal also produce a chilling effect on society, where citizens avoid controversial topics for fear of arrest.[175]

56. Una's suspended imprisonment[176] has a chilling effect, as for one year she faces the threat of imprisonment, and that condition reduces her courage to impart information and ideas on matters of public interest.[177]

57. Additionally, by convicting Una, Cero has set an example of what happens when someone publishes opinions that oppose government policy, causing a chilling effect among society, as all users will fear a violation of their fundamental rights in the future.[178] Such severe sanctions not only have a deterrent effect on Una but on other journalists, influencers, and also her followers from speaking out on debates of important public matters.[179]

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[175] *Herrera-Ulloa v Costa Rica* Series C No 107 (IACtHR, 2 July 2004) [61], [66]; *Ricardo Canese v Paraguay* Series C No 111 (IACtHR, 31 August 2004) [58], [60]; *Mosley v the United Kingdom* App no 48009/08 (ECtHR, 15 September 2011) [129]; UNHRC, 'Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression' (16 May 2011) UN Doc A/HRC/17/27 [26], [28].

[176] Compromis 36.

[177] *Cumpănă and Mazăre v Romania* App no 33348/96 (ECtHR, 17 December 2004) [113]–[115]; *Krasulya v Russia* App no 12365/03 (ECtHR, 22 May 2007) [44]; *Mahmudov and Agazade v Azerbaijan* App 35877/04 (ECtHR, 18 March 2009) [51]; *Yleisradio Oy and Others v Finland* App no 30881/09 (ECtHR, 12 June 2009); *Fatullayev v Azerbaijan* App no 40984/07 (ECtHR, 4 October 2010) [102]; *Mariapori v Finland* App no 37751/07 (ECtHR, 6 October 2010) [68].

[178] *Wille v Lichtenstein* App no 28396/95 (ECtHR, 28 October 1999) [50]; *Elçi and Others v Turkey* App nos 23145/93, 25091/94 (ECtHR, 24 March 2004) [714]; *Cumpănă and Mazăre v Romania* App no 33348/96 (ECtHR, 17 December 2004) [114]; *Guja v Moldova* App no 14277/04 (ECtHR, 12 February 2008) [95]; *Belpietro v Italy* App no 43612/10 (ECtHR, 24 September 2013) [61]; *Pentikäinen v Finland* App no 11882/10 (ECtHR, 20 October 2015) [65], [71], [113]; *Bédat v Switzerland* App no 56925/08 (ECtHR, 29 March 2016) Dissenting Opinion of Judge López Guerra [15]; *Karácsony and Others v Hungary* App nos 42461/13, 44357/13 (ECtHR, 17 May 2016) [85]; *Baka v Hungary* App no 20261/12 (ECtHR, 23 June 2016) [130], [160]; *NIT S.R.L. v Moldova* App no 28470/12 (ECtHR, 5 April 2022) [228].

[179] *Lopes Gomes da Silva v Portugal* App no 37698/97 (ECtHR, 28 December 2000) [36]; *Dammann v Switzerland* App no 77551/01 (ECtHR, 25 July 2006) [57]; *Fatullayev v Azerbaijan* App no 40984/07 (ECtHR, 4 October 2010) [102]; *Belpietro v Italy* App no 43612/10 (ECtHR, 24 September 2013) [61]; *Magyar Tartalomszolgáltatók Egyesülete and Index.hu Zrt v Hungary* App no 22947/13 (ECtHR, 2 May 2016) [86]; *Khadija Ismayilova v Azerbaijan* App nos 65286/13, 57270/14 (ECtHR, 10 April 2019) [161].

58. Consequently, Applicants submit that the interference was not necessary in a democratic society.

ISSUE B – THE STATE OF CERO, BY CONVICTING AND SENTENCING ONEAI UNDER THE DIGITAL SAFETY ACT, AND SPECIFICALLY BY IMPOSING A ONE-MONTH BAN ON ITS SERVICE, 'RMSM', VIOLATED ITS RIGHT TO THE FREEDOM OF EXPRESSION, INCLUDING THE FREEDOM TO IMPART INFORMATION AND IDEAS, RECOGNISED BY ARTICLE 19 OF THE ICCPR

59. Since FoE is the cornerstone of any democratic society,[180] it alone makes possible the continuing intellectual controversy, the contest of opinions that forms the lifeblood of free and democratic constitutional order.[181] FoE includes the right to seek, receive and impart information and ideas of all kinds.[182]

60. The inherent worth of speech does not depend upon the identity of its source.[183] FoE should be granted to everyone regardless of the nature of the aim pursued or the role

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[180] *Handyside v the United Kingdom* App no 5493/72 (ECtHR, 7 December 1976) [49]; *Perna v Italy* App no 48898/99 (ECtHR, 6 May 2003) [39]; *Steel and Morris v the United Kingdom* App no 68416/01 (ECtHR,15 May 2005) [87]; *Monnat v Switzerland* App no 73604/01 (ECtHR, 21 September 2006) [55]; *Hachette Filipacchi Associes v France* App no 71111/01 (ECtHR, 12 November 2007) [40]; *Stoll v Switzerland* App no 69698/01 (ECtHR, 10 December 2007) [101]; *Mouvement Raëlien Suisse v Switzerland* App no 16354/06 (ECtHR, 13 July 2012) [48]; *Bédat v Switzerland* App no 56925/08 (ECtHR, 29 March 2016) [48]; *Medžlis Islamske Zajednice Brčko and Others v Bosnia and Herzegovina* App no 17224/11 (ECtHR, 27 June 2017) [75]; *Sébastien Germain Marie Aïkoue Ajavon v Republic of Benin* App no 062/2019 (AfCHPR, 4 December 2020) [119]; *Houngue Éric Noudehouenou v Republic of Benin* App no 028/2020 (AfCHPR, 1 December 2022) [106]; UNHRC, 'General Comment No 34, Article 19, Freedoms of Opinion and Expression' (12 September 2011) UN Doc CCPR/C/GC/34 [2]; *Adimayo M. Aduayom, Sofianou T. Diasso and Yawo S. Dobou v Togo* CCPR/C/51/D/422/1990, 423/1990, 424/1990 (UNHRC, 12 July 1996) [7(4)]; *Tae-Hoon Park v Republic of Korea* CCPR/C/57/D/628/1995 (UNHRC, 20 October 1998) [10.3]; *Media Rights Agenda and Others v Nigeria* Comm nos 105/93, 128/94, 130/94, 152/96 (ACmHPR, 31 October 1998) [54]; *Vladimir Viktorovich Shchetko v Belarus* CCPR/C/87/D/1009/2001 (UNHRC, 11 July 2006) [7.3]; *Stephen Benhadj v Algeria* CCPR/C/90/D/1173/2003 (UNHRC, 20 July 2007) [8.10].

[181] *Herrera-Ulloa v Costa Rica* Series C No 107 (IACtHR, 2 July 2004) [112]; *Ricardo Canese v Paraguay* Series C No 111 (IACtHR, 31 August 2004) [82]; *Claude-Reyes et al v Chile* Series C No 151 (IACtHR, 19 September 2006) [85]; *Perozo et al v Venezuela* Series C No 195 (IACtHR, 28 January 2009) [116]; *Ríos et al v Venezuela* Series C No 194 (IACtHR, 28 January 2009) [105]; IACtHR 'Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism' (13 November 1985) Advisory Opinion OC. 5/85 Series A No. 5 [5]; IACmHR, 'Annual Report 2009; Annual Report of the Office of the Special Rapporteur for Freedom of Expression' (30 December 2009) OEA/Ser.L/V/II. Doc. 51 [8].

[182] ICCPR art 19; UDHR art 19; ECHR art 10; ACHR art 13; ACHPR art 9; Charter of Fundamental Rights of the European Union [2000] OJ C364/01 art 11; *Autronic AG v Switzerland* App no 12726/87 (ECtHR, 22 May 1990) [45].

[183] *First Nat'l Bank of Boston v Bellotti* 435 US 765 (1978).

played by natural or legal persons in its exercise.[184] Consistently, Cero recognises the FoE of legal persons.[185] OneAI exercises its FoE, encompassing the right to impart information and ideas through RMSM.[186]

61. As technology evolves, AI-powered content is becoming an integral part of the public debate on the Internet.[187] FoE applies not only to the content of information but also to the means of dissemination, since any restriction imposed on the latter necessarily interferes with the right to receive and impart information.[188] RMSM constitutes a means of exercising FoE for its users, as it facilitates the dissemination of information by generating social media posts.[189]

62. Applying the three-part test,[190] the interference was (i) not prescribed by law, (ii) not in pursuance of a legitimate aim, (iii) neither necessary nor proportionate to achieve such aim.

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[184] *Autronic AG v Switzerland* App no 12726/87 (ECtHR, 22 May 1990) [47]; *Casado Coca v Spain* App no 15450/89 (ECtHR, 24 February 1994) [35]; *Çetin and Others v Turkey* App nos 40153/98, 40160/98 (ECtHR, 13 February 2003) [57]; *Ahmet Yıldırım v Turkey* App no 3111/10 (ECtHR, 18 March 2013) [50].

[185] Compromis 2, 4.

[186] Compromis 2, 8.

[187] Compromis 12; Flanagin A, Bibbins-Domingo K, Berkwits M, Christiansen SL, 'Nonhuman "Authors" and Implications for the Integrity of Scientific Publication and Medical Knowledge' (2023) 329(8) JAMA 637-639; Jiayang Wu, Wensheng Gan, Zefeng Chen, Shicheng Wan, Hong Lin, 'AI-Generated Content (AIGC): A Survey' (26 March 2023) <https://arxiv.org/abs/2304.06632> accessed 16 December 2023.

[188] *Autronic AG v Switzerland* App no 12726/87 (ECtHR, 22 May 1990) [47]; *Ahmet Yıldırım v Turkey* App no 3111/10 (ECtHR, 18 March 2013) [50]; IACmHR, 'Freedom of Expression and the Internet' (2013) OEA/SER L/II CIDH/RELE/IN F11/13 [5], [101].

[189] Compromis 8.

[190] Arguments 3.

i) The interference was not prescribed by law

63. The interference was not prescribed by law because a) it was not reasonably foreseeable[191] and b) adequate safeguards were not available against arbitrary interferences.[192]

a) The law envisaging the interference was not reasonably foreseeable for OneAI

64. Foreseeability beyond the procedural requirements refers to the quality of the provisions providing the intervention.[193] Accordingly, a norm cannot be regarded as 'law' unless formulated with sufficient precision to enable the citizens to regulate their conduct.[194]

65. First, DSA's wording is imprecise, overbroad and vague,[195] thus impeding OneAI from being able to reasonably foresee its criminal liability.[196]

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[191] *Goodwin v the United Kingdom* App no 17488/90 (ECtHR, 27 March 1996) [31]; *Tammer v Estonia* App no 41205/98 (ECtHR, 4 April 2001) [37]; *Chauvy and Others v France* App no 64915/01 (ECtHR, 29 September 2004) [43]; *Houngue Éric Noudehouenou v Republic of Benin* App no 028/2020 (AfCHPR, 1 December 2022) [109]; UNHRC, 'General Comment No 34, Article 19, Freedoms of Opinion and Expression' (12 September 2011) UN Doc CCPR/C/GC/34 [25].

[192] *Silver and Others v the United Kingdom* App nos 5947/72, 6205/73, 7052/75, 7061/75, 7107/75, 7113/75, 7136/75 (ECtHR, 25 March 1983) [90]; *Huvig v France* App no 11105/84 (ECtHR, 24 April 1990) [34]; *Maestri v Italy* App no 39748/98 (ECtHR, 17 February 2004) [30]; *Sanoma Uitgevers BV v the Netherlands* App no 38224/03 (ECtHR, 14 September 2010) [82]; UN Economic and Social Council, UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, 'Siracusa Principles on the Limitation and Derogation of Provisions in the ICCPR' (1984) UN Doc E/CN 4/1984/4 [16], [18]; UNHRC, 'General Comment No 34, Article 19, Freedoms of Opinion and Expression' (12 September 2011) UN Doc CCPR/C/GC/34 [25].

[193] *Ahmet Yıldırım v Turkey* App no 3111/10 (ECtHR, 18 March 2013) [57]; *Sanoma Uitgevers BV v the Netherland*s App no 38224/03 (ECtHR, 14 September 2010) [81]; *Kafkaris v Cyprus* App no 21906/04 (ECtHR, 12 February 2008) [116]; *Kruslin v France* App no 11801/85 (ECtHR, 24 April 1990) [27].

[194] *The Sunday Times v the United Kingdom* (No 1) App no 6538/74 (ECtHR, 26 April 1979) [49]; *Karácsony and Others v Hungary* App nos 42461/13, 44357/13 (ECtHR, 17 May 2016) [124]; *Magyar Kétfarkú Kutya Párt v Hungary* App no 201/17 (ECtHR, 20 January 2020) [94]; *Selahattin Demirtaş v Turkey* (No 2) App no 14305/17 (ECtHR, 22 December 2020) [250].

[195] Arguments 6-7.

[196] *Altuğ Taner Akçam v Turkey* App no 27520/07 (ECtHR, 25 January 2012) [95]; UNHRC, 'Report of the United Nations High Commissioner for Human Rights on the Protection of Human Rights and Fundamental Freedoms While Countering Terrorism' (19 December 2014) UN Doc A/HRC/28/28 [48]; European Commission for Democracy Through Law of the Council of Europe, 'Opinion on the Federal Law on Combating Extremist Activity of the Russian Federation' (Council of Europe, 20 June 2012) [70], [74].

66. Second, DSA neither defines any limit on the scope and duration of a ban nor the conditions for determining them,[197] thereby making the degree of a potential ban on RMSM unforeseeable for OneAI.
67. Third, the definition of terrorism and thus the classification of ELA is also ambiguous within Cero's legal system,[198] thus making the authorities' interpretation of DSA uncertain for OneAI.
68. Consequently, it was not reasonably foreseeable for OneAI to be held liable for the alleged offences.

b) There were no adequate safeguards against unfettered discretion

69. Cero failed to establish adequate legal protection against arbitrary interferences with the FoE of the Applicants,[199] thus allowing authorities to conduct the proceedings arbitrarily in accordance with Cero's political interests.[200]
70. On the one hand, DSA neither provides adequate guidance for distinguishing which expressions can be restricted legitimately[201] nor defines the scope of the court's discretion and manner of its exercise regarding the determination of the sanctions.[202]

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[197] Arguments 9.

[198] Arguments 8.

[199] *Malone v the United Kingdom* App no 8691/79 (ECtHR, 2 August 1984) [67]; *Margareta and Roger Andersson v Sweden* App no 12963/87 (ECtHR, 25 February 1992) [75]; *Claude-Reyes et al v Chile* Series C No 151 (IACtHR, 19 September 2006) [89]; *Moiseyev v Russia* App no 62936/00 (ECtHR, 6 April 2009) [266]; *Ahmet Yıldırım v Turkey* App no 3111/10 (ECtHR, 18 March 2013) [59]; *Magyar Kétfarkú Kutya Párt v Hungary* App no 201/17 (ECtHR, 20 January 2020) [93].

[200] Arguments 12.

[201] Arguments 12.

[202] Compromis 5; *The Sunday Times v the United Kingdom* (No 1) App no 6538/74 (ECtHR, 26 April 1979) [49]; *Maestri v Italy* App no 39748/98 (ECtHR, 17 February 2004) [30]; *Ahmet Yıldırım v Turkey* App no 3111/10 (ECtHR, 18 March 2013) [59].

Notably, the inconsistent application of the term terrorism in DSA and CTA regarding ELA caused arbitrary interference for OneAI.[203]

71. On the other hand, the conducted legal proceedings raise serious concerns, as the classification of the findings regarding the alleged attack prevented the courts from examining the alleged ground for interference invoked by Cero.[204]
72. Consequently, the interference was not prescribed by law.

ii) The interference did not pursue a legitimate aim

73. As stated above,[205] any restriction on FoE may only serve the aims stated in the ICCPR.[206]
74. Cero seeking to restrict FoE must demonstrate that the expression created a clear and imminent danger[207] or clear harm.[208] As outlined above,[209] Cero failed to prove that the Post threatened national security, public order or the rights of others.
75. Therefore, the intervention served Cero's political aims and did not pursue a legitimate aim.

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[203] Arguments 8.

[204] Arguments 13.

[205] Arguments 15.

[206] ICCPR art 19(3).

[207] *Gül and Others v Turkey* App no 4870/02 (ECtHR, 8 September 2010) [42]; *Kılıç and Eren v Turkey* App no 43807/07 (ECtHR, 29 February 2012) [29].

[208] *Ricardo Canese v Paraguay* Series C No 111 (IACtHR, 31 August 2004) [72].

[209] Arguments 16-17.

iii) The interference was not necessary in a democratic society

76. Applying the necessity test,[210] the interference a) did not correspond to a pressing social need, b) was not suitable to pursue its aims, c) was not necessary, and d) was not proportionate and caused a chilling effect.

a) The interference did not correspond to a pressing social need as the Post did not cause clear and imminent danger or clear harm

77. FoE can be restricted in case of a clear and imminent danger[211] or clear harm[212] based on real causes.[213] Cero failed to demonstrate in a specific and individualised fashion the precise nature of the threat and a direct and immediate connection between the threat and the expression.[214] As stated above, in light of all the relevant facts, the Post generated by RMSM did not glorify terrorism or encourage the commission of any violent action. [215] Moreover, no evidence supports any link between the Post and the alleged attack.[216]

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[210] Arguments 19.

[211] *Gül and Others v Turkey* App no 4870/02 (ECtHR, 8 September 2010) [42]; *Kılıç and Eren v Turkey* App no 43807/07 (ECtHR, 29 February 2012) [29].

[212] *Ricardo Canese v Paraguay* Series C No 111 (IACtHR, 31 August 2004) [72].

[213] Office of the Special Rapporteur for Freedom of Expression with the Inter-American Commission on Human Rights, Inter-American Legal Framework Regarding the Right to Freedom of Expression, 2009, CIDH/RELE/INF. 2/09 [82].

[214] UNHRC, 'General Comment No 34, Article 19, Freedoms of Opinion and Expression' (12 September 2011) UN Doc CCPR/C/GC/34 [35]; *Hak-Chul Shin v Republic of Korea* CCPR/C/80/D/926/2000 (UNHRC, 16 March 2004) [7.3]; *Yashar Agazade and Rasul Jafarov v Azerbaijan* CCPR/C/118/D/2205/2012 (UNHRC, 27 October 2016) [7.4].

[215] Arguments 20, 23; *Lingens v Austria* App no 9815/82 (ECtHR, 8 July 1986) [40]; *Rizos and Daskas v Greece* App no 65545/01 (ECtHR, 27 May 2004) [40]; *Erkizia Almandoz v Spain* App no 5869/17 (ECtHR, 22 September 2021) [37].

[216] Arguments 17.

78. Furthermore, the protection of the rights of others, national security and public order is the obligation and responsibility of the state through active measures.[217] It may not shift this duty to individuals, thereby arbitrarily interfering with their FoE. The sanctions imposed by Cero are not in response to a threat posed by OneAI but rather to its failure to perform its own obligations.[218] Therefore, it constitutes an unlawful interference with OneAI's FoE.

b) The interference was not suitable to pursue its alleged legitimate aims

79. Cero aimed to discourage the publication and spread of posts inciting violent acts. However, the implemented measures were not suitable, considering that the prohibition of the use of RMSM for a prescribed period did not prevent the spread of potentially dangerous content itself, as once the ban has expired, the algorithm continues to work in the same way.[219]
80. RMSM is designed to generate posts based on its user's previous posts and habits imitating their style.[220] Consistently, the Post translated the prevalent hashtag '# ✊ ELA' used previously by Una[221] into a textual social media post.[222] In this way, the Post aligned with the user's established pattern, as the emoji is often associated with solidarity.[223]

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[217] UNHRC 'Resolution 44/12' A/HRC/RES/44/12 (16 July 2020) 1.

[218] Compromis 36; UNHRC 'Resolution 33/21' A/HRC/RES/33/21 (30 September 2016) [11].

[219] Compromis 5, 36.

[220] Compromis 8-9; Clarifications 3, 6.

[221] Compromis 24, 26-27.

[222] Compromis 28; Clarifications 7.

[223] Compromis 24.

81. Alternatively to the ban, Cero could have taken suitable steps to prevent potentially dangerous terrorism-related postings by envisaging joint cooperation regarding the further development of RMSM.

82. Hence, the imposed sanctions were not suitable to achieve Cero's alleged aims.

c) The interference was not the least intrusive instrument

83. Cero intervened using one of the most severe measures, as it imposed a ban on OneAI's service,[224] constituting a prior restraint by hindering OneAI from exercising its FoE, including its right to impart information and ideas for a future period.[225] The dangers inherent in prior restraints are such that they call for the most careful scrutiny.[226]

84. Cero failed to ensure tight control over the ban's scope,[227] and strictly target illegal contents,[228] resulting in the imposition of a general and unconditional restriction not limited to any social media platforms, users or topics.[229] Such a wholesale blocking measure excessively interferes with lawful contents as a collateral effect, thus arbitrary interfering with OneAI's FoE.[230] Notably, generic bans relating to the operation of

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[224] Compromis 36-38.

[225] Arguments 32.

[226] *Observer and Guardian v the United Kingdom* App no 13585/88 (ECtHR, 26 November 1991) [60]; *The Sunday Times v the United Kingdom* (No 2) App no 13166/87 (ECtHR, 26 November 1991) [51]; *Ahmet Yıldırım v Turkey* App no 3111/10 (ECtHR, 18 March 2013) [47]; *Organization for a Better Austin v Keefe* 402 US 415, 419 (1971).

[227] *Ekin Association v France* App no 39288/98 (ECtHR, 17 October 2001) [58]; *Ahmet Yıldırım v Turkey* App no 3111/10 (ECtHR, 18 March 2013) [64].

[228] *Bulgakov v Russia* App no 20159/15 (ECtHR, 16 November 2020) [34], [38]; *OOO Flavus and Others v Russia* App nos 12468/15, 19074/16, 23489/15 (ECtHR, 16 November 2020) [38], [41]; *Vladimir Kharitonov v Russia* App no 10795/14 (ECtHR, 16 November 2020) [40], [46].

[229] Compromis 36.

[230] *Ahmet Yıldırım v Turkey* App no 3111/10 (ECtHR, 18 March 2013) [63], [66]; *Bulgakov v Russia* App no 20159/15 (ECtHR, 16 November 2020) [34], [38]; *Engels v Russia* App no 61919/16 (ECtHR, 16 November 2020) [30]; *OOO Flavus and Others v Russia* App nos 12468/15, 19074/16, 23489/15 (ECtHR, 16 November 2020) [38], [41]; *Vladimir Kharitonov v Russia* App no 10795/14 (ECtHR, 16 November 2020) [40], [46].

internet-based information dissemination systems are clearly incompatible with the ICCPR.[231]

85. RMSM's ability of generating personalised content, enabling seamless and effective sharing on social media,[232] qualifies it an internet-based information disseminating system. Cero's interference with such a system also deprived RMSM users of this means of exercising their FoE, which is crucial for active engagement in pivotal discussions on critical societal matters.[233]
86. Cero's alleged legitimate aims could have been reached by much less intrusive instruments, such as imposing an appropriate fine or a content-specific ban.
87. Consequently, as the imposed restrictions are overbroad and are not the least intrusive instrument amongst those that might achieve their protective function,[234] the interference was not necessary.

d) The interference was not proportionate and caused a chilling effect

88. The principle of proportionality requires a discernible and sufficient link between the sanction and the conduct and circumstances of the individual concerned.[235] The nature and severity of the sanctions imposed are further important factors to consider.[236]

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[231] UNHRC, 'General Comment No 34, Article 19, Freedoms of Opinion and Expression' (12 September 2011) UN Doc CCPR/C/GC/34 [43].

[232] Compromis 8-10, 13.

[233] *Times Newspapers Ltd v the United Kingdom* (Nos 1, 2) App nos 3002/03, 23676/03 (ECtHR, 10 March 2009) [27]; *Ahmet Yıldırım v Turkey* App no 3111/10 (ECtHR, 18 March 2013) [48]-[50], [54]; *Akdeniz v Turkey* App no 20877/10 (ECtHR, 11 March 2014) [24]; *Cengiz and Others v Turkey* App nos 48226/10, 14027/11 (ECtHR, 1 December 2015) [49].

[234] UNHRC, 'General Comment No 34, Article 19, Freedoms of Opinion and Expression' (12 September 2011) UN Doc CCPR/C/GC/34 [34].

[235] *Hirst v the United Kingdom* (No 2) App no 74025/01 (ECtHR, 6 October 2005) [71].

[236] *Başkaya and Okçuoğlu v Turkey* App nos 23536/94, 24408/94 (ECtHR, 8 July 1999) [66]; *Ceylan v Turkey* App no 23556/94 (ECtHR, 8 July 1999) [37]; *Karataş v Turkey* App no 23168/94 (ECtHR, 8 July 1999) [53];

da) OneAI has developed RMSM with due diligence

89. Cero should consider that the operation of an AI tool is inherently different from human thinking,[237] thus regulating and judging the same raises serious concerns. Notably, the main obligation of OneAI during its developments is constant due diligence.[238]

90. OneAI has developed one of the most sophisticated AI programs in the world.[239] The due diligence regarding the development of RMSM is shown by the successful pilot testing prior to launching its market version[240] and the considerable number of users who subscribed to the paid market version after the beta testing.[241]

91. Furthermore, the tool's proper functioning was ensured by requiring users to train it through several steps over months before live use.[242] In addition, RMSM continued to learn from users' behaviour in order to evolve.[243]

92. Notably, the content generated by RMSM fully complies with the community standards of the social media platform on which the content is posted contributing to a safer user

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Tammer v Estonia App no 41205/98 (ECtHR, 4 April 2001) [69]; *Skałka v Poland* App no 43425/98 (ECtHR, 27 August 2003) [41]-[43]; *Cumpănă and Mazăre v Romania* App no 33348/96 (ECtHR, 17 December 2004) [111]; *Dammann v Switzerland* App no 77551/01 (ECtHR, 25 July 2006) [57]; *Pinto Pinheiro Marques v Portugal* App no 26671/09 (ECtHR, 22 April 2015) [46]; *Baka v Hungary* App no 20261/12 (ECtHR, 23 June 2016) [160]; *Medipress-Sociedade Jornalística, Lda v Portugal* App no 55442/12 (ECtHR, 30 November 2016) [45].

[237] Korteling JE (Hans), van de Boer-Visschedijk GC, Blankendaal RAM, Boonekamp RC, Eikelboom AR, 'Human- versus Artificial Intelligence' (2021) 4 Frontiers in Artificial Intelligence <https://www.frontiersin.org/articles/10.3389/frai.2021.622364/full> accessed 17 December 2023.

[238] *Michaud v France* App no 12323/11 (ECtHR, 6 March 2013) [34]; Case C-324/09 *L'Oréal SA and Others v eBay International AG and Others* [2011] ECLI:EU:C:2011:474 [122].

[239] Compromis 8.

[240] Compromis 11.

[241] Compromis 12.

[242] Compromis 9.

[243] Compromis 9, 14; Clarifications 3, 12.

experience.[244] Consistently, the Post was not flagged for any violation, including praising or glorifying 'terrorism',[245] and has not been removed or blocked by Facebook.[246]

db) The imposed sanctions were disproportionate

93. The DSA did not specify the circumstances to be considered in determining the sanctions,[247] resulting in the imposition of disproportionate and unreasonable sanctions on OneAI.[248] The criminal conviction and the imposed sanctions, especially the ban on RMSM, severely tarnished OneAI's reputation[249] and caused significant financial losses.[250]

94. On the one hand, Cero imposed the upper limit of the fine that can be applied.[251] This indicates that the most serious form of the offence had been committed. However, in OneAI's case, it was a one-sentence post relating to an organisation of uncertain classification,[252] available to the public only for a very limited, seventy-five minute period.[253]

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[244] Compromis 11, 13; Clarifications 9.

[245] Compromis 34.

[246] Compromis 28.

[247] Arguments 9.

[248] Compromis 36.

[249] ICCPR art 17; *Grande Stevens v Italy* App no 18640/10 (ECtHR, 7 July 2014) [122].

[250] Compromis 39.

[251] Compromis 5, 36.

[252] Arguments 8.

[253] Compromis 28.

95. On the other hand, the generic one-month ban imposed on RMSM has caused significant financial losses for OneAI. The conviction led to a wave of unsubscribes as it created uncertainty among users who were unable to use RMSM due to the ban. OneAI lost three-quarters of its subscribers by the end of the ban, representing a loss of more than USD 70,000,000 in annual revenue.[254] Such a financial downturn could threaten OneAI's economic foundations, fundamentally affecting its operations and future developments.[255]

96. Therefore, the imposed sanctions, especially the ban, were severely disproportionate.

dc) The interference caused a chilling effect

97. As stated by the ECtHR in the 2023's Sanchez v France case 'Interferences with the exercise of FoE through the Internet are likely to have a chilling effect, which carries a risk of self-censorship'.[256] The severity of the imposed fine and the ban's financial implications caused a chilling effect on OneAI's FoE.[257] Furthermore, it violated the right of the public to receive information by reducing postings with the assistance of RMSM.[258]

[254] Compromis 39.

[255] *Błaja News Sp. z o. o. v Poland* App no 59545/10 (ECtHR, 26 February 2014) [71].

[256] *Sanchez v France* App no 45581/15 (ECtHR, 15 May 2023) [184].

[257] Arguments 57; *Comunicação Social, S.A. and Others v Portugal* App no 39324/07 (ECtHR, 7 March 2011) [55]; *Bozhkov v Bulgaria* App no 3316/04 (ECtHR, 19 July 2011) [55]; *Pinto Pinheiro Marques v Portugal* App no 26671/09 (ECtHR, 22 April 2015) [46]; *Pais Pires de Lima v Portugal* App no 70465/12 (ECtHR, 12 May 2019) [66]-[67]; *Freitas Rangel v Portugal* App no 78873/13 (ECtHR, 11 April 2022) [61].

[258] *Observer and Guardian v the United Kingdom* App no 13585/88 (ECtHR, 26 November 1991) [59]; *Guerra and Others v Italy* App no 116/1996/735/932 (ECtHR, 19 February 1998) [53]; *Ahmet Yıldırım v Turkey* App no 3111/10 (ECtHR, 18 March 2013) [50].

98. Furthermore, 600,000 users have unsubscribed from RMSM by the end of the ban.[259] Before the interference, OneAI had approx. 800,000 subscribers, including celebrities and social media influencers.[260] As a result, the participation of unsubscribing users in public debate declines. The chilling effect is particularly severe regarding high reach-users such as social media influencers.

99. Furthermore, the interference also discourages technological progress and innovation regarding services that facilitate the exercise of FoE. Indeed, sanctions have a deterrent effect on such technological companies.

100. Consequently, Applicants submit that the interference was not necessary in a democratic society. Therefore, the FoE of the Applicants shall prevail.

[259] Compromis 39.

[260] Compromis 12.

IX. PRAYER FOR RELIEF

In the light of arguments advanced and authorities cited, the Applicants respectfully request this Honourable Court to adjudge and declare that:

1. The State of Cero, by convicting and sentencing Una under the Digital Safety Act, and specifically by imposing a one-month ban on her use of social media, violated her right to the freedom of expression recognised by Article 19 of the ICCPR.
2. The State of Cero, by convicting and sentencing OneAI under the Digital Safety Act, and specifically by imposing a one-month ban on its service, RMSM, violated its right to the freedom of expression, including the freedom to impart information and ideas, recognised by Article 19 of the ICCPR.

On behalf of Una and OneAI

101A

Counsels for Applicants