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

Una and OneAI
(*Applicants*)

v.

Cero
(*Respondent*)

MEMORIAL FOR RESPONDENT

Word Count for Arguments Section: 4,987

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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**
AI	**Artifical Intelligence**
CC	**Constitutional Court of Cero**
CoA	**Court of Appeal 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**
DRC	**Digital Regulatory Commission**
DSA	**Digital Safety Act of Cero**
ELA	**Enos Liberation Army**
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**
MoA	**Margin of Appreciation**
OHCHR	**Office of the High Commissioner for Human Rights**
OSCE	**Organisation for Security and Co-operation in Europe**
OAS	**Organisation of American States**
RDP	**Regional Defence Pact**
the Post	**Una's 11.00 AM Facebook post on 17 March 2023**
the terrorist attack / explosion	**the detoniation at a Cerovian weapons manufacturing facility on the morning of 18 March 2023**
ToS	**Terms of Service**
UDHR	**Universal Decleration 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

DECLARATIONS, TREATIES AND CONVENTIONS

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Benjamin Wagner, *Algorithms and human rights. Study on the human rights dimensions of automated data processing techniques and possible regulatory implications* (Council of Europe, 2018)	79
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IACmHR, '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	73
Jan Oster, *Media Freedom as a Fundamental Right* (Cambridge University Press, 2015)	49

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

Cero (Respondent) 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 Respondent 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, DID NOT VIOLATE HER RIGHT TO THE FREEDOM OF EXPRESSION RECOGNISED BY ARTICLE 19 OF THE ICCPR.

The restriction was prescribed by law as the limitations on freedom of expression were stipulated in the Constitution, the Digital Safety Act and the ICCPR, which Cero ratified without reservations. More than five years have passed since DSA's adoption, therefore its practical application is predictable. Una was able to reasonably foresee the consequences of her actions. DSA explicitly prescribes the legal consequences of committing glorifying terrorism. The limitations lay down clear and straightforward rules to curb the publication or dissemination of harmful content. As DSA gives precise, unambiguous definitions, which meet international standards. Its wording was sufficiently flexible for its application, and purposefully employed relatively broader terms to facilitate its flexible application. Cero conducted an effective investigation and the procedure lawfully and effectively. Una exercised all effective judicial reviews, which shall be considered an adequate safeguard against unfettered discretion.

The interference pursued legitimate aims under ICCPR - the protection of national security, public order and the rights of others. Cero is involved in the Enosian conflict, as RDP obliges Cero to supply Enos with weapons to quell the armed revolt irrupted by ELA. Therefore, the Cerovian state-run weapon facilities became potential targets for terrorist attacks of ELA sympathisers. Cero enjoys a wide MoA for imposing sanctions, therefore such expression was legitimately restricted to try to mitigate the escalation of the conflict to its territory.

Furthermore, the explosion in the facility could threaten the right to life of its employees and other people living near to the facility.

Upon examining the content, the context of the Post and the function of the person publishing it, the interference was necessary because it corresponded to a pressing social need, was suitable, was the least intrusive measure and was proportionate to its legitimate aims.

Una committed an offence under DSA as she glorified ELA by using the term ‘I stand in solidarity’, and as a result, she indirectly encouraged others to commit terrorism. Una had a significant effect not just on her many followers but potentially on anyone. As she was a public figure and aware of the significant number of ELA sympathisers in Cero, Una had a greater responsibility to consider the possible consequences of her Post. RMSM autogenerated the Post based on Una’s previous social media activity. Thus Applicants are jointly responsible for it. Una’s Post created a clear and imminent danger and clear harm as when the level of terrorist threat remained high, the Post was capable of inciting further violence as it made the impression that recourse to violence is a necessary measure of achieving ELA’s aims. The Post was available on Facebook for more than an hour, during which time it was shared by many users, reached and influenced huge audiences, including ELA sympathisers. Notably, only fifteen hours after the publication of the Post, a terrorist attack was carried out by ELA sympathisers.

The applied sanctions were suitable for protecting legitimate aims as fine is a widely used legitimate sanction, the suspended prison sentence was able to prevent Una from re-offending but not deprive her of her freedom and the suspension was suitable to prevent the spread of further dangerous content by Una which could have incited others to commit terrorism.

The imposed sanctions were necessary. Considering her high degree of influence, concomitant with an augmented level of responsibility, and the fact that she that line in a politically sensitive Cero, Una's grossly negligent exercise of FoE led to the necessity of the application of criminal

sanctions. The prison sentence and the suspension imposed were necessary as Una's Post indirectly incited others to commit such violent acts, which were able to seriously impair the right to life of others.

The interference was proportionate as Cero struck a fair balance between Una's FoE and the legitimate right to protection against the activities of terrorist organisations. The Post cannot be considered relevant to the debate of general interest. Una only jumped on a large social media wave and she posted as a regular influencer who desired to gain a larger follower base, and not as a political activist. She claimed that she would take legal action against OneAI, but she did not. Meanwhile, she was aware that her inciting Post had already been shared by many followers. Thus, Cero could not afford the risk of not sanctioning an offender who had inconsistently not kept herself to her promise and who had deleted the Post out of fear for her own reputation. The suspended prison sentence was at the lower end of the spectrum, thus it was not excessive. Considering her financial position, she was not fined excessively and her livelihood was not threatened. The suspension imposed was a social media-specific suspension and did not constitute a general encumbrance on her FoE, thus she could practise it in other ways.

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', DID NOT VIOLATE ITS RIGHT TO THE FREEDOM OF EXPRESSION, INCLUDING THE FREEDOM TO IMPART INFORMATION AND IDEAS, RECOGNISED BY ARTICLE 19 OF THE ICCPR

The interference with One AI's right to freedom of expression was prescribed by law. The norms envisaging the interference were accessible, and the DSA was adopted more than five

years ago. The interference was foreseeable as it had a legal basis in national law, the possible restrictions and applicable sanctions imposed on One AI are outlined in DSA. The term ‘glorifying terrorism’ is explicitly defined, as DSA determines the types of content that constitute incitement to terrorism. DSA gives precise, unambiguous definitions for terrorism and glorification, which meet international standards. DSA adapts to changing circumstances, thus using some purposefully broader terms to facilitate its flexible application. DSA outlines the possible legal consequences of infringements, specifying the potential range of fines, and the prescribed period for suspension. OneAI could seek legal assistance to ensure the compliance of its tool with DSA. Cero provided adequate safeguards for OneAI as a thorough investigation with judicial protection against arbitrary interference was conducted. Cero provided effective and adequate domestic remedies, including hearings, trials, and appeals, and the fact that OneAI exhausted all of them, indicates their effective availability.

The interference pursued the legitimate aims of protecting national security, public order and the rights of others. The RDP obliged Cero to supply Enos with weapons, by which Cero became involved in the conflict. The military infrastructure of Cero supplied both states with weapons, thus it was vital to protect their national security. Cero therefore legitimately restricted FoE to safeguard these by preventing the dissemination of autogenerated posts supporting terrorism. Support for ELA could cause severe disturbances to public order. The interference corresponded to a pressing social need. Cero has a positive obligation to protect every citizen's life. RMSM autogenerated a Post which glorified terrorism, thereby committing an offence which indirectly encouraged and instigated others to commit terrorist acts. Users could not turn off the constant monitoring of their social media activity by RMSM, it could therefore autogenerate posts which users did not intend to share on their behalf. OneAI provided no avoidable themes to opt for. Thereby RMSM could produce content to which users had not contributed, even posts that incite violence. OneAI had a significant impact on society and thus

had a greater responsibility to consider the possible consequences of the malfunctioning of RMSM. The Post created a clear and imminent danger and clear harm, as the autogeneration of the Post is deemed an indirect call to commit terrorist attacks and risk others' lives. It was available for more than an hour and influenced many people. The Post fuelled tensions and the terrorist attack was committed only fifteen hours after its publication.

The imposed sanctions were suitable for protecting the legitimate aims. The financial penalty is a widely used sanction to encourage for-profit companies to comply with DSA and avoid future offences. Temporarily suspending RMSM was suitable for preventing the proliferation of potentially dangerous posts.

The general suspension on RMSM for one month was necessary, as implementing a content-specific suspension is technologically impossible. AI dissemination systems are too complex and unpredictable for courts. RMSM autogenerates content by constantly learning from its users' habits. It is impossible to narrow down the suspension effectively and impose precise control over an AI-driven tool. To validate these difficulties, the # ✊ is not always understood as the symbol of solidarity, and RMSM misconstrued it in the context of speech.

The interference was proportionate to the legitimate aim pursued. OneAI did not meet the obligation to develop RMSM in compliance with DSA, as RMSM autogenerated an infringing Post. A stricter approach should be followed concerning OneAI which carries out a professional activity, as it can be expected to take special care in assessing risks. RMSM published the autogenerated content directly on social media platforms, without any prior user approval, and users could opt for switching off the labelling feature. OneAI is the author of the Post, therefore it is liable for breaching DSA. The suspension provided a reasonable time for OneAI to implement safeguards in RMSM to avoid further infringements. These safeguards could be the deletion of some controversial topics, a monitoring system with human review, or the restriction

of the opt-out system of labelling. It is risky that topics can either be autogenerated or suggested during highly sensitive times without enabling users to notice the RMSM-generated content. Cero gave careful consideration to the violent content of the Post, the escalation of the conflict, and the instability of the region. The Post illustrates that the algorithm does not have an adequate safeguard to decide whether an autogenerated post constitutes an offence or what its impact on society might be. The fine compared to the OneAI's monthly revenue from RMSM subscriptions cannot be considered excessive and has not threatened OneAI's economic foundations. The reason for unsubscriptions is likely to be that OneAI failed to develop RMSM in compliance with the relevant legislation resulting in the autogeneration of a Post glorifying terrorism. The suspension was tool-specific and did not constitute a general encumbrance on OneAI's FoE, therefore could still practise FoE without restrictions in other ways.

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, DID NOT VIOLATE HER RIGHT TO THE FREEDOM OF EXPRESSION RECOGNISED BY ARTICLE 19 OF THE ICCPR

1. FoE[38] constitutes one of the essential foundations of a democratic society and a basic condition for its progress and each individual's self-fulfilment.[39] The Internet provides an unprecedented platform for the exercise of FoE and has a key role in expressing and rapidly disseminating opinions, thus significantly amplifying their impact on society.[40]

[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] *Observer and Guardian v the United Kingdom* App no 13585/88 (ECtHR, 26 November 1991); *Jersild v Denmark* App no 15890/89 (ECtHR, 23 September 1994) [31]; *Janowski v Poland* App no 25716/94 (ECtHR, 21 January 1999) [30]; *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]; *Radio France and Others v France* App no 53984/00 (ECtHR, 30 March 2004) [32], [59]; *İ.A. v Turkey* App no 42571/98 (ECtHR, 13 December 2005) [23].

[40] *Times Newspapers Ltd v the United Kingdom* (Nos 1, 2) App nos 3002/03, 23676/03 (ECtHR, 10 June 2009) [27]; *Ahmet Yildirim v Turkey* App no 3111/10 (ECtHR, 18 March 2013) [54]; *Delfi AS v Estonia* App no 64569/09 (ECtHR, 16 June 2015) [56], [84], [110]; *Cengiz and Others v Turkey* App nos 48226/10, 14027/11 (ECtHR, 1 March 2016) [52].

2. The exercise of FoE carries with it duties and responsibilities,[41] both under ICCPR and the Constitution[42] to ensure that co-existing rights are not hindered.[43] FoE is not an absolute right, therefore it can be subject to certain restrictions.[44]
3. Accordingly, the interference with Applicants' rights guaranteed under Article 19(2) of ICCPR was permissible. According to the three-part cumulative test set by international standards, the restriction was i) prescribed by law, ii) pursued legitimate aims, and iii) was necessary and proportionate to achieve such aims.[45]

[41] Compromis 3.

[42] Compromis 2.

[43] 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' (11 May 2016) UN Doc A/HRC/32/38 [7].

[44] *Observer and Guardian v the United Kingdom* App no 13585/88 (ECtHR, 26 November 1991) [59]; *Media Rights Agenda and Others v Nigeria* Comm nos 105/93, 128/94, 130/94, 152/96 (ACmHPR, 31 October 1998) [66]; *Janowski v Poland* App no 25716/94 (ECtHR, 21 January 1999) [30]; *Fuentes Bobo v Spain* App no 39293/98 (ECtHR, 29 May 2000) [43]; *Association Ekin v France* App no 39288/98 (ECtHR, 17 October 2001) [56]; *De Diego Nafría v Spain* App no 46833/99 (ECtHR, 4 September 2002) [38]; *Perna v Italy* App no 48898/99 (ECtHR, 6 May 2003) [39]; *Vladimir Viktorovich Shchetko v Belarus* CCPR/C/87/D/1009/2001 (UNHRC, 11 July 2006) [7.3]; *Kimel v Argentina* Series C No 177 (IACtHR, 2 May 2008) [75]; *Uj v Hungary* App no 23954/10 (ECtHR, 19 October 2011) [17]; *Ingabire Victoire Umuhoza v Rwanda* App no 003/2014 (AfCHPR, 7 December 2018) [133]; *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].

[45] *Handyside v the United Kingdom* App no 5493/72 (ECtHR, 7 December 1976) [44]-[46], [49], [53]; *Uj v Hungary* App no 23954/10 (ECtHR, 19 October 2011) [15]; *Lohé Issa Konaté v the Republic of Burkina Faso* App no 004/2013 (AfCHPR, 5 December 2014) [148]-[150]; *Ingabire Victoire Umuhoza v Rwanda* App no 003/2014 (AfCHPR, 7 December 2018) [133]; *Womah Mukong v Cameroon* CCPR/C/51/D/458/1991 (UNHRC, 10 August 1994) [9.7]; *Vladimir Viktorovich Shchetko v Belarus* CCPR/C/87/D/1009/2001 (UNHRC, 8 August 2006) [7.3]; Jan Oster, *Media Freedom as a Fundamental Right* (Cambridge University Press, 2015) 112-118.

i) The interference was prescribed by law

4. For interferences to be prescribed by law, acts a) must be accessible, b) reasonably foreseeable and c) adequate safeguards must be available against arbitrary interferences.[46]

a) The law envisaging the interference was accessible for Una

5. Cero enacted DSA in 2018[47] in accordance with its domestic legal order. The written statute was accessible to Cerovian citizens, providing an indication adequate for the circumstances of the legal rules applicable to a given case.[48] Additionally, more than five years have passed since DSA's adoption,[49] therefore its practical application is transparent and predictable.

[46] *Klass and Others v Germany* App no 5029/71 (ECtHR, 6 September 1978) [56]; *Uzun v Germany* App no 35623/05 (ECtHR, 2 December 2010) [72]; *Gürtekin and Others v Cyprus* App nos 60441/13, 68206/13, 68667/13 (ECtHR, 11 March 2014) [20]; *Malcolm Ross v Canada* CCPR/C/70/D/736/1997 (UNHRC, 26 October 2000) [11.4].

[47] Compromis 5.

[48] *The Sunday Times v the United Kingdom* (No 1) App no 6538/74 (ECtHR, 26 April 1979) [49]; *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].

[49] Compromis 5.

b) The interference was reasonably foreseeable

6. Any interference must have a legal basis in national law.[50] Concerning Cero's legislative framework, ICCPR was ratified without reservations,[51] and the permissible limitations of FoE were specified in both the Constitution and DSA.[52]
7. Laws restricting FoE shall be sufficiently precise[53] enumerating exemptions, limitations and penalties[54] to enable people to regulate their conduct accordingly.[55] However, foreseeability does not require absolute certainty,[56] and consequences may still be

[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]; *Sanoma Uiigeucrs BV v the Netherlands* App no 38224/03 (ECtHR, 14 September 2010) [81]; UNHRC, 'General Comment No 34, Article 19, Freedoms of opinion and expression' (12 September 2011) UN Doc CCPR/C/GC/34 [25].

[51] Compromis 4.

[52] Compromis 2-7.

[53] *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]; *Kokkinakis v Greece* App no 14307/88 (ECtHR, 25 May 1993) [40]; *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 Uiigeucrs 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]; *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' (1985) UN Doc E/CN 4/1985/4 [17]; 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); *Tomás Eduardo Cirio v Uruguay* Case 11.500 (IACmHR, 27 October 2006) [64].

[54] *Kafkaris v Cyprus* App no 21906/04 (ECtHR, 12 February 2008) [140]; *Leonardus Johannes Maria de Groot v the Netherlands* CCPR/C/54/D/578/1994 (UNHRC, 14 July 1994); UNHRC, 'General Comment No 34, Article 19, Freedoms of Opinion and Expression' (12 September 2011) UN Doc CCPR/C/GC/34 [25]; Toby Mendel, 'Restricting Freedom of Expression: Standards and Principles' (Centre for Law and Democracy, 2010).

[55] *The Sunday Times v the United Kingdom* (No 1) App no 6538/74 (ECtHR, 26 April 1979) [49]; *Kokkinakis v Greece* App no 14307/88 (ECtHR, 25 May 1993) [40]; *Hashman and Harrup v the United Kingdom* App no 25594/94 (ECtHR, 25 November 1999) [31]; *Chauvy and Others v France* App no 64915/01 (ECtHR, 29 September 2004) [43]; *Delfi AS v Estonia* App no 64569/09 (ECtHR, 16 June 2015) [121].

[56] *The Sunday Times v the United Kingdom* (No 1) App no 6538/74 (ECtHR, 26 April 1979) [49]; *Müller and Others v Switzerland* App no 10737/84 (ECtHR, 24 May 1988) [29]; *Kokkinakis v Greece* App no 14307/88 (ECtHR, 25 May 1993) [40]; *Hertel v Switzerland* App no 25181/94 (ECtHR, 25 August 1998) [35]; *Chauvy and Others v France* App no 64915/01 (ECtHR, 29 September 2004) [43].

adequately foreseeable if the person concerned has to take appropriate legal advice.[57] DSA explicitly prescribes the legal consequences of finding a person guilty of glorifying terrorism.[58] The limitations lay down clear and straightforward rules to curb the publication or dissemination of harmful contents.[59]

8. DSA[60] clearly defines the offence committed by Una: she recklessly published content[61] that indirectly encouraged members of the public to commit an act of terrorism, namely an explosion.[62] Her liability is based on DSA,[63] as her Post was likely to be understood by a reasonable person as the glorification of an entity that committed terrorist acts.[64] As DSA gives precise, unambiguous definitions,[65] which meets international standards,[66] Una was able to reasonably foresee the consequences of her actions.[67]
9. Accordingly, the wording of DSA was precisely defined but also sufficiently flexible for its application. While certainty is desirable, it may bring excessive rigidity and the law must be able to keep pace with changing circumstances.[68] In areas affecting national

[57] *Tolstoy Miloslavsky v the United Kingdom* App no 18139/91 (ECtHR, 13 July 1995) [37]; *Cantoni v France* App no 17862/91 (ECtHR, 11 November 1996) [35]; *Chauvy and Others v France* App no 64915/01 (ECtHR, 29 September 2004) [43], [45]; *Lindon, Otchakovsky-Laurens and July v France* App nos 21279/02, 36448/02 (ECtHR, 22 October 2007) [41]; *Delfi AS v Estonia* App no 64569/09 (ECtHR, 16 June 2015) [129].

[58] Compromis 5.

[59] Compromis 5.

[60] Compromis 5.

[61] Compromis 28.

[62] Compromis 29.

[63] Compromis 5.

[64] Compromis 28.

[65] Compromis 7.

[66] UNGA 'Measures to eliminate international terrorism' A/RES/49/60 (adopted 17 February 1995) 2-4.

[67] *Rouillan v France* App no 28000/19 (ECtHR, 23 September 2022) [74]-[76].

[68] *Chauvy and Others v France* App no 64915/01 (ECtHR, 29 September 2004) [43]; *Lindon, Otchakovsky-Laurens and July v France* App nos 21279/02, 36448/02 (ECtHR, 22 October 2007) [41]; *Anatoliy Yeremenko v*

security, the foreseeable character of the law can be weaker.[69] The wording of DSA,[70] and the Constitution[71] purposefully employed relatively broader terms to facilitate the flexible application of the relevant provisions. Norms need to maintain a certain level of abstraction to be able to keep up with changing circumstances.[72] Many laws are inevitably couched in terms which, to a greater or lesser extent, are vague and whose the interpretation and application of which are questions of practice,[73] especially if the subject and content of the law demands a higher level of abstraction.

10. Considering the written form and the language of DSA, the consistent application of these concepts by national courts, Una could have reasonably foreseen that she might incur criminal liability for her Post.

Ukraine App no 22287/08 (ECtHR, 15 December 2022) [48]; *Bouton v France* App no 22636/19 (ECtHR, 13 January 2023) [33].

[69] *Leander* v *Sweden* App no 9248/81 (ECtHR, 26 March 1987) [84].

[70] Compromis 5, 7.

[71] Compromis 2-3.

[72] *The Sunday Times v the United Kingdom* (No 1) App no 6538/74 (ECtHR, 26 April 1979) [49]; *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) [88]; *Müller and Others v Switzerland* App no 10737/84 (ECtHR, 24 May 1988) [29]; *Kokkinakis v Greece* App no 14307/88 (ECtHR, 25 May 1993) [40]; *Hertel v Switzerland* App no 25181/94 (ECtHR, 25 August 1998) [35]; *Chauvy and Others v France* App no 64915/01 (ECtHR, 29 September 2004) [43]; *Lindon, Otchakovsky-Laurens and July v France* App nos 21279/02, 36448/02 (ECtHR, 22 October 2007) [41]; *Usón Ramírez v Venezuela* Series C No 207 (IACtHR, 20 November 2009) [55]; *Delfi AS v Estonia* App no 64569/09 (ECtHR, 16 June 2015) [71], [75].

[73] *The Sunday Times v the United Kingdom* (No 1) App no 6538/74 (ECtHR, 26 April 1979) [49]; *Chauvy and Others v France* App no 64915/01 (ECtHR, 29 September 2004) [43].

c) Adequate safeguards were provided against arbitrary interferences

11. Cero has fulfilled its positive obligation to conduct an effective investigation,[74] and the judicial authorities conducted the procedure lawfully and effectively,[75] examining the case thoroughly. All five authorities that investigated the case acted consistently with DSA.[76]
12. The Applicants' case was examined by the DRC, a board empowered to investigate complaints of violations of DSA on social media. The DRC prepared a report and forwarded it to the empowered CCID.[77] Afterwards, Una and OneAI were found guilty in a summary trial by the HC.[78]
13. The term 'effective remedy' must mean a remedy that is as effective as it can be,[79] in practice as well as in law.[80] Una could challenge the HC's decision before the CoA and

[74] *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) [67]; *Margareta and Roger Andersson v Sweden* App no 12963/87 (ECtHR, 25 February 1992) [75]; *Claude Reyes and Others v Chile* Series C No 151 (IACtHR, 16 September 2006) [89]; *Moiseyev v Russia* App no 62936/00 (ECtHR, 6 April 2009) [266]; *Pentikäinen v Finland* App no 11882/10 (ECtHR, 20 October 2015) [85]; 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' (1985) UN Doc E/CN 4/1985/4 [16]; UNHRC, 'General Comment No 34, Article 19, Freedoms of Opinion and Expression' (12 September 2011) UN Doc CCPR/C/GC/34 [25].

[75] Compromis 36-38.

[76] Compromis 5-7, 31-38.

[77] Compromis 6, 31-35.

[78] Compromis 36.

[79] *Leander v Sweden* App no 9248/81 (ECtHR, 26 March 1987) [84].

[80] *Lindstrand Partners Advokatbyrå AB v Sweden* App no 18700/09 (ECtHR, 29 May 2017) [117]; *Jansons v Latvia* App no 1434/14 (ECtHR, 30 January 2023) [97].

the CC[81] on the merits.[82] Una therefore availed of all effective judicial reviews,[83] which shall be considered an adequate safeguard against unfettered discretion.[84]

14. Due to the terrorist attack,[85] the summary trial was held in accordance with DSA.[86] The authorities paid special attention to every detail, which allowed for prompt and effective decision-making, promoting legality.[87]

15. Consequently, Respondent submits that, as Una was able to foresee the legal consequences of the violation of DSA and effective remedies were granted, the interference was prescribed by law.

ii) The interference pursued legitimate aims

16. The criteria of lawfulness refers to a legal basis for any action.[88] The interference pursued legitimate aims under ICCPR,[89] namely the protection of national security, public order and the rights of others.

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[81] Compromis 37-38.

[82] Compromis 36-38.

[83] *Ahmet Yıldırım v Turkey* App no 3111/10 (ECtHR, 18 March 2013) [64].

[84] *Klass and Others v Germany* App no 5029/71 (ECtHR, 6 September 1978) [56]; *Sanoma Uitgevers BV v the Netherlands* App no 38224/03 (ECtHR, 14 September 2010) [82]; *Uzun v Germany* App no 35623/05 (ECtHR, 2 December 2010) [72]; *Trabajo Rueda v Spain* App no 32600/12 (ECtHR, 30 August 2017) [37]; *Malcolm Ross v Canada* CCPR/C/70/D/736/1997 (UNHRC, 26 October 2000) [11.1].

[85] Compromis 29.

[86] Compromis 5.

[87] *König v Germany* App no 6232/73 (ECtHR, 10 March 1980) [99]; *Pélissier and Sassi v France* App no 25444/94 (ECtHR, 25 March 1999) [67]; *Pedersen and Baadsgaard v Denmark* App no 49017/99 (ECtHR, 17 December 2004) [45].

[88] *Beyeler v Italy* App no 33202/96 (ECtHR, 5 January 2000) [108]; *Iatridis v Greece* App no 31107/96 (ECtHR, 19 October 2000) [58]; *Broniowski v Poland* App no 31443/96 (ECtHR, 28 September 2005) [147].

[89] ICCPR art 19(3).

17. An armed rebellion had been going on in Cero's neighbouring state Enos for more than a decade.[90] Cero is involved in this brutal conflict, as RDP obliges Cero to supply Enos with weapons to quell the armed revolt.[91] Therefore, the Cerovian state-run[92] weapon facilities became potential targets for terrorist attacks by ELA sympathisers.
18. Cero enjoys a wide MoA for imposing sanctions when an indirect incitement to terrorist violence means a serious threat to national security,[93] and when the person expressing FoE has a significant impact on the public.[94] Therefore, Cero legitimately restricted such expression by preventing the dissemination of terrorism supporting posts[95] to try to mitigate the escalation of the conflict to its territory as Cero's national security, public order[96] and prevention of disorder or crime[97] were seriously threatened.

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[90] Compromis 19.

[91] Compromis 20-21.

[92] Clarifications 33.

[93] *Rouillan v France* App no 28000/19 (ECtHR, 23 September 2022) [66], [74]-[76].

[94] *Handyside v the United Kingdom* App no 5493/72 (ECtHR, 7 December 1976) [49]; *Norris v Ireland* App no 10581/83 (ECtHR, 26 October 1988) [45]; *X, Y and Z v the United Kingdom* App no 21830/93 (ECtHR, 22 April 1997) [44]; *Polat v Turkey* App no 23500/94 (ECtHR, 8 July 1999) [47]; *Christine Goodwin v the United Kingdom* App no 28957/95 (ECtHR, 11 July 2002) [85]; *Armonienė v Lithuania* App no 36919/02 (ECtHR, 25 February 2009) [38]; *A. v Norway* App no 28070/06 (ECtHR, 9 July 2009) [66]; *Von Hannover v Germany* (No 2) App nos 40660/08, 60641/08 (ECtHR, 7 February 2012) [82].

[95] *Murray v the United Kingdom* App no 14310/88 (ECtHR, 28 October 1994) [91].

[96] *Leroy v France* App no 36109/03 (ECtHR, 6 April 2009) [45].

[97] ECHR art 10(2); *Klass and Others v Germany* App no 5029/71 (ECtHR, 6 September 1978) [46]; *Segerstedt-Wiberg and Others v Sweden* App no 62332/00 (ECtHR, 6 September 2006) [87]; *S. and Marper v the United Kingdom* App nos 30562/04, 30566/04 (ECtHR, 4 December 2008) [100]; *Uzun v Germany* App no 35623/05 (ECtHR, 2 December 2010) [77]; *M.K. v France* App no 19522/09 (ECtHR, 18 April 2013) [32]; *Roman Zakharov v Russi*a App no 47143/06 (ECtHR, 4 December 2015) [237]; *Trabajo Rueda v Spain* App no 32600/12 (ECtHR, 30 August 2017) [39].

19. Acts of terrorism have far-reaching impacts on the exercise of all human rights.[98] The explosion in the facility could threaten the right to life[99] of its employees and other people living near to the facility.[100]

20. The Constitution recognises regional and international security as legitimate aims aligned with national security,[101] safeguarding Cero's territorial integrity and citizens' safety by preventing the dissemination of harmful posts supporting terrorism.[102]

21. Consequently, Respondent submits that the interference has pursued the legitimate aims of protecting national security, public order and the rights of others.

iii) The interference was necessary for the legitimate aims pursued

22. For an interference to be necessary, it must a) correspond to a pressing social need, b) be suitable, c) be the least intrusive instrument and d) be proportionate to its legitimate aims.[103]

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[98] *Tagayeva and Others v Russia* App no 26562/07 (ECtHR, 18 September 2017) [482]; OHCHR, 'Preliminary conclusions and observations by the UN Special Rapporteur on the right to freedom of opinion and expression to his visit to Turkey, 14-18 November 2016' (18 November 2016) <https://www.ohchr.org/en/statements/2016/11/preliminary-conclusions-and-observations-un-special-rapporteur-right-freedom> accessed 20 December 2023.

[99] ICCPR art 6(1).

[100] Compromis 29; ICCPR art 6(1).

[101] Compromis 2.

[102] *Murray v the United Kingdom* App no 14310/88 (ECtHR, 28 October 1994) [91].

[103] *Handyside v the United Kingdom* App no 5493/72 (ECtHR, 7 December 1976) [48]-[49]; *Hertel v Switzerland* App no 25181/94 (ECtHR, 25 August 1998) [47]; *Interights v Mauritania* Comm no 242/2001 (ACmHPR, 4 June 2004) [78]-[79]; *Herrera-Ulloa v Costa Rica* Series C No 107 (IACtHR, 2 July 2004) [122]-[123]; *Mouvement raëlien suisse v Switzerland* App no 16354/06 (ECtHR, 13 July 2012) [48]; Joint Declaration on Freedom of Expression and the Internet (The United Nations 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 ACmHPR Special Rapporteur on Freedom of Expression and Access to Information) (1 June 2011); UNHRC, 'General Comment No 34, Article 19, Freedoms of Opinion and Expression' (12 September 2011) UN Doc CCPR/C/GC/34 [22], [33], [34].

a) The interference corresponded to a pressing social need

23. Cero's reasons for justifying a pressing social need were relevant and sufficient.[104] In examining the justification for interference in the discourse defending terrorism, the national authorities performed an acceptable assessment of the relevant facts.[105] Including the review of the interference in light of the case as a whole,[106] they analysed the content and the context of the impugned statements in which they were made,[107] the personality and function of the person making the statements,[108] as well as the background to the cases submitted to it, particularly problems linked to the prevention of terrorism.[109]

24. Consequently, the interference corresponded to a pressing social need for the following reasons.

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[104] *Handyside v the United Kingdom* App no 5493/72 (ECtHR, 7 December 1976) [50]; *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 f v Norway* App no 510/04 (ECtHR, 1 June 2007) [81]; *Leroy v France* App no 36109/03 (ECtHR, 6 April 2009) [46]; *Animal Defenders International v the United Kingdom* App no 48876/08 (ECtHR, 22 April 2013) [100]; *Satakunnan Markkinapörssi Oy and Satamedia Oy v Finland* App no 931/13 (ECtHR, 27 June 2017) [164]; *Bouton v France* App no 22636/19 (ECtHR, 13 January 2023) [44].

[105] *Zana v Turkey* App no 69/1996/688/880 (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].

[106] *Handyside v the United Kingdom* App no 5493/72 (ECtHR, 7 December 1976) [50]; *Lingens v Austria* App no 9815/82 (ECtHR, 8 July 1986) [40]; *Ezelin v France* App no 11800/85 (ECtHR, 26 April 1991) [51]; *Perinçek v Switzerland* App no 27510/08 (ECtHR, 15 October 2015) [198]; *Satakunnan Markkinapörssi Oy and Satamedia Oy v Finland* App no 931/13 (ECtHR, 27 June 2017) [164].

[107] *Zana v Turkey* App no 69/1996/688/880 (ECtHR, 25 November 1997) [51]; *Erdoğdu and İnce v Turkey* App nos 25067/94, 25068/94 (ECtHR, 8 July 1999) [47]; *Öneryıldız v Turkey* App no 48939/99 (ECtHR, 30 November 2004) [90]; *Leroy v France* App no 36109/03 (ECtHR, 6 April 2009) [38].

[108] *Zana v Turkey* App no 69/1996/688/880 (ECtHR, 25 November 1997) [49]-[50]; *Rouillan v France* App no 28000/19 (ECtHR, 23 September 2022) [66].

[109] *Karatas v Turkey* App no 23168/94 (ECtHR, 8 July 1999) [51]; *Sürek v Turkey* (No 1) App no 26682/95 (ECtHR, 8 July 1999) [62]; *Cetin and Others v Turkey* App nos 40153/98, 40160/98 (ECtHR, 13 May 2003) [62]; *Rouillan v France* App no 28000/19 (ECtHR, 23 September 2022) [66].

aa) The Post glorified terrorism

25. Cero has a positive obligation to afford general protection to society,[110] to protect the general public from terrorism[111] and to take preventive measures to protect those whose life is at risk from criminal acts.[112] According to DSA's definition,[113] ELA committed terrorist acts as it aimed to violently overthrow the Enosian government, intimidated the public, and advanced a political cause.[114]

26. Una committed an offence, as, under DSA, content that glorifies entities committing or preparing terrorist acts constitutes indirect encouragement to commit or prepare these acts.[115] The Post was a glorification of terrorism, as its wording 'I stand in solidarity with ELA'[116] is a cognate expression of praise being construed accordingly.[117] The Post shall be seen as an indirect call or a justification of violence, fairly construed in its immediate or wider context.[118] Consequently, Una should have been aware that she

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[110] *İbrahim Aksoy v Turkey* App nos 28635/95, 30171/96, 34535/97 (ECtHR, 10 January 2001) [41]-[42], [60]; *Mastromatteo v Italy* App no 37703/97 (ECHtR 24 October 2002) [69]; *Yalçın Küçük v Turkey* App no 28493/95 (ECtHR, 5 March 2003) [39]; *Maiorano and Others v Italy* App no 28634/06 (ECtHR, 15 March 2010) [107]; *Choreftakis and Choreftaki v Greece* App no 46846/08 (ECtHR, 9 July 2012) [48]; *Tagayeva and Others v Russia* App no 26562/07 (ECtHR, 18 September 2017) [482].

[111] *Tagayeva and Others v Russia* App no 26562/07 (ECtHR, 18 September 2017) [486]; OHCHR, 'Preliminary conclusions and observations by the UN Special Rapporteur on the right to freedom of opinion and expression to his visit to Turkey, 14-18 November 2016' (18 November 2016) <https://www.ohchr.org/en/statements/2016/11/preliminary-conclusions-and-observations-un-special-rapporteur-right-freedom> accessed 20 December 2023.

[112] ICCPR art 6; *L. C. B. v the United Kingdom* App no 23413/94 (ECtHR, 9 June 1998) [36]; *Osman v the United Kingdom* App no 87/1997/871/1083 (ECtHR, 28 October 1998) [115]; *Centre for Legal Resources on behalf of Valentin Câmpeanu v Romania* App no 47848/08 (ECtHR, 17 July 2014) [130]; *Tagayeva and Others v Russia* App no 26562/07 (ECtHR, 18 September 2017) [482].

[113] Compromis 7.

[114] Compromis 19-30.

[115] Compromis 5.

[116] Compromis 28.

[117] Compromis 7.

[118] *Incal v Turkey* App no 41/1997/825/1031 (ECtHR, 9 June 1998) [50]; *Sürek v Turkey* (No 1) App no 26682/95 (ECtHR, 8 July 1999) [62]; *Soulas and Others v France* App no 15948/03 (ECtHR, 10 October 2008) [43];

glorified ELA by using this term, and by glorifying ELA she indirectly encouraged others to commit acts of terrorism.

ab) Una had a significant impact on people, and she did not act with sufficient care

27. Cero enjoys a wide MoA in cases where the person exercising FoE has a significant impact on people.[119] Una, 'Cero's Most Influential Person' in 2022, had a significant impact with a total of 17 million followers on Instagram and Facebook.[120] Una's followers often re-shared her posts.[121] Hence, Una had a significant effect not just on her many followers but potentially on anyone.
28. By having so many followers,[122] Una must be regarded as a public figure. She has entered the public scene,[123] is undeniably very well known to the public[124] and has a position in society.[125] She regularly posts as a public person on political issues and is a

Balsytė-Lideikienė v Lithuania App no 72596/01 (ECtHR, 4 February 2009) [79]-[80]; *Hizb ut-Tahrir and Others v Germany* App no 31098/08 (ECtHR, 12 June 2012) [16]; *Kasymakhunov and Saybatalov v Russia* App nos 26261/05, 26377/06 (ECtHR, 14 June 2013) [107]; *Perinçek v Switzerland* App no 27510/08 (ECtHR, 15 October 2015) [206]; *Lilliendahl v Iceland* App no 29297/18 (ECtHR, 12 May 2020) [36].

[119] *Handyside v the United Kingdom* App no 5493/72 (ECtHR, 7 December 1976) [49]; *Norris v Ireland* App no 10581/83 (ECtHR, 26 October 1988) [45]; *X, Y and Z v the United Kingdom* App no 21830/93 (ECtHR, 22 April 1997) [44]; *Christine Goodwin v the United Kingdom* App no 28957/95 (ECtHR, 11 July 2002) [85]; *Armonienė v Lithuania* App no 36919/02 (ECtHR, 25 February 2009) [38]; *A. v Norway* App no 28070/06 (ECtHR, 9 July 2009) [66]; *Von Hannover v Germany* (No 2) App nos 40660/08, 60641/08 (ECtHR, 7 February 2012) [57], [82].

[120] Compromis 15.

[121] Compromis 24-28.

[122] Compromis 15.

[123] *News Verlags GmbH & Co.KG v Austria* App no 31457/96 (ECtHR, 11 April 2000) [54]; *Verlagsgruppe News GmbH v Austria* (No 2) App no 10520/02 (ECtHR, 14 March 2007) [36]; *Egeland and Hanseid v Norway* App no 34438/0416 (ECtHR, 16 July 2009) [60]; *Flinkkilä v Finland* App no 25576/04 (ECtHR, 6 July 2010) [83]; *Krone Verlag GmbH v Austria* App no 27306/07 (ECtHR, 19 September 2012) [53]; *Kurier Zeitungsverlag und Druckerei GmbH v Austria* (No 2) App no 1593/06 (ECtHR, 19 September 2012 [50].

[124] *Von Hannover v Germany* (No 2) App nos 40660/08, 60641/08 (ECtHR, 7 February 2012) [77].

[125] *Verlagsgruppe News GmbH v Austria* (No 2) App no 10520/02 (ECtHR, 14 March 2007) [36].

vocal critic of the arms trade.[126] As she was aware of the significant number of sympathisers with ELA's cause in Cero,[127] Una had a greater responsibility to consider the possible consequences of her Post.[128]

29. RMSM autogenerated the Post based on Una's previous posts and social media activity, therefore it was jointly produced by them, thus Applicants are jointly responsible for it.[129] As the Post was published directly on Una's behalf on her social media account[130] and she adopted it as her own, she is liable for its content.[131] She did not act with sufficient care as she consciously allowed autogenerated posts to be shared on her behalf and opted to turn off the labelling function. Thus, her followers could not differentiate between her own and autogenerated posts.[132]

ac) The Post created clear and imminent danger

30. FoE may be restricted if the words used create a clear and imminent danger[133] and clear harm[134] where a state has a right to prevent disturbances.[135] Cero is obliged to safeguard

[126] Compromis 15.

[127] Compromis 20.

[128] *Axel Springer AG v Germany* App no 39954/08 (ECtHR, 7 February 2012) [82]; *Magyar Jeti Zrt v Hungary* App no 11257/16 (ECtHR, 4 March 2019) [77].

[129] Compromis 36.

[130] Compromis 16-18.

[131] Joint Declaration by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression (21 December 2005).

[132] Compromis 17.

[133] *Gül and Others v Turkey* App no 4870/02 (ECtHR, 8 September 2010) [42].

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

[135] *Schenck v United States* 249 US 47 (1919).

fundamental rights and ensure their effective enjoyment.[136] Cero had responsibilities to take action against terrorism-supporting views,[137] because they were threats to national security,[138] public order, and the life, rights, and safety of its citizens.[139]

31. The sensitive nature of the fight against terrorism should be taken into account.[140] While the level of terrorist threat remained high, Una's Post conveyed a positive image of the perpetrators of terrorist attacks.[141] The content and dissemination of the Post were capable of inciting further violence in the region, as it gave the impression that recourse to violence is a necessary and justified measure in achieving ELA's aims.[142] Hence, Una had provided her followers with an outlet for stirring up violence.[143]
32. The potential impact of the medium concerned is an important factor and the audiovisual media often have a more immediate and powerful effect.[144] International practice is

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[136] *Djavit An v Turkey* App no 20652/92 (ECtHR, 9 July 2003) [57]; *Oya Ataman v Turkey* App no 74552/01 (ECtHR, 5 March 2007) [36]; *Gün and Others v Turkey* App no 8029/07 (ECtHR, 18 September 2013) [72].

[137] *Osman v the United Kingdom* App no 87/1997/871/1083 (ECtHR, 28 October 1998) [115]; *Öztürk v Turkey* App no 22479/93 (ECtHR, 28 September 1999) [59]; *Özgür Gündem v Turkey* App no 23144/93 (ECtHR, 16 March 2000) [42]-[43]; *Kılıç v Turkey* App no 22492/93 (ECtHR, 28 March 2000) [62]; *Labita v Italy* App no 26772/95 (ECtHR, 6 April 2000) [131]; *Erdoğdu v Turkey* App no 25723/94 (ECtHR, 15 June 2000) [50]; *Leroy v France* App no 36109/03 (ECtHR, 6 April 2009) [36]; *Uzeyir Jafarov v Azerbaijan* App no 54204/08 (ECtHR, 29 April 2015) [56].

[138] *Dmitriyevskiy v Russia* App no 42168/06 (ECtHR, 29 January 2018) [86]-[87]; *Stomakhin v Russia* App no 52273/07 (ECtHR, 8 October 2018) [85]-[86].

[139] *Cumpana and Mazare 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].

[140] *İbrahim Aksoy v Turkey* App nos 28635/95, 30171/96, 34535/97 (ECtHR, 10 January 2001) [60]; *Yalçın Küçük v Turkey* App no 28493/95 (ECtHR, 5 March 2003) [39].

[141] *Rouillan v France* App no 28000/19 (ECtHR, 23 September 2022) [70].

[142] ICCPR art 6; *Choreftakis and Choreftaki v Greece* App no 46846/08 (ECtHR, 9 July 2012) [46]; *Tagayeva and Others v Russia* App no 26562/07 (ECtHR, 18 September 2017) [595], [609].

[143] *Sürek v Turkey* (No 3) App no 24735/94 (ECtHR, 8 July 1999) [40]-[41]; *Fatih Taş v Turkey* (No 3) App no 45281/08 (ECtHR, 10 September 2019) [35].

[144] *Jersild v Denmark* App no 15890/89 (ECtHR, 23 September 1994) [31]; *Delfi AS v Estonia* App no 64569/09 (ECtHR, 16 June 2015) [134]; *I.V.Ț. v Romania* App no 35582/15 (ECtHR, 1 March 2022) [48]; *NIT S. R. L. v the Republic of Moldova* App no 28470/12 (ECtHR, 5 April 2022) [182]; *Zemmour v France* App no 63539/19

mindful of the risk of harm posed by very quickly spreading communications on the Internet.[145] The Post was available on Facebook for more than an hour, during which time it was shared by many users, reached and influenced huge audiences, including ELA sympathisers.[146] Notably, only fifteen hours after the publication of the Post, a terrorist attack was carried out by ELA sympathisers.[147]

33. Consequently, Respondent submits that there was a pressing social need for the interference.

b) The applied sanctions were suitable for protecting the legitimate aims

34. The ex post facto nature[148] fine is a justifiable sanction.[149] The suspended prison sentence was appropriate to prevent Una from re-offending but not deprive her of her freedom.[150] These were the sanctions most likely to have a real impact on Una as they prompted her to comply with her duties and responsibilities under FoE.[151]
35. The suspension was suitable for preventing Una from spreading further dangerous content that could have incited others to commit terrorism.

(ECtHR, 20 March 2023) [62]; *Bild GmbH & Co. KG v Germany* App no 9602/18 (ECtHR, 31 October 2023) [28].

[145] *Editorial Board of Pravoye Delo and Shtekel v Ukraine* App no 33014/05 (ECtHR, 5 August 2011) [63]; *Węgrzynowski and Smolczewski v Poland* App no 33846/07 (ECtHR, 16 October 2013) [58]; *Delfi AS v Estonia* App no 64569/09 (ECtHR, 16 June 2015) [110], [133], [157]; *M.L. and W.W. v Germany* App nos 60798/10, 65599/10 (ECtHR, 28 June 2018) [91]; *Savva Terentyev v Russia* App no 10692/09 (ECtHR, 4 February 2019) [79]; *Société Editrice de Mediapart and Autres v France* App nos 281/15, 34445/15 (ECtHR, 31 May 2021) [88]; *Bild GmbH & Co. KG v Germany* App no 9602/18 (ECtHR, 31 October 2023) [28].

[146] Compromis 28; *Lilliendahl v Iceland* App no 29297/18 (ECtHR, 12 May 2020) [39].

[147] Compromis 29.

[148] *Karácsony and Others v Hungary* App nos 42461/13, 44357/13 (ECtHR, 17 May 2016) [155].

[149] *Leroy v France* App no 36109/03 (ECtHR, 6 April 2009) [38], [47].

[150] *Choreftakis and Choreftaki v Greece* App no 46846/08 (ECtHR, 9 July 2012) [49].

[151] Compromis 3.

36. Additionally, national courts should address such issues of domestic law concerning individual criminal responsibility or to deliver guilty or not-guilty verdicts in that regard.[152]

37. Consequently, Respondent submits that the applied sanctions were suitable for protecting the legitimate aims pursued.

c) The interference was the least intrusive instrument

38. A state shall adopt criminal convictions compatible with FoE for media-specific offences where human rights of others or national security concerns have been seriously impaired.[153] Cero's primary duty is to secure the right to life by applying effective criminal-law provisions to deter the commission of offences against the person backed up by law-enforcement machinery for the prevention, suppression and sanctioning of breaches of such provisions.[154]

39. Una's Post was suitable for indirectly inciting others to commit the terrorist attack[155] when she glorified a terrorist group that had supporters in Cero.[156] At a time when the entire society was still in shock over the Enosian conflict,[157] the impact of Una's

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[152] *Öneryıldız v Turkey* App no 48939/99 (ECtHR, 30 November 2004) [116].

[153] *Cumpana and Mazare 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]; OHCHR, 'Preliminary conclusions and observations by the UN Special Rapporteur on the right to freedom of opinion and expression to his visit to Turkey, 14-18 November 2016' (18 November 2016) <https://www.ohchr.org/en/statements/2016/11/preliminary-conclusions-and-observations-un-special-rapporteur-right-freedom> accessed 20 December 2023.

[154] *Osman v the United Kingdom* App no 87/1997/871/1083 (ECtHR, 28 October 1998) [115]; *Öneryıldız v Turkey* App no 48939/99 (ECtHR, 30 November 2004) [89].

[155] Compromis 36.

[156] Compromis 20.

[157] Compromis 29.

message could not be overlooked in a politically sensitive Cero,[158] as it provoked reactions that could fan the flames of violence. This temporal dimension could increase Una's responsibility.[159] Considering her high degree of influence, concomitant with an augmented level of responsibility,[160] Una's grossly negligent exercise of FoE led to the necessity of the application of criminal sanctions.

40. A prison sentence imposed is compatible with FoE, particularly where other fundamental rights have been seriously impaired.[161] Una's Post indirectly incited others to commit such violent acts, which were capable of seriously impairing the right to life of others.[162] Additionally, it was the least intrusive instrument because it did not deprive Una of her personal liberty but acted instead as a dissuasive tool to avoid reoffending.[163]
41. The imposed suspension was during a time when public tension was high because of the explosion and the spread of its news.[164] It was applied in such a politically unstable period, when the security of its citizens was at stake, hence Cero could not afford to risk that Una would further incite others to commit terrorist attacks.

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[158] Compromis 19-22; *Lingens v Austria* App no 9815/82 (ECtHR, 8 July 1986) [43]; *Piermont v France* App nos 15773/89, 15774/89 (ECtHR, 27 April 1995) [77]; *Zana v Turkey* App no 69/1996/688/880 (ECtHR, 25 November 1997) [10], [59]; *Sürek v Turkey* (No 1) App no 26682/95 (ECtHR, 8 July 1999) [52]; *Sürek v Turkey* (No 3) App no 24735/94 (ECtHR, 8 July 1999) [40]; *Herri Batasuna and Batasuna v Spain* App nos 25803/04, 25817/04 (ECtHR, 6 November 2009) [89].

[159] *Leroy v France* App no 36109/03 (ECtHR, 6 April 2009) [45].

[160] Arguments 27.

[161] *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]; *Stern Taulats and Roura Capellera v Spain* App no 51168/15 (ECtHR, 13 June 2018) [34]; *Atamanchuk v Russia* App no 4493/11 (ECtHR, 12 October 2020) [67]; *Bouton v France* App no 22636/19 (ECtHR, 13 January 2023) [53].

[162] ICCPR art 6(1).

[163] *Choreftakis and Choreftaki v Greece* App no 46846/08 (ECtHR, 9 July 2012) [49].

[164] Compromis 29; OHCHR, 'Preliminary conclusions and observations by the UN Special Rapporteur on the right to freedom of opinion and expression to his visit to Turkey, 14-18 November 2016' (18 November 2016) <https://www.ohchr.org/en/statements/2016/11/preliminary-conclusions-and-observations-un-special-rapporteur-right-freedom> accessed 20 December 2023.

42. Considering the general[165] and the specific context,[166] the application of criminal sanctions was justified for such a life-threatening, serious offence committed during such a hazardous period.

43. Therefore, Respondent submits that as there was no other means of achieving the same end that would interfere less seriously with FoE[167] to prevent Una from re-offending and thus ensure the legitimate aims, the interference was necessary.

d) The interference was proportionate

44. Proportionality requires consideration of the nature of the speech in the context of the legitimate aim, the nature of the impact of the impugned expression, the process applied and the sanctions imposed.[168] Cero struck a fair balance between Una's FoE and the legitimate right to protection against the activities of terrorist organisations.[169]

45. The Post cannot be considered relevant to the debate of general interest.[170] Una is a social media influencer famous for videos on fashion, culture, and tourist destinations.[171] Most of her income comes from her endorsement contracts with luxury

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[165] Compromis 29; *Z.B. v France* App no 46883/15 (ECtHR, 2 December 2021) [60], [63].

[166] *Z.B. v France* App no 46883/15 (ECtHR, 2 December 2021) [61].

[167] *Glor v Switzerland* App no 13444/04 (ECtHR, 6 November 2009) [94]; *Fontevecchia and D'Amico v Argentina* Series C No 238 (IACtHR, 29 November 2011) [54].

[168] *Szél and Others v Hungary* App no 44357/13 (ECtHR, 16 September 2014) [62]; *Karácsony and Others v Hungary* App nos 42461/13, 44357/13 (ECtHR, 17 May 2016) [85].

[169] *Zana v Turkey* App no 69/1996/688/880 (ECtHR, 25 November 1997) [55]; *Özgür Gündem v Turkey* App no 23144/93 (ECtHR, 16 March 2000) [43]; *Leroy v France* App no 36109/03 (ECtHR, 6 April 2009) [37]; *Bidart v France* App no 52363/11 (ECtHR, 12 November 2015) [37].

[170] *Z.B. v France* App no 46883/15 (ECtHR, 2 December 2021) [58].

[171] Compromis 15.

brands and hotels.[172] She only jumped on a large social media wave[173] when she started to share posts about the crisis in Naut.[174] She posted as a regular influencer who desired to gain a larger follower base, and not as a political activist.

46. Furthermore, Una deleted the Post because she received negative comments[175] and she feared for her fame. She claimed that she would take legal action against OneAI, but she did not.[176] Meanwhile, she was aware that her dangerous Post had already been shared by many followers.[177] These raise serious doubts about her credibility. Thus, Cero could not afford the risk of not sanctioning an offender who had inconsistently not kept herself to her promise and who had not deleted the Post out of active contrition but out of fear for her own reputation.
47. Considering the sanctions imposed, the suspended prison sentence was at the lower end of the spectrum. It had a very short duration, only one-seventh of what could have been maximally imposed.[178] Moreover, the prison sentence was suspended meaning that as long as she refrains from criminal behaviour for one year, she does not need to serve her time.[179] It offers her a second chance to avoid imprisonment by demonstrating her commitment to rehabilitation.

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[172] Compromis 15.

[173] Compromis 22, 25.

[174] Compromis 24-28.

[175] Compromis 28.

[176] Compromis 32.

[177] Compromis 28.

[178] Compromis 5, 36.

[179] Compromis 36.

48. The fine imposed was only 3% of the maximum amount.[180] In view of her financial position, she was not fined excessively and her livelihood was not under threat.[181] As she used to earn approximately USD 200,000 / month, the sanction applied was USD 1,500, hence the penalty applied is about 0.75% of her monthly income.[182]
49. The suspension imposed was a social media-specific suspension and did not constitute a general encumbrance on her FoE, thus she could exercise it in other ways without restrictions.
50. Una was not forced to change either her lifestyle or profession.[183] Nevertheless, the result of the domestic proceedings would compel her to act diligently[184] and fulfil her duties and responsibilities under practising FoE.[185]
51. Respondent submits that considering the nature and severity of the penalty,[186] the duration of the exclusion,[187] and the fact that Una seriously endangered the security of her country and the lives of her fellow citizens with her recklessly shared Post, her conviction was reasonable and proportionate.[188]

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[180] Compromis 5, 36.

[181] *A and B v Norway* App nos 24130/11, 29758/11 (ECtHR, 15 November 2016) [74].

[182] Compromis 15, 36.

[183] *Delfi AS v Estonia* App no 64569/09 (ECtHR, 16 June 2015) [161].

[184] Case C-324/09 *L'Oréal SA and Others v eBay International AG and Others* [2011] ECLI:EU:C:2011:474 [122].

[185] Compromis 2.

[186] *Leroy v France* App no 36109/03 (ECtHR, 6 April 2009) [47].

[187] *Maslov v Austria* App no 1638/03 (ECtHR, 23 June 2008) [98].

[188] *Kudrevičius and Others v Lithuania* App no 37553/05 (ECtHR, 15 October 2015) [182].

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', DID NOT VIOLATE ITS RIGHT TO THE FREEDOM OF EXPRESSION, INCLUDING THE FREEDOM TO IMPART INFORMATION AND IDEAS, RECOGNISED BY ARTICLE 19 OF THE ICCPR

52. As emphasised before,[189] Respondent recognises the essential role of FoE in a democratic society.[190] However, FoE is not an absolute right,[191] therefore it may be subject to certain limitations.[192]

53. AI is increasingly influencing the information environment worldwide.[193] Accountability for AI-generated content is vital to balance FoE, prevent the spread of harmful content, and protect the right to FoE while curbing misinformation online.[194] Moreover, Internet companies have become central platforms for discussion, debate, and access to information.[195]

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[189] Arguments 1.

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

[191] ICCPR art 19(3); UDHR art 29(2); ECHR arts 8(2), 10(2); ACHR arts 11(2), 13(2); ACHPR art 9(2); UNHRC, 'General Comment No 34, Article 19, Freedoms of opinion and expression' (12 September 2011) UN Doc CCPR/C/GC/34 [21]; Recommendation CM/Rec(2014)6 of the Committee of Ministers to Member States on a Guide to Human Rights for Internet Users (adopted 16 April 2014) [2].

[192] *Association Ekin v France* App no 39288/98 (ECtHR, 17 October 2001) [56]; *Perna v Italy* App no 48898/99 (ECtHR, 6 May 2003) [39]; *Ingabire Victoire Umuhoza v Rwanda* App no 003/2014 (AfCHPR, 7 December 2018) [133]; *Media Rights Agenda and Others* v *Nigeria* Comm nos 105/93, 128/94, 130/94, 152/96 (ACmHPR, 31 October 1998) [66].

[193] UNHRC, 'Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression' (29 August 2018) UN Doc A/73/348 [1].

[194] European Commission, 'White Paper on Artificial Intelligence: A European approach to excellence and trust' (Brussels, 19 February 2020) COM(2020) 65 final 9.

[195] *Times Newspapers Ltd. v the United Kingdom* (Nos 1, 2) app nos 3002/03, 23676/03 (ECtHR, 10 June 2009) [27]; *Packingham v North Carolina* 582 US ___ (2017) [II].

54. Applying the three-part test,[196] the interference was (i) prescribed by law, (ii) pursued legitimate aims, and (iii) was necessary and proportionate to achieve those aims.

i) The interference was prescribed by law

55. Respondent submits that the interference was prescribed by law, as it a) was accessible, b) reasonably foreseeable, and c) provided adequate safeguards against unfettered discretion.[197]

a) The law envisaging the interference was accessible for OneAI

56. The aforementioned DSA was adopted five years ago,[198] thus its application was well anticipated.

b) The interference was reasonably foreseeable

57. First, interferences must have a legal basis in national law.[199] The liability, the possible restrictions of FoE and the applicable sanctions imposed on OneAI are outlined in DSA.[200] The law provides a precise and adequate framework[201] for regulating OneAI's

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[196] Arguments 3.

[197] *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]; *Claude Reyes and Others v Chile* Series C No 151 (IACtHR, 16 September 2006) [89]; *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].

[198] Compromis 5.

[199] *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].

[200] Compromis 5.

[201] *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]; *Kokkinakis v Greece* App no 14307/88 (ECtHR, 25 May 1993) [40]; *Tolstoy Miloslausky v the United Kingdom* App no 18139/91 (ECtHR, 13 July 1995) [37]; *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

conduct,[202] namely to align RMSM with DSA. The term 'glorifying terrorism' is explicitly defined,[203] as DSA determines the types of content that constitute incitement to terrorism.[204] DSA gives precise, unambiguous definitions for terrorism and glorification,[205] which meet international standards.[206]

58. Second, foreseeability allows some flexibility and consequences can never be foreseen with complete certainty.[207] This is unattainable,[208] especially in a rapidly transforming field such as AI.[209] DSA adapts to the changing circumstances, using some purposefully broader terms to facilitate its flexible application.[210]

59. Courts have flexibility to decide the exact amount of the fine and the additional restrictions on service usage, allowing the consideration of all circumstances of the

February 2008) [140]; *Usón Ramírez v Venezuela* Series C No 207 (IACtHR, 20 November 2009) [55], [140]; *Sanoma Uiigeucrs 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]; 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].

[202] *Kafkaris v Cyprus* App no 21906/04 (ECtHR, 12 February 2008) [140]; *Leonardus Johannes Maria de Groot v the Netherlands* CCPR/C/54/D/578/1994 (UNHRC, 14 July 1994) [4.3.]; Toby Mendel, 'Restricting Freedom of Expression: Standards and Principles' (Centre for Law and Democracy, 2010).

[203] Compromis 5.

[204] Arguments 8.

[205] Compromis 2.

[206] UNGA 'Measures to eliminate international terrorism' A/RES/49/60 (adopted 17 February 1995) 2-4.

[207] *The Sunday Times v the United Kingdom* (No 1) App no 6538/74 (ECtHR, 26 April 1979) [49]; *Müller and Others v Switzerland* App no 10737/84 (ECtHR, 24 May 1988) [29]; *Kokkinakis v Greece* App no 14307/88 (ECtHR, 25 May 1993) [40]; *Hertel v Switzerland* App no 25181/94 (ECtHR, 25 August 1998) [35]; *Perinçek v Switzerland* App no 27510/08 (ECtHR, 15 October 2015) [131].

[208] *Anatoliy Yeremenko v Ukraine* App no 22287/08 (ECtHR, 15 December 2022) [48].

[209] European Commission, 'White Paper on Artificial Intelligence: A European approach to excellence and trust' (Brussels, 19 February 2020) COM(2020) 65 final 1.

[210] Arguments 9.

case.[211] DSA outlines the possible legal consequences of infringements,[212] specifying the potential range of fines, and the prescribed period for suspension.[213]

60. The requirement of foreseeability is met, even if one has to take appropriate legal advice to assess the consequences of an action.[214] OneAI with a significant USD 8,000,000 monthly revenue from RMSM subscriptions[215] could seek legal assistance to ensure the compliance of its tool with DSA.

61. Consequently, OneAI could reasonably foresee[216] its liability and the imposed sanctions.

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[211] *The Sunday Times v the United Kingdom* (No 1) App no 6538/74 (ECtHR, 26 April 1979) [55]; *Barfod v Denmark* App no 11508/85 (ECtHR, 22 February 1989) [28]; *Jersild v Denmark* App no 15890/89 (ECtHR, 23 September 1994) [31]; *Prager and Oberschlick v Austria* App no 15974/90 (ECtHR, 26 April 1995) [34]; *Vogt v Germany* App no 17851/91 (ECtHR, 26 September 1995) [48]; *Uj v Hungary* App no 23954/10 (ECtHR, 19 October 2011) [18].

[212] Compromis 5.

[213] Compromis 5.

[214] *Cantoni v France* App no 17862/91 (ECtHR, 11 November 1996) [35]; *Delfi AS v Estonia* App no 64569/09 (ECtHR, 16 June 2015) [129].

[215] Compromis 12.

[216] *Chauvy and Others v France* App no 64915/01 (ECtHR, 29 September 2004) [43]; UNHRC, 'General Comment No 34, Article 19, Freedoms of Opinion and Expression' (12 September 2011) UN Doc CCPR/C/GC/34 [25].

c) Adequate safeguards were provided against arbitrary interferences

62. As stated above,[217] OneAI was guaranteed with adequate safeguards,[218] because Cero conducted a thorough investigation,[219] providing judicial protection against arbitrary interference.[220]

63. The conviction of OneAI was conducted in compliance with Cero's legal system. Cero provided effective[221] and adequate domestic remedies,[222] including hearings, trials, and appeals,[223] and the fact that OneAI exhausted all of them, indicates their effective

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[217] Arguments 11-12.

[218] *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) [67]; *Huvig v France* App no 11105/84 (ECtHR, 24 April 1990) [34]; *Ahmet Yıldırım v Turkey* App no 3111/10 (ECtHR, 18 March 2013) [59]; 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' (1985) UN Doc E/CN 4/1985/4 [16]; UNHRC, 'General Comment No 34, Article 19, Freedoms of Opinion and Expression' (12 September 2011) UN Doc CCPR/C/GC/34 [25].

[219] *Assenov and Others v Bulgaria* App no 90/1997/874/1086 (ECtHR, 28 October 1998) [103]; *Oğur v Turkey* App no 21594/93 (ECtHR, 20 May 1999) [92]; *Tanrıkulu v Turkey* App no 23763/94 (ECtHR, 8 July 1999) [104]; *Gül v Turkey* App no 22676/93 (ECtHR, 14 December 2000) [89]; *Batı and Others v Turkey* App nos 33097/96, 57834/00 (ECtHR, 3 September 2004) [136]; *Ognyanova and Choban v Bulgaria* App no 46317/99 (ECtHR, 23 May 2006) [107]; *Dedovskiy and Others v Russia* App no 7178/03 (ECtHR, 15 August 2008) [92]; *Khadzhialiyev and Others v Russia* App no 3013/04 (ECtHR, 6 April 2009) [106]; *Denis Vasilyev v Russia* App no 32704/04 (ECtHR, 17 March 2010) [157]; *El-Masri v the former Yugoslav Republic of Macedonia* App no 39630/09 (ECtHR, 13 December 2012) [183].

[220] Compromis 4-6, 37-38; *Claude Reyes and Others v Chile* Series C No 151 (IACtHR, 16 September 2006) [89]; *Sanoma Uitgevers BV v the Netherlands* App no 38224/03 (ECtHR, 14 September 2010) [82]; *Telegraaf Media Nederland Landelijke Media BV and Others v the Netherlands* App no 39315/06 (ECtHR, 22 February 2013) [102]; *Ahmet Yıldırım v Turkey* App no 3111/10 (ECtHR, 18 March 2013) [59]; 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' (1985) UN Doc E/CN 4/1985/4 [15–18]; UNHRC, 'General Comment No 27, Article 12, Freedom of Movement' (2 November 1999) UN Doc CCPR/C/21/Rev.1/Add.9 [13]; IACmHR, '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 [70]; *Larry James Pinkney v Canada* CCPR/C/14/D/27/1977 (UNHRC, 29 October 1981) [34].

[221] *De Wilde, Ooms and Versyp v Belgium* App nos 2832/66, 2835/66, 2899/66 (ECtHR, 18 June 1971) [55]; *Leander v Sweden* App no 9248/81 (ECtHR, 26 March 1987) [84]; *Vassilios Athanasiou and Others v Greece* App no 50973/08 (ECtHR, 21 March 2011) [54]-[56].

[222] *Selahattin Demirtaş v Turkey* (No 2) App no 14305/17 (ECtHR, 22 December 2020) [205].

[223] Compromis 31-40.

availability.[224] OneAI's trials upheld the right to remedy, emphasising the importance of timely proceedings to ensure the effectiveness of sanctions that justified the tight deadlines.[225]

64. Consequently, Respondent submits that the interference was prescribed by law.

ii) The interference pursued legitimate aims

65. AI poses challenges and risks in the areas of safety, security and criminal use or attacks.[226] As stated above,[227] the interference aimed to protect national security, public order and the rights of others.[228] Cero enjoys a wide MoA[229] in determining the existence of these legitimate aims.[230]

66. First, Cero is given latitude to determine what its national security requires.[231] By signing the RDP, Cero was obliged to supply Enos with weapons,[232] by which Cero became involved in the conflict. That made Cerovian state-run weapon facilities potential targets of terrorist attacks for ELA sympathisers. The military infrastructure

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[224] *Lindstrand Partners Advokatbyrå AB v Sweden* App no 18700/09 (ECtHR, 29 May 2017) [117]; *Jansons v Latvia* App no 1434/14 (ECtHR, 30 January 2023) [97].

[225] *E.H. v France* App no 39126/18 (ECtHR, 22 October 2021) [176].

[226] Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions, Artificial Intelligence for Europe, COM(2018) 237 final 3.3.

[227] Arguments 16-21.

[228] *Chassagnou and Others v France* App nos 25088/94, 28331/95, 28443/95 (ECtHR, 29 April 1999) [113]; *Ashby Donald and Others v France* App no 36769/08 (ECtHR, 10 April 2013) [40].

[229] *Erdoğdu and İnce v Turkey* App nos 25067/94, 25068/94 (ECtHR, 8 July 1999) [50].

[230] *Zana v Turkey* App no 69/1996/688/880 (ECtHR, 25 November 1997) [55]; *Leroy v France* App no 36109/03 (ECtHR, 6 April 2009) [37].

[231] *Klass and Others v Germany* App no 5029/71 (ECtHR, 6 September 1978) [49]; *Malone v the United Kingdom* App no 8691/79 (ECtHR, 2 August 1984 [81]; *Leander v Sweden* App no 9248/81 (ECtHR, 26 March 1987) [59]; *Hatton v the United Kingdom* App no 36022/97 (ECtHR, 8 July 2003) [97].

[232] Compromis 20.

of Cero supplied both states with weapons, thus it was vital to protect their national security, sovereignty and territorial integrity.[233] Cero therefore legitimately restricted FoE to safeguard these by preventing the dissemination of autogenerated posts supporting terrorism.

67. Second, support for ELA could cause severe disturbances to public order.[234] Acts capable of fuelling additional violence and the sensitivity of the fight against terrorism made the legitimate aim of protecting public order invocable.[235]

68. Third, an explosion in such a facility[236] could threaten the lives of its employees,[237] legitimising the invocation of the rights of others.

69. Consequently, Respondent submits that the interference aimed to protect national security, public order and the rights of others.

iii) The interference was necessary for the legitimate aims pursued

70. Respondent submits that, upon examining the content, the context of the Post[238] and the function of the legal person autogenerating them, the interference was necessary

[233] *Sürek v Turkey* (No 1) App no 26682/95 (ECtHR, 8 July 1999) [50]-[51].

[234] *Leroy v France* App no 36109/03 (ECtHR, 6 April 2009) [45].

[235] *Zana v Turkey* App no 69/1996/688/880 (ECtHR, 25 November 1997) [55]; *Erdoğdu and Ince v Turkey* App nos 25067/94, 25068/94 (ECtHR, 8 July 1999) [43], [50]; *Sürek v Turkey* (No 1) App no 26682/95 (ECtHR, 8 July 1999) [52].

[236] Clarifications 33.

[237] Compromis 29.

[238] *Zana v Turkey* App no 69/1996/688/880 (ECtHR, 25 November 1997) [49]-[50]; *Karatas v Turkey* App no 23168/94 (ECtHR, 8 July 1999) [51]; *Demirel and Ateş v Turkey* App nos 10037/03, 14813/03 (ECtHR, 12 July 2007) [38]; *Leroy v France* App no 36109/03 (ECtHR, 6 April 2009) [38]; *Perinçek v Switzerland* App no 27510/08 (ECtHR, 15 October 2015) [242]; *Satakunnan Markkinapörssi Oy and Satamedia Oy v Finland* App no 931/13 (ECtHR, 27 June 2017) [170]; *Rouillan v France* App no 28000/19 (ECtHR, 23 September 2022) [66].

because it a) corresponded to a pressing social need, b) was suitable, c) was the least intrusive instrument and d) was proportionate to its legitimate aims.[239]

a) The interference corresponded to a pressing social need

71. Cero has a positive obligation to protect every citizen's life and take appropriate steps to safeguard those whose right to life may be at stake.[240] The security of Cero's citizens was threatened as OneAI committed a serious offence by its autogenerated Post that glorified terrorism, thus indirectly encouraging[241] and instigating others to commit terrorist acts.

72. Users could not turn off the constant monitoring of their social media activity (including likes, shares) by RMSM.[242] RMSM could therefore autogenerate posts based on what was liked by the users but also those posts which users did not intend to be shared on their behalf. Although users could choose themes in their preferences, OneAI provided no opportunity for them to choose themes on which they wanted to avoid posting. In this way, the software could produce content to which users had not contributed, even posts that incite violence.

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[239] *Handyside v the United Kingdom* App no 5493/72 (ECtHR, 7 December 1976) [48]-[49]; *Hertel v Switzerland* App no 25181/94 (ECtHR, 25 August 1998) [47]; *Herrera-Ulloa v Costa Rica* Series C No 107 (IACtHR, 2 July 2004) [122]-[123]; *Mouvement raëlien suisse v Switzerland* App no 16354/06 (ECtHR, 13 July 2012) [48]; Joint Declaration on Freedom of Expression and the Internet (The United Nations 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 ACmHPR Special Rapporteur on Freedom of Expression and Access to Information) (1 June 2011); UNHRC, 'General Comment No 34, Article 19, Freedoms of Opinion and Expression' (12 September 2011) UN Doc CCPR/C/GC/34 [22], [33], [34]; *Interights v Mauritania* Comm no 242/2001 (ACmHPR, 4 June 2004) [78]-[79].

[240] ICCPR art 6; *L. C. B. v the United Kingdom* App no 23413/94 (ECtHR, 9 June 1998) [36]; *Osman v the United Kingdom* App no 87/1997/871/1083 (ECtHR, 28 October 1998) [115]; *Mastromatteo v Italy* App no 37703/97 (ECtHR, 24 October 2002) [67]; *Maiorano and Others v Italy* App no 28634/06 (ECtHR, 15 March 2010) [107]; *Choreftakis and Choreftaki v Greece* App no 46846/08 (ECtHR, 9 July 2012) [48]; *Centre for Legal Resources on behalf of Valentin Câmpeanu v Romania* App no 47848/08 (ECtHR, 17 July 2014) [130]; *Tagayeva and Others v Russia* App no 26562/07 (ECtHR, 18 September 2017) [482].

[241] Compromis 5.

[242] Compromis 9, 14.

73. When a person expressing FoE has a huge impact, Cero enjoys wide MoA.[243] OneAI has a significant impact on society. RMSM had approximately 800,000 subscribers,[244] including Una, with a total of approximately 17 million followers[245] and other celebrities and social media influencers whose revenues depend on continuous content production.[246] On this basis, as OneAI could influence and determine millions of people's behaviour, it had a greater responsibility to consider the possible consequences of the malfunctioning of RMSM.[247]

74. The Post has created a clear and imminent danger and clear harm,[248] as the Post was available for more than an hour,[249] during which period it reached and influenced many people, including ELA sympathisers. As a result of the content, ELA sympathisers could have been greatly encouraged.[250] The dangerousness of the Post is demonstrated by the fact that it may have fuelled the terrorist attack which was committed by ELA sympathisers only fifteen hours after its publication.[251] As such, the autogeneration of terrorism-glorifying posts supporting violent organisations are deemed indirect calls[252] to commit terrorist attacks and risk others' lives.

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[243] Arguments 18.

[244] Compromis 12.

[245] Compromis 16.

[246] Compromis 12.

[247] *Axel Springer AG v Germany* App no 39954/08 (ECtHR, 7 February 2012) [90]; *Patrício Monteiro Telo De Abreu v Portugal* App no 42713/15 (ECtHR, 10 October 2022) [36].

[248] *Ricardo Canese v Paraguay* Series C No 111 (IACtHR, 31 August 2004) [72]; *Gül and Others v Turkey* App no 4870/02 (ECtHR, 8 September 2010) [42].

[249] Compromis 28.

[250] Compromis 15.

[251] Compromis 29.

[252] *Zana v Turkey* App no 69/1996/688/880 (ECtHR, 25 November 1997) [49]-[50]; *Erdoğdu and İnce v Turkey* App nos 25067/94, 25068/94 (ECtHR, 8 July 1999) [41]-[42].

75. Therefore, Respondent submits that the interference corresponded to a pressing social need.

b) The applied sanctions were suitable for protecting the legitimate aims

76. On the one hand, financial penalties are justifiable[253] and are one of the most appropriate types of sanction to encourage for-profit companies to comply with DSA and avoid future offences.[254]
77. On the other hand, temporarily suspending RMSM was suitable for preventing the proliferation of potentially dangerous terrorism-related posts. Temporary suspensions are widespread methods to prevent the spread of harmful posts on social media.[255]
78. Consequently, Respondent submits that the imposed sanctions were suitable for pursuing Cero's legitimate aims.

c) The interference was the least intrusive instrument

79. Considering the content of the Post,[256] the circumstances in which it was published[257] and the function of OneAI as a legal person, the imposed criminal sanctions were necessary.

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[253] *Leroy v France* App no 36109/03 (ECtHR, 6 April 2009) [38], [47].

[254] *Barthold v Germany* App no 8734/79 (ECtHR, 25 March 1985) [18].

[255] *Vladimir Kharitonov v Russia* App no 10795/14 (ECtHR, 16 November 2020) [46]; Recommendation CM/Rec(2016)5 of the Committee of Ministers to Member States on Internet Freedom (adopted 13 April 2016) [2.2.1.].

[256] Arguments 25-26.

[257] *Zana v Turkey* App no 69/1996/688/880 (ECtHR, 25 November 1997) [49]-[50]; *Karatas v Turkey* App no 23168/94 (ECtHR, 8 July 1999) [51]; *Demirel and Ateş v Turkey* App nos 10037/03, 14813/03 (ECtHR, 12 July 2007) [37]; *Leroy v France* App no 36109/03 (ECtHR, 6 April 2009) [38]; *Perinçek v Switzerland* App no 27510/08 (ECtHR, 15 October 2015) [198]; *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].

80. The general suspension on RMSM for one month was the least intrusive instrument, as implementing a full-scale, content-specific suspension of AI-powered tools in such a short period is technologically impossible.[258] The expertise of courts falls short of prescribing a content-specific suspension through rewriting algorithms.[259] AI dissemination systems are too complex and unpredictable for courts, especially when they learn from a wide range of user inputs, as does RMSM.

81. With algorithms like RMSM's, there is always tremendous uncertainty because they are continuously changing, as RMSM autogenerates content by constantly learning from its users' habits,[260] including the user's engagement (i.e. clicking links), reposts, comments and likes with respect to the posts of other users.[261] It is impossible to narrow down the suspension effectively[262] and impose precise control over an AI-driven tool due to its evolving nature.

82. To validate the previously mentioned difficulties, the #✊ it not always understood as the symbol of solidarity, and RMSM misconstrued it in the context of speech.[263]

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[258] Karen Yeung, *A study of the implications of advanced digital technologies (including AI systems) for the concept of responsibility within a human rights framework* (Council of Europe, 2019) [24].

[259] *Gonzalez v Google LLC* 598 US ___ (2023); *Twitter, Inc. v Taamneh* 598 US 471 (2023).

[260] Compromis 9, 14.

[261] Clarifications 3.

[262] Benjamin Wagner, *Algorithms and human rights. Study on the human rights dimensions of automated data processing techniques and possible regulatory implications* (Council of Europe, 2018) [4].

[263] Compromis 27-28; *Lingens v Austria* App no 9815/82 (ECtHR, 8 July 1986) [40]; *Barfod v Denmark* App no 11508/85 (ECtHR, 22 February 1989) [28]; *Jersild v Denmark* App no 15890/89 (ECtHR, 23 September 1994) [31]; *Sürek v Turkey* (No 1) App no 26682/95 (ECtHR, 8 July 1999) [62]; *Uj v Hungary* App no 23954/10 (ECtHR, 19 October 2011) [18].

83. Consequently, Respondent submits that there were no alternative measures available to pursue the legitimate aims in question that would have been less restrictive and yet equally effective.[264]

d) The interference was proportionate

84. In order to determine the proportionality of a general measure, underlying legislative choices must primarily be assessed.[265] The nature, duration and severity of the penalty imposed have to be considered.[266] National security concerns could provide a more extensive authorisation to intervene in FoE.[267]

85. OneAI has an obligation to develop RMSM in compliance with DSA, because it provides RMSM to 800,000 users, many of whom are Cerovians and its headquarter is in Cero.[268] However, OneAI did not meet this obligation, as the RMSM autogenerated an infringing Post.[269]

86. A stricter approach should therefore be followed concerning people carrying out a professional activity, such as OneAI, as they can be expected to take special care in assessing the risks.[270] It is needed for them to show evidence that they have fully

[264] *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].

[265] *Animal Defenders International v the United Kingdom* App no 48876/08 (ECtHR, 22 April 2013) [108].

[266] *Maslov v Austria* App no 1638/03 (ECtHR, 23 June 2008) [98]; *Leroy v France* App no 36109/03 (ECtHR, 6 April 2009) [47]; *Pentikäinen v Finland* App no 11882/10 (ECtHR, 20 October 2015) [105].

[267] *Zana v Turkey* App no 69/1996/688/880 (ECtHR, 25 November 1997) [49].

[268] Compromis 15.

[269] Compromis 28.

[270] *Cantoni v France* App no 17862/91 (ECtHR, 11 November 1996) [35].

complied with community standards of social media platforms, as declared in their ToS.[271]

87. RMSM published the autogenerated content directly on social media platforms, without any prior user approval,[272] and the users could opt for switching off the labelling feature.[273] Consequently, OneAI is the author of the Post, as it was autogenerated by RMSM, therefore it is liable for breaching DSA.[274]

88. A one-month period of suspension is a reasonable time for OneAI to implement safeguards in RMSM to avoid further infringements. Those needed safeguards could be the deletion of some controversial topics, a monitoring system with human review,[275] or to make the restriction of the opt-out system of labelling impossible to content that could pose a threat to national security, public order and the rights of others. It is also risky that topics can either be autogenerated or suggested during highly sensitive times without enabling users to notice the RMSM-generated content.

89. Stricter actions are justified when unlawful speech can be disseminated worldwide through – even AI-empowered – social media tools unprecedentedly in a matter of seconds and will remain persistently available.[276] Cero gave careful consideration to the violent content of the Post, the escalation of the conflict, and the instability of the

[271] Compromis 13.

[272] Compromis 13.

[273] Compromis 16.

[274] Joint Declaration by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression (21 December 2005).

[275] Clarifications 9.

[276] *Delfi AS v Estonia* App no 64569/09 (ECtHR, 16 June 2015) [110], [147]; *Annen v Germany* App no 3690/10 (ECtHR, 26 February 2016) [67].

region[277] because of the armed rebellion in its neighbour.[278] Given the severe turmoil in Enos and the social media wave in Cero at the time of the Post, an already fragile situation could worsen. The Post illustrates that the algorithm does not have an adequate safeguard to decide whether or not an autogenerated post constitutes an offence or what the disseminated content's impact on society might be.[279]

90. The commercial basis of OneAI must be considered when assessing the proportionality of the fine.[280] Considering that OneAI's monthly revenue from RMSM subscriptions was about USD 8,000,000,[281] the USD 50,000 fine is a mere 0.6% of that.[282] It therefore cannot be considered excessive and it has not threatened OneAI's economic existence.[283]

91. Even though some users decided to withdraw their subscription from RMSM, there is no evidence that these unsubscribes are directly linked to the imposed sanctions. The reason for unsubscriptions is likely to be that OneAI failed to develop RMSM in compliance with the relevant legislation resulting in the autogeneration of a post glorifying terrorism.

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[277] *Piermont v France* App nos 15773/89, 15774/89 (ECtHR, 27 April 1995) [77].

[278] Compromis 19.

[279] Compromis 28.

[280] *Delfi AS v Estonia* App no 64569/09 (ECtHR, 16 June 2015) [162].

[281] Compromis 12.

[282] Compromis 36.

[283] *Błaja News Sp. z o. o. v Poland* App no 59545/10 (ECtHR, 26 February 2014) [71]; *A and B v Norway* App nos 24130/11, 29758/11 (ECtHR, 15 November 2016) [74].

92. The suspension was tool-specific and did not constitute a general encumbrance on OneAI's FoE as RMSM is only one of its means to exercise its FoE.[284] OneAI could still practise FoE without restrictions in other ways.
93. Consequently, Respondent submits that considering all emerging aspects during the imposition of the sanctions, the interference was proportionate to its legitimate aims.

[284] Compromis 2.

IX. PRAYER FOR RELIEF

In the light of arguments advanced and authorities cited, Respondent respectfully requests 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, did not violate 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, did not violate 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 Cero

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Counsels for Respondent