

**THE 2022-2023 PRICE MEDIA LAW
MOOT COURT COMPETITION**

SWARNA SHIKRA

KANTHI BESRA

(APPLICANTS)

V.

THE STATE OF KURULU

(RESPONDENT)

MEMORIAL FOR RESPONDENT

Words: 4993

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LIST OF ABBREVIATIONS

ACC	Academic Code of Conduct
ACtHPR	African Court of Human and Peoples' Rights
AI	Artificial Intelligence
Applicants	Swarna Shikra & Kanthi Besra
Besra	Kanthi Besra
<i>Battichcha</i>	<i>Battichcha v The State of Kurulu</i>
CCK	Constitutional Court of Kurulu
CESCR	Committee on Economic, Social and Cultural Rights
Chirp	Chirp Enterprises
CKP	Central Koha Police
CPE	Campaign for Private Education
ECtHR	European Court of Human Rights
HRC	Human Rights Committee
IACtHR	Inter-American Court of Human Rights
ICCPR/CCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO	International Labor Organization
IUSU	Inter-University Students Union

MCK	Magistrate of Central Koha
NUK	National University of Kurulu
NUKSU	National University of Kurulu Students Union
OHCHR	United Nations Office of the High Commissioner for Human Rights
SANUK	Student Association of the National University of Kurulu
Shikra	Swarna Shikra
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNHRC	United Nations Human Rights Council
US	United States of America
USBL	University Standards Board Law

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<p>‘What We Heard: The Government’s proposed approach to address harmful content online’ https://www.canada.ca/en/canadian-heritage/campaigns/harmful-online-content/what-we-heard.html#a3a3> accessed 21 November 2022</p>	7
<p>Yuliia Kniazieva, ‘AI Content Moderation for Responsible Social Media’ https://labeledyourdata.com/articles/ai-content-moderation> accessed 21 November 2022</p>	8

STATEMENT OF RELEVANT FACTS

The State of Kurulu

1. The State of Kurulu ('Kurulu') is a country with a population of approximately 50 million people. According to Section 4 of the University Standard Board Law, all the universities in Kurulu are owned and operated by the State. In Kurulu, there are 40 universities in total, and they are all ranked within the top 500 universities in the world. The National University of Kurulu was ranked 12th in 2021.

Campaign for Private Education

2. The Campaign for Private Education ("CPE") is an organization which advocates the establishment of private universities. Most of its members are 18 to 25 years old.
3. Swarna Shikra ("Shikra") is the head of CPE. She is also a tenured professor and reputed educationalist at the National University of Kurulu ("NUK").

Besra Limited

4. Kanthi Besra is a successful entrepreneur and one of the largest benefactors of CPE. She promised to found the first private university in Kurulu if the law is reformed.

The Inter-University Students Union

5. The Inter-University Students Union (“IUSU”) is a nation-wide organization which comprises 39 of 40 Kurulu’s state universities. The Student Association of National University of Kurulu (“SANUK”) was expelled from IUSU in 2019 because of its overt support of Shikra and CPE. The IUSU has consistently opposed university privatization. National University of Kurulu Student Union (“NUKSU”), a rival student union of SANUK, was formed in 2020.

Chirp

6. Chirp is the most popular social media platform in Kurulu. In 2022, it had over 23 million users in Kurulu. Shikra had over 200,000 followers on Chirp and maintained her account on “Public Mode.” Chirp provides Community Guidelines that apply to all posts and comments. In Clause 8, Chirp provided its standard to moderate content.
7. Chirp provides two mechanisms to deal with content that violates its Community Guidelines: Artificial Intelligence (“AI”) mechanism and human content reviewers. Both of the two mechanisms can take down content that violates the Community Guidelines.
8. Chirp’s AI mechanism can proactively detect “almost all” Community Guidelines violations by analyzing the content. An in-depth review concluded that Chirp’s AI mechanism had an 88% accuracy rate in terms of correctly detecting content as violating the Community Guidelines.
9. Human content reviewers perform reviews of all user complaints, and determine

whether a violation of the Community Guidelines has taken place. A user is able to report any post or comment by selecting which Community Guideline was violated by the content.

10. Chirp would notify users of the content-removal. A user can “appeal” the content-removal by appealing to Chirp’s Appeal Committee. The decision of the Committee and the determination of human content reviewers are fed into the AI mechanism.

Battichcha v The State of Kurulu

11. *Battichcha v The State of Kurulu* (“*Battichcha*”) is a historical judgment in Kurulu. In *Battichcha*, several users commented under the petitioner’s video. The comments revealed the petitioner’s home address and called for reprisals against the petitioner. Consequently, the Constitutional Court of Kurulu decided that Chirp was responsible for failing to take reasonable actions to remove harmful content. After *Battichcha*, Chirp subsequently began developing its AI mechanism to detect and remove harmful content that violates the Community Guidelines.

Shikra’s Post

12. At 9.00am on 9 July, Shikra posted a statement with an image of candle on Chirp, calling for “*all academics and students to take a stand.*” She also urged people to “*REFUSE to teach or attend classes; OCCUPY all university premises.*” She

stated that “*DO NOT TOLERATE traitors*” and “*start my vigil.*”

User comments below Shikra’s post

13. At 11.00am on 9 July, SANUK posted a statement to support Shikra and threatened to take actions against non-compliance.
14. By around 5.00pm, one user named “Drongo22” commented: “*What kind of academic refuses to teach? What kind of public intellectual calls for ‘intolerance’ against her opponents? Shikra should be fired immediately. Clip those wings before it’s too late.*” Another user, named ‘Heron100’ exclaimed: “*Enjoying a cushy tenured position and ‘lecturing’ students to cut classes and attack “traitors”! What a fraud!*”
15. By 6.00pm, IUSU issued a statement that condemned Shikra’s calling for strike action and demanded Shikra be removed from her university post under Section 24.4 of NUK’s Academic Code of Conduct (“ACC”).
16. At 8.00pm, one user named “IUSU_RedKite” posted the following comment: “*This entire campaign is being funded by Shikra’s lover, that evil neoliberal Kanthi Besra.*” Another user named “BarnOwl_NUKSU” posted a comment: “*What a pair of birdbrains. Trash their nest!*”
17. During this period, Chirp removed around 40 comments that violated Clause 8 of the Community Guidelines. Shikra and Besra made no user complaints against the comments made by Drongo22, Heron100, IUSU_RedKite, and BarnOwl_NUKSU.

18. At 3.00am on 10 July, three individuals broke into Shikra and Besra's home and painted on their living room wall.

Complaints and Inquires

19. On 10 July, the Vice Chancellor's office informed Shikra that she was under the investigation of breaching NUK's ACC. Shikra confirmed her attendance immediately.

20. At 4.00pm on 10 July, Besra filed complaints at the Central Koha Police Station ("CKP") about the incident. Besra's complaint also alleged that Chirp failed to take reasonable action to prevent the crime from taking place.

21. Besra suggested that "BarnOwl_NUKSU" might be involved in the crime. The Police assured Besra that a full investigation would be launched, but tracing a user on Chirp needed a court warrant.

22. On 12 July, the CKP summoned a Chirp representative and recorded a statement on Chirp's content moderation process and user information storage. The representative assured the officer that the user data would be provided for the CKP if there was a court warrant.

23. On 13 July, the CKP applied for a court warrant to obtain the personal information of "BarnOwl_NUKSU." The Magistrate of Central Koha ("MCK") denied the warrant request, because there was no basis to violate the privacy of any user. The MCK cited Article 7 and Article 9 of Kurulu's Constitution, which guarantee the users' rights to privacy and the freedom of expression.

24. On 14 July, the CKP informed Besra of the MCK's decision. The CKP continued to investigate the crime through other means, for example, analyzing CCTV footage and forensic evidence.
25. On 17 July, NUK held an inquiry for Shikra's post on 9 July. The inquiry panel and Vice Chancellor's Office decided that Shikra should be suspended for a period of one week. The lifting of her suspension would be a written undertaking that she refrains from issuing similar statements in the future.

Proceedings before the Constitutional Court

26. On 20 July, Besra and Shikra filed a joint complaint against the State of Kurulu before the Constitutional Court of Kurulu ("CCK"). They complained that Kurulu had failed to provide them an effective remedy against their rights violation. They also alleged that Kurulu failed to properly investigate the crime on 10 July because Kurulu did not direct Chirp to disclose the suspects' personal information.
27. The petitioners also named Chirp Enterprises, alleging that Chirp had failed to proactively detect and take down harmful content, which led to the actual harm.
28. On 1 August 2022, the CCK dismissed all the complaints, holding that there was insufficient evidence to establish that a particular user on Chirp had caused the crime on 10 July. It also held that Chirp had taken reasonable steps to detect and remove harmful content.
29. Besides, Shikra filed a separate petition complaining that the suspension and the

conditions attached to the removal of her suspension violated her rights to freedom of expression.

STATEMENT OF JURISDICTION

Swarna Shikra, Kanthi Besra, and the State of Kurulu, the latter being a party to the International Covenant on Civil and Political Rights (“ICCPR”) and International Covenant on Economic, Social and Cultural Rights (“ICESCR”), submitted their differences to the Universal Court of Human Rights (“this Court”), and hereby submit to this Court their dispute concerning Article 17 and Article 19, read with Article 2(3) of the ICCPR.

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

QUESTION PRESENTED

- I. Whether Kurulu violated Shikra and Besra's rights under Article 17 and Article 19, read with Article 2(3) of the ICCPR, by failing to impose a statutory duty on social media service providers to remove content that is likely to cause imminent harm of a serious nature.
- II. Whether Kurulu's action with respect to investigations into the break-in and vandalism of Shikra and Besra's home, violated their rights under Article 17 and Article 19, read with Article 2(3) of the ICCPR.
- III. Whether Kurulu's action with respect to the one-week suspension of Shikra and the conditions of removing her suspension violated her rights recognized by Article 19 of the ICCPR.

SUMMARY OF ARGUMENTS

Kurulu did not violate Applicants’ rights under Article 17 and Article 19, read with Article 2(3) of the ICCPR, by failing to impose a statutory duty on social media service providers to remove harmful content.

- A. Kurulu’s lack of statutory duty on social media service providers (“SMSPs”) to remove content does not violate Article 2(3) of the ICCPR because (a) the comments under Shikra’s post did not violate Applicants’ Covenant rights of the ICCPR, and (b) alternatively, Kurulu has provided effective remedies for Applicants. Additionally, (c) the statutory duty requested by Applicants is unnecessary and disproportionate.
- B. Although offensive and vulgar, the unremoved comments under Shikra’s post did not violate Applicants’ rights under Article 17 and Article 19 of the ICCPR. First, “Trash their nest” did not show any address of Applicants’ residence, therefore did not interfere with Applicants’ rights to privacy under Article 17 of the ICCPR. Second, “Birdbrain”, “fraud” and “evil neoliberal” did not violate Applicants’ rights to reputation and honor under Article 17 of the ICCPR, as Applicants were public figures who had to display a high tolerance of the criticism. Furthermore, freedom of expression protects vulgarities that are used only for stylistic purposes. Third, the application of the six-part test of Rabat Plan shows that “Clip those wings before it’s too late” was not severe enough to violate Applicants’ rights to freedom of expression under Article 19 of the ICCPR.
- C. Alternatively, Kurulu has provided effective remedies for Applicants. Citing

Battichcha v The State of Kurulu as a precedent, Applicants had utilized the judicial proceedings in Kurulu by filing a claim against Chirp to enforce their rights. Furthermore, the Constitutional Court of Kurulu made a reasonable decision in the instant case, because Applicants did not provide any evidence to support that comments under Shikra's post were the reason for the crime. Kurulu therefore has provided effective remedies for Applicants.

- D. Additionally, a statutory duty on SMSPs such as Chirp to remove harmful content is unnecessary and disproportionate.
- E. The statutory duty is unnecessary because Chirp has conducted effective content moderation, and imposing such a statutory duty would discourage the creativeness of SMSPs. Chirp provides two effective mechanisms to moderate content that violates its Community Guidelines, which complies with the requirement of human rights protection. Chirp also provides remedies for its wrongful removal. The statutory duty requested by Applicants is thus unnecessary.
- F. The statutory duty is disproportionate because (a) it is not the least intrusive means of addressing harmful content and (b) it does not make a reasonable balance between the interests at stake. First, imposing a statutory duty is not the least intrusive way, because Kurulu can take alternative ways that are able to address the harmful content and preferable to outsourcing the role of content police to SMSPs. Second, there is no reasonable balance between the interests at stake because the scope of the restriction requested by Applicants is overbroad, and SMSPs might abuse its discretion. The restriction is overbroad because it might reach both

protected speech and unprotected speech, and cast a chilling effect on individual users. SMSPs might abuse their discretion because of the incentives to avoid liabilities, and their lack of capacities to regulate harmful content like a public function. The statutory duty requested by Applicants is thus disproportionate.

Kurulu’s action with respect to investigations did not violate Applicants’ rights under Article 17 and Article 19, read with Article 2(3) of the ICCPR.

G. Kurulu has fulfilled its duty to investigate under Article 2(3) of the ICCPR because it conducted a prompt, thorough, effective and transparent investigation through the Central Koha Police (“CKP”).

H. Kurulu conducted a prompt investigation because the CKP carried out the investigation immediately after Applicants filed the complaint. Kurulu conducted a transparent investigation because the CKP provided Applicants with relevant information of the investigation process.

I. Kurulu conducted a thorough and effective investigation because the CKP (a) used all proportionate and available legal means, and (b) took the specific context into consideration. First, the CKP used all available and proportionate legal means that do justice to the break-in and vandalization. Requiring the CKP to do more will impose a disproportionate burden. Second, the CKP had taken the patterns of this case into consideration. As this case might be pertinent to users on Chirp, the CKP summoned a Chirp representative. The investigation is thus thorough and effective.

Section 24 of the Academic Code of Conduct is a valid restriction on faculty’s freedom of expression under Article 19 of the ICCPR.

- J. Section 24 of the Academic Code of Conduct (“ACC”) is prescribed by law. Section 24 has its legal basis in Article 19 of Kurulu’s Constitution and Section 29 of the University Standard Board Law (“USBL”). Both laws are state legislations of Kurulu and accessible to Kurulu citizens. Both laws are also foreseeable, as they are formulated with sufficient precision as to enable faculty to foresee that certain professional code of conducts would be imposed on them.
- K. Section 24 of the ACC pursues a legitimate aim of protecting public order. Universities in Kurulu play an important role of maintaining the basic function of society, therefore the effective functioning of universities falls into the scope of public order.
- L. Section 24 of the ACC is proportionate to the legitimate aim pursued because (a) there is a reasonable balance between the harm to freedom of expression and the benefit to the rights protected, and (b) the restriction is the least intrusive measure. First, the impact of the disciplinary action on faculty’s freedom of expression is indirect and temporary, while the harm that such expression would cause is direct and long-lasting. Second, compared with criminal sanctions, the disciplinary action is the least intrusive measure to protect the effective functioning of universities.

The discipline action imposed on Shikra is a valid restriction on Shikra’s right to freedom of expression under Article 19 of the ICCPR.

- M. The disciplinary action is prescribed by law, as it can find its basis in Section 24 of the ACC. The ACC is accessible when Shikra served as a tenured professor at NUK. It is also foreseeable as to the consequence because the types of disciplinary actions

available to universities are limited. Given the sufficient procedural guarantees and the faculty status of Shikra, Section 24 of the ACC is sufficiently precise.

- N. The disciplinary action pursues the legitimate aim of protecting (a) public order and (b) the rights of others. First, the disciplinary action aims to protect the public order, specifically, the effective functioning of universities. Vehemently calling for occupying universities and stopping classes for privatizing universities, Shikra's post constituted imminent threat to the effective functioning of the NUK. Second, the disciplinary action seeks to protect the educational rights of students, since Shikra's post called for actions that will result students inaccessible to classes.
- O. The disciplinary action is proportionate to the legitimate aim pursued. First, there is a reasonable balance between the interests at stake. NUK could have dismissed Shikra for her "gross misconduct," but it only imposed a one-week suspension. Furthermore, the condition for lifting the suspension is necessary to maintain public confidence in the educational profession. Second, the suspension is the least intrusive measure to achieve the protective aim because no other alternatives can suppress Shikra's inflammatory speech and prevent future school disorder.

ARGUMENTS

I KURULU DID NOT VIOLATE APPLICANTS' RIGHTS UNDER ARTICLE 17 AND ARTICLE 19, READ WITH ARTICLE 2(3) OF THE ICCPR, BY FAILING TO IMPOSE A STATUTORY DUTY ON SOCIAL MEDIA SERVICE PROVIDERS TO REMOVE HARMFUL CONTENT.

1. A State's lack of statutory duty on Social Media Service Providers ("SMSPs") to remove content does not violate Applicants' rights under Article 2(3) of the ICCPR if **(A)** the content on SMSPs does not violate Applicants' Covenant rights under the ICCPR,¹ **(B)** alternatively, the State has provided effective remedies for individuals whose Covenant rights are violated.² Additionally, **(C)** a statutory duty on SMSPs to remove content shall not contravene the requirements imposed by Article 19 of the ICCPR.³

A. Comments under Shikra's post did not violate Applicants' rights under Article 17 and Article 19 of the ICCPR

2. The four comments unremoved under Shikra's post did not violate Applicants'

¹ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 ('ICCPR') Article 2(3); HRC, 'General Comment No 31 Art 2: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant' (29 March 2004) UN Doc CCPR/C/21/Rev.1/Add. 13 ('General Comment 31') [15]-[17].

² General Comment 31 (n 1) [16]; *Saodat Kulieva v Tajikistan* (Communication No 2707/2015) UN Doc CCPR/C/128/D/2707/2015 ('*Saodat Kulieva*') [10]; *Jansons v Latvia* App no 1434/14 (ECtHR, 8 September 2022) [97].

³ ICCPR (n 1) Art 19(3); HRC, 'General Comment No 34 Article 19: Freedoms of opinion and expression' (12 September 2011) UN Doc CCPR/C/GC/34 ('General Comment 34') [7], [22], [24]-[36]; UNHRC, 'Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, David Kaye' (11 May 2016) UN Doc A/HRC/32/38 ('May 2016 Report of UN Special Rapporteur David Kaye') [85]; UNHRC, 'Promotion and protection of the right to freedom of opinion and expression, David Kaye' (9 October 2019) UN Doc A/74/486 ('October 2019 Report of UN Special Rapporteur David Kaye') [20], [34]; *Zdrestov v Belarus* (Communication No 2391/2014) UN Doc CCPR/C/128/D/2391/2014 [8.2]-[8.3]; *Balaskas v Greece* App no 73087/1 (ECtHR, 5 November 2020) ('*Balaskas*') [33]; *Kilinç v Turkey* App no 40884/07 (ECtHR, 12 January 2021) [33]-[34]; *Rios v Venezuela* Series C No 194 (IACtHR, 28 January 2009) [72]; *Umuhoza v Rwanda* App no 003/2014 (ACtHPR, 24 November 2017) [132]-[133]; Jørgensen, R. F., *Human rights and private actors in the online domain* (CUP, 2018) ('Human rights and private actors in the online domain') 243-269.

rights under Article 17 and Article 19 under the ICCPR.

(1) “Trash their nest”

3. The comment “trash their nest” made by “BarnOwl_NUKSU” did not violate Applicants’ rights to privacy under Article 17 of the ICCPR, as this comment did not show any home address of Applicants. Applicants therefore did not have a reasonable fear of being interfered with their home.⁴

(2) “Birdbrain”, “fraud” and “evil neoliberal”

4. “Birdbrain”, “fraud” and “evil neoliberal” made by “BarnOwl_NUKSU”, “Heron100” and “IUSU_RedKit” did not violate Applicants’ rights of reputation and honor under Article 17 of the ICCPR.
5. Users’ freedom of expression extends to vulgarities used only for stylistic purposes,⁵ such as the comments here.⁶ Shirka was a reputed educationalist and tenured professor,⁷ and Besra was a successful entrepreneur who promised to found the first private university in Kurulu.⁸ They knowingly exposed themselves to public scrutiny, therefore had to display a high tolerance of the criticism.⁹

⁴ HRC, ‘General Comment No 16 Article 17: The Right to Respect of Privacy, Family, Home and Correspondence, and Protection of Honor and Reputation’ (8 April 1988) [1]; *Kaboğlu and Oran v Turkey* App no 18068/11 (ECtHR, 17 March 2011) [74]; *Samoylova v Russia* App no 49108/11 (ECtHR, 14 December 2021) [101], [103].

⁵ UNHRC, ‘Promotion and protection of the right to freedom of opinion and expression, Frank La Rue’ (7 September 2012) UN Doc A/67/357 (‘September 2012 Report of UN Special Rapporteur Frank La Rue’) [49]; *Gül and ors v Turkey* App no 4870/02 (ECtHR, 8 June 2010) [41]; *Magyar Tartalomszolgáltatók Egyesülete and Index.hu Zrt v Hungary* App no 22947/13 (ECtHR, 2 February 2016) (‘Magyar’) [46], [76], [77]; *Grebneva and Alisimchik v Russia* App no 8918/05 (ECtHR, 22 November 2016) [52]; *Savva Terentyev v Russia* App no 10692/09 (ECtHR, 28 August 2018) (‘Savva Terentyev’) [68], [74].

⁶ Clarifications [40].

⁷ Fact Pattern [7].

⁸ Fact Pattern [8].

⁹ *Kaboğlu and Oran v Turkey* App no 18068/11 (ECtHR, 17 March 2011) [74]; *Jishkariani v Georgia* App no 18925/09 (ECtHR, 20 September 2018) [46]; *Balaskas* (n 3) [50].

6. Therefore, these comments are not severe enough to violate Applicants’ rights under Article 17.¹⁰

(3) “Clip those wings before it’s too late”

7. Although offensive, the comment “clip those wings” made by “Drongo22” did not violate Applicants’ rights under Article 19 of the ICCPR. The application of the six-part test of Rabat Plan shows that this comment is not severe enough to violate Applicants’ rights under Article 19 of the ICCPR.
8. The UN Rabat Plan of Action provides a six-part test to assess the severity of an expression: (a) context, (b) speaker, (c) intent, (d) content and form, (e) extent of the speech act, and (f) likelihood including imminence.¹¹

a. Context

9. Publications that contribute to a debate of general interest are less likely to be interpreted as incitement or inchoate.¹² Here, “Clip those wings” contributed to a debate of general interest, because Shirka’s post called for all academics and students to immediately cease academic activities.¹³

b. Speaker

10. The speaker’s position or status in the society is a relevant factor in determining

¹⁰ *Handyside v United Kingdom* App no 5493/72 (ECtHR, 7 December 1976) [66]; *Axel Springer AG v Germany* App no 39954/08 (ECtHR, 7 February 2012) [83]; *Bédat v Switzerland* App no 56925/08 (ECtHR, 29 March 2016) (‘*Bédat*’) [72]; *Medžlis Islamske Zajednice Brčko and ors v Bosnia and Herzegovina* App no 17224/11 (ECtHR, 27 June 2017) (‘*Medžlis*’) [76]

¹¹ September 2012 Report of UN Special Rapporteur Frank La Rue (n 5) [45]; UNHRC, ‘Rabat Plan of Action on the Prohibition of Advocacy of National, Racial or Religious Hatred that Constitutes Incitement to Discrimination, Hostility or Violence’ (5 October 2012) UN Doc A/HRC/22/17/Add.4 (‘*Rabat Plan*’); UNHRC, ‘Report of the Special Rapporteur on Freedom of Religion or Belief, Heiner Bielefeldt’ (26 December 2013) UN Doc A/HRC/25/58 [58].

¹² *Incal v Turkey* App no 22678/93 (ECtHR, 9 June 1998) (‘*Incal*’) [46], [50]; *Lehideux and Isorni v France* App no 55/1997/839/1045 (ECtHR, 23 September 1998) (‘*Lehideux*’) [48], [55]; *Gunduz v Turkey* App no 35071/97 (ECtHR, 4 December 2003) (‘*Gunduz*’) [43], [44], [49]; *Coleman v Australia* (Communication No 1157/2003) UN Doc CCPR/C/87/D/1157/2003 (‘*Coleman*’) [7.3].

¹³ Fact Pattern [37].

incitement to violence.¹⁴ Here, “Drongo22” is far less influential than Shikra. Shikra is a reputed educationalist, as well as the head of the Campaign for Private Education (“CPE”).¹⁵ She has over 200,000 followers on Chirp and received over 15,000 “likes” of her post,¹⁶ whereas “Drongo22” is only an anonymous user.¹⁷

c. Intent

11. Incitement to violence requires intent, as mere negligence and recklessness are not sufficient for a restriction on speech.¹⁸ Here, the preceding sentence was “Shikra should be fired immediately.” Therefore, “Clip those wings” only aimed at firing Shikra instead of calling for strike action.

d. Likelihood including imminence

12. A reasonable probability to succeed in inciting actual action is important to determine incitement to violence.¹⁹ Here, “Clip those wings” only expressed dissatisfaction with the Shikra’s post, rather than calling for intruding Applicants’ home. Therefore, it would not reasonably succeed in inciting an actual action.
13. In conclusion, “clip those wings” is not severe enough to violate Applicants’ rights to freedom of expression under Article 19 of the ICCPR.

B. Alternatively, Kurulu has provided effective remedies for Applicants

14. Article 2(3) of the ICCPR requires States to make effective remedies for

¹⁴ Rabat Plan (n 11) [29].

¹⁵ Fact Pattern [8].

¹⁶ Fact Pattern [38].

¹⁷ Fact Pattern [41].

¹⁸ Rabat Plan (n 11) [29].

¹⁹ *ibid.*

learned about Applicants' home address from those comments.

18. Rather, it is highly possible that the intruders already knew of Applicants' home address via other channels. "Birdbrains" under Shikra's post could have simply been an announcement of the intruders' intention, rather than the reason for their break-in and vandalization.
19. Therefore, Kurulu has provided effective remedies for Applicants, and the CCK's decision was well-reasoned in fact and in law.

C. A statutory duty on SMSPs such as Chirp to remove harmful content is unnecessary and disproportionate

20. A statutory duty to take down harmful content shall meet the requirement of legitimacy, necessity, and proportionality of Article 19 under the ICCPR, as the duty infringes upon other users' rights to freedom of expression.²⁸
21. Imposing a statutory duty of content-removal on SMSPs is unnecessary and disproportionate because **(1)** Chirp has made an effective content-moderation, and **(2)** imposing such a statutory duty would be disproportionate to the goal of protecting individual users' freedom of expression under Article 19 of the ICCPR.

(1) Chirp has conducted effective content-moderation

²⁸ ICCR (n 1) art 19 [3]; General Comment 34 (n 3) [7], [22], [24]-[36]; May 2016 Report of UN Special Rapporteur David Kaye (n 3) [85]; United Nations General Assembly ('UNGA'), 'Promotion and protection of the right to freedom of opinion and expression, David Kaye' (6 September 2016) UN Doc A/71/373 ('September 2016 Report of UN Special Rapporteur David Kaye') [3]; October 2019 Report of UN Special Rapporteur David Kaye (n 3) [20], [34]; *Zdrestov v Belarus* (Communication No 2391/2014) UN Doc CCPR/C/128/D/2391/2014 [8.2]-[8.3]; *Balaskas* (n 3) [33]; *Kilinc v Turkey* App no 40884/07 (ECtHR, 12 January 2021) [33]-[34]; *Umuhoza v Rwanda* App no 003/2014 (ACtHPR, 24 November 2017) [132]-[133]; *Rios v Venezuela*, Series C No. 194 (IACtHR, 28 January 2009) [72]; 'Manila Principles on Intermediary Liability' V1 (24 March 2015) <https://www.eff.org/files/2015/10/31/manila_principles_1.0.pdf> accessed 21 November 2022, 4; Giovanni Sartor and Andrea Loreggia, 'The impact of algorithms for online content filtering or moderation' 2020 <[https://www.europarl.europa.eu/RegData/etudes/STUD/2020/657101/IPOL_STU\(2020\)657101_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2020/657101/IPOL_STU(2020)657101_EN.pdf)> accessed 21 November 2022 ('The impact of algorithms for online content filtering or moderation'), 24, 47.

22. Chirp has carried out human right due diligence.²⁹ Firstly, Chirp’s Community Guidelines has complied with the requirement of human rights protection.³⁰ Secondly, Chirp provides two effective mechanisms to moderate content: (1) the Artificial Intelligence (“AI”) mechanism that is effective in automatic content removal and (2) human content reviewers that are effective where individuals report on comments.³¹ Thirdly, Chirp provides effective remedies for wrongful removal.³²

a. The AI mechanism is effective in content removal

23. Given the volume of content and the timeline of the moderation, social media platform can only use automated systems to make content moderation.³³ It is unrealistic to expect SMSPs to perfectly differentiate the content that should be removed and the content that should be protected.³⁴

²⁹ CESCR, ‘General Comment No 24 on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities’ (10 August 2017) UN Doc E/C.12/GC/24 [5], [14]; UNHRC, ‘Improving accountability and access to remedy for victims of business-related human rights abuse: The relevance of human rights due diligence to determinations of corporate liability’ (1 June 2018) UN Doc A/HRC/38/20/Add.2* (‘June 2018 Report on Corporate Liability’ [7]; UNHRC, ‘United Nations Guiding Principles on Business and Human Rights’ (16 June 2011) UN Doc A/HRC/Res/17/4 (‘UNGP’) principle 11, 17-21.

³⁰ Fact Pattern [21]; UNGP (n 29) principle 16, 23, 24; September 2012 Report of UN Special Rapporteur Frank La Rue (n 5) [46]; UNHRC, ‘The practical application of the Guiding Principles on Business and Human Rights to the activities of technology companies (21 April 2022) UN Doc A/HRC/50/56 (‘April 2022 Report of UN Special Rapporteur on application of GP’) [29].

³¹ Fact Pattern [22]-[30].

³² UNGP (n 29) principle 15, 22; UNHRC, ‘Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, David Kaye’ (6 April 2018) UN Doc A/HRC/38/35 (‘April 2018 Report of UN Special Rapporteur David Kaye’) [1]; April 2022 Report of UN Special Rapporteur on application of GP (n 30) [40], [47].

³³ ‘What We Heard: The Government’s proposed approach to address harmful content online’ <<https://www.canada.ca/en/canadian-heritage/campaigns/harmful-online-content/what-we-heard.html#a3a3>> accessed 21 November 2022.

³⁴ ‘Content Regulation in the Digital Age: Submission to the United Nations Special Rapporteur on the Right to Freedom of Opinion and Expression by the Association for Progressive Communications (APC)’ (February 2018) <<https://www.ohchr.org/sites/default/files/Documents/Issues/Opinion/ContentRegulation/APC.pdf>> accessed 21 November 2022 (‘Content Regulation in the Digital Age’), 32, 33, 45, 46.

24. Here, Chirp has reached the average industrial standard for AI mechanism in the world. Chirp's AI mechanism removes a harmful content within 3 to 5 seconds after the content was posted,³⁵ and achieves an accuracy rate of 88%.³⁶ Among the several major SMSPs in the world, Amazon Web Service identifies harmful content at an 80% accuracy rate, and Facebook's AI system discovers 90% of flagged content.³⁷

25. Therefore, Chirp's AI mechanism is effective to remove harmful content.

b. Human moderation is effective where individuals report on comments

26. A notice-and-takedown system is effective if human moderators can respond rapidly to users' complaint.³⁸

27. Here, Chirp's human content reviewer mechanism is effective to respond to users' complaints.³⁹ Reviewers can review all user complaints that selects which Community Guideline was violated,⁴⁰ remove the content if a violation takes place,⁴¹ and permanently ban a user who repeatedly violates Community Guideline.⁴²

28. Therefore, both the AI mechanism and human content reviewer mechanism are effective in content-moderation.

³⁵ Fact Pattern [29].

³⁶ Fact Pattern [24].

³⁷ Yuliia Kniazieva, 'AI Content Moderation for Responsible Social Media' <<https://labeledyourdata.com/articles/ai-content-moderation>> accessed 21 November 2022.

³⁸ *Magyar* (n 5) [91]; The impact of algorithms for online content filtering or moderation (n 28) 22.

³⁹ *Magyar* (n 5) [91].

⁴⁰ Fact Pattern [26].

⁴¹ Fact Pattern [26], [27].

⁴² Fact Pattern [30].

c. Chirp provides effective remedies for wrongful removal

29. Chirp has provided effective remedies for users whose content is wrongfully removed.⁴³ Chirp gives users notifications about the content-removal.⁴⁴ Users can appeal the content-removal to Chirp’s Appeal Committee.⁴⁵ Chirp’s AI mechanism would automatically add the determination of the Appeal Committee and human moderators into its algorithm.⁴⁶
30. Given the effective moderation mechanism in Chirp, a statutory duty is unnecessary. Additionally, imposing a statutory duty would discourage innovative moderation of the SMSP.⁴⁷

(2) Imposing a statutory duty to remove harmful content would be disproportionate to the legitimate pursued

31. To be proportionate, a restriction needs to **(a)** be the least intrusive measure to achieve the legitimate aim,⁴⁸ and **(b)** make a reasonable balance between the interests at stake.⁴⁹

⁴³ UNGP (n 29) principle 15; April 2018 Report of UN Special Rapporteur David Kaye (n 32) [1]; April 2022 Report of UN Special Rapporteur on application of GP (n 30) [411]; The impact of algorithms for online content filtering or moderation (n 28) 23.

⁴⁴ Fact Pattern [32].

⁴⁵ Fact Pattern [31].

⁴⁶ Fact Pattern [27], [32].

⁴⁷ June 2018 Report on Corporate Liability (n 29) [17].

⁴⁸ General Comment 34 (n 3) [34]; May 2016 Report of UN Special Rapporteur David Kaye (n 3) [7]; *Toregozhina v Kazakhstan* (Communication No 2137/2012) UN Doc CCPR/C/112/D/2137/2012 [7.4]; *Sviridov v Kazakhstan* (Communication No 2158/2012) UN Doc CCPR/C/12D/2158/2012 [10.3]; *Ouka v Kenya* Communication No 232/99 (ACtHPR, 06 November 2000) [2]; *Kenneth Good v Republic of Botswana* Communication No 313/05 (ACtHPR, 26 May 2010) [189].

⁴⁹ UNHRC, ‘Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin’ (28 December 2019) UN Doc A/HRC/13/37 [14]-[19]; *Rodrigues da Silva and Hoogkamer v The Netherlands* App no 5043195/99 (ECtHR, 31 January 2006) [39]; Manfred Nowak, *UN Covenant on Civil and Political Rights: CCPR Commentary* (2nd edn, NP Engel 2005) 383.

a. The statutory duty is not the least intrusive means

32. A State cannot “use a sledge-hammer to crack a nut.”⁵⁰ To be the least intrusive means, no other means that can achieve the legitimate aim would less severely interfere with the rights concerned under ICCPR.⁵¹
33. Here, the statutory duty of content removal is not the only way of addressing the harmful content, nor is it the least intrusive way. Comparing with SMSPs, users are at a better position to decide what content is harmful to their Covenant rights.⁵² Instead of the State imposing such a statutory duty, SMSPs should grant users the right to filter the comments under their own posts, flag posts that are pertinent to their interests, and file complaints against violations of their rights.⁵³
34. Additionally, the State could also build creative tools that are helpful to remove harmful content.⁵⁴ For example, one approach in India is to set up a hotline for users to report WhatsApp content to law enforcement authorities, while another approach is to set up a “social media laboratory” to monitor online hate speech.⁵⁵ Twitter and Facebook use warnings and notices to moderate harmful comments.⁵⁶
35. While aiming at protecting individuals’ rights under Article 17 and Article 19, these

⁵⁰ *R v Oakes* (1986) 1 SCR 103 [138]-[139].

⁵¹ *Glor v Switzerland* App no 13444/04 (ECtHR, 30 April 2009) [94]; *Fáber v Hungary* App no 40721/08 (ECtHR, 24 July 2012) [43]; *Axel Springer SE and RTL Television GmbH v Germany* App no 51405/12 (ECtHR, 21 September 2017) [56]; *Tagiyev and Huseynov v Azerbaijan* App no 13274/08 (ECtHR, 5 December 2019) [49].

⁵² Content Regulation in the Digital Age (n 34) 15.

⁵³ Content Regulation in the Digital Age (n 34) 20.

⁵⁴ October 2019 Report of UN Special Rapporteur David Kaye (n 3) [55]; Content Regulation in the Digital Age (n 33) 20.

⁵⁵ October 2019 Report of UN Special Rapporteur David Kaye (n 3) [36].

⁵⁶ ‘Warnings & Blocks’, <<https://www.facebook.com/help/256115917886669>> accessed 21 November 2022; ‘Notices on Twitter and what they mean’, <<https://help.twitter.com/en/rules-and-policies/notices-on-twitter>> accessed 21 November 2022.

approaches suggest alternative means to address harmful content without outsourcing the role of content police to distant companies.⁵⁷ Therefore, a statutory duty is not the least intrusive means.

b. There is no reasonable balance between the interests

36. A restriction is not proportionate when it is overbroad.⁵⁸ The impact that the restriction could have on the SMSP's capacity to guarantee and promote freedom of expression of its users must be weighed against the benefits that the restriction would have in protecting other individuals' rights.⁵⁹

37. Here, the statutory duty requested by Applicants is not proportionate because **(i)** the scope of restriction is overbroad and **(ii)** SMSPs might abuse their discretion.

i. The scope of the restriction is overbroad

38. A restriction is overbroad when it both reaches protected speech and unprotected speech, which results in a chilling effect on individual users.⁶⁰

39. Here, the statutory duty requested by Applicants is overbroad and vague. Applicants' claim only mentions the nature of the expression to cause imminent harm, without other essential factors in determining whether an expression is

⁵⁷ October 2019 Report of UN Special Rapporteur David Kaye (n 3) [36]; Chinmayi Arun and Nakul Nayak, 'Preliminary findings on online hate speech and the law in India' (2016) Berkman Klein Center 11.

⁵⁸ General Comment 34 (n 3) [34]; UNHRC, 'Report of the Special Rapporteur on freedom of religion or belief, Heiner Bielefeldt' (23 December 2015) UN Doc A/HRC/31/18 [64].

⁵⁹ General Comments 34 (n 3) [34]; *Perincek v Switzerland* App no 27510/08 (ECtHR, 15 October 2015) ('*Perincek*') [75]; *Bédat* (n 10) [54].

⁶⁰ April 2022 Report of UN Special Rapporteur on application of GP (n 30) [25]; Declaration of Principles on Freedom of Expression and Access to Information in Africa (2019) <https://www.achpr.org/public/Document/file/English/draft_declaration_of_principles_on_freedom_of_expression_in_africa_eng.pdf> accessed 21 November 2022, Principle 9; Martin H. Redish and Warren Court, 'the Burger Court and the First Amendment Overbreadth Doctrine' (1983–1984) 78 NW. U. L. Rev.1031; 'The Establishment Clause and the Chilling Effect' (2020) 133 Harv L Rev 1338.

serious enough to be removed.⁶¹ For example, the intent of the speaker to incite violence,⁶² and the context in which the content was expressed.⁶³

40. Additionally, such an overbroad restriction contravenes the goal of protecting individual users' rights to freedom of expression, as it would provoke fear and silence, rather than controversy and discourse.⁶⁴

41. Therefore, the statutory duty reaches both protected and unprotected speech, casts a chilling effect on users, and therefore is not proportionate.

ii. SMSPs might abuse their discretion in content removal

42. Firstly, imposing such a statutory duty is highly possible to make SMSPs abuse their discretion when dealing with complex questions of fact and law,⁶⁵ because of the fuzziness of the statutory duty requested by Applicants, SMSPs' lack of culpability to regulate the harmful content like a public function, and SMSPs' lack of processes consistent with due process standards of content regulation.⁶⁶

43. Secondly, SMSPs are highly possible to abuse its discretion under such a statutory duty, because of their motives to avoid liabilities.⁶⁷ Under European Union Law, search engines are required to determine the validity of claims brought by "right to

⁶¹ September 2012 Report of UN Special Rapporteur Frank La Rue (n 5) [46].

⁶² *Bildender Künstler v Austria* App no 68354/01 (ECtHR, 25 January 2001) [33].

⁶³ September 2012 Report of UN Special Rapporteur Frank La Rue (n 5) [46]; *Incal* (n 12) [46], [50]; *Lehideux* (n 12) [48], [55]; *Karataş v Turkey* App no 23168/94 (ECtHR, 8 July 1999) ('*Karataş*') [52]; *Gunduz* (n 12) [43], [44], [49]; *Coleman* (n 12) [7.3].

⁶⁴ September 2016 Report of UN Special Rapporteur David Kaye (n 27) [3].

⁶⁵ May 2016 Report of UN Special Rapporteur David Kaye (n 3) [54]; April 2018 Report of UN Special Rapporteur David Kaye (n 32) [17]; Emily Taylor, 'The Privatization of Human Rights: Illusions of Consent, Automation and Neutrality' (2016) GCIG Paper 12.

⁶⁶ April 2018 Report of UN Special Rapporteur David Kaye (n 32) [17]; October 2019 Report of UN Special Rapporteur David Kaye (n 3) [35].

⁶⁷ *ibid.*

be forgotten,”⁶⁸ which is similar to a statutory duty imposed on SMSPs.

44. However, as the Special Rapporteur David Kaye stated, delegation of regulatory function to SMSPs would put pressure on those private actors such that they over remove content to avoid liability.⁶⁹

II KURULU’S ACTION WITH RESPECT TO INVESTIGATIONS DID NOT VIOLATE APPLICANTS’ RIGHTS UNDER ARTICLE 17 AND ARTICLE 19, READ WITH ARTICLE 2(3) OF THE ICCPR

45. Under Article 2(3) of the ICCPR, a State must investigate human rights violations.⁷⁰ Kurulu has fulfilled its duty to investigate because it conducted a prompt, thorough, effective and transparent investigation through independent and impartial bodies.⁷¹

A. Kurulu conducted a prompt investigation

46. An investigation is prompt when the State carries out the investigation immediately after the alleged violation of human rights.⁷²
47. Here, Kurulu launched the investigation without undue delay.⁷³ On 10 July,

⁶⁸ C-131/12 *Google Spain v Agencia Española de Protección de Datos and Mario Costeja González* ECLI:EU:C: 2014: 317 (13 May 2014) [94].

⁶⁹ April 2018 Report of UN Special Rapporteur David Kaye (n 32) [17]; Jørgensen, ‘Human rights and private actors in the online domain’ (n 3) [59].

⁷⁰ UNHRC, ‘Extrajudicial, summary or arbitrary executions’ (23 December 1992) UN Doc E/CN.4/1993/46 [686]; *Osorio Rivera and Family v Peru* Series C No 274 (IACtHR, 26 November 2013) [177].

⁷¹ General Comment 31 (n 1) [15], [18], [20]; UNESCO, ‘Principles on the Effective Prevention and Investigation of Extralegal, Arbitrary and Summary Executions’ (24 May 1989) UN Doc A/Res/1989/65 [9].

⁷² *Rodríguez Vera et al. v Colombia* Series C No 287 (IACtHR, 14 November 2014) [475].

⁷³ UNGA, ‘Declaration on the Protection of All Persons from Enforced Disappearance’ (18 December 1992) UN Doc A/Res/47/133 Art.13(1); UNGA, ‘International Convention for the Protection of All Persons from Enforced Disappearances’ (23 December 2010) UN Doc A/Res 47/133 Art. 12(1); *Georgopoulos et al. v Greece* (Communication No 1799/2008) UN Doc CCPR/C/99/D/1799/2008 [7.3], [7.4]; *Vladimir Neklyayev v Belarus* (Communication No 2383/2014) UN Doc CCPR/C/126/D/2383/2014 (‘*Vladimir Neklyayev*’) [7.3].

Applicants filed a complaint at the Central Koha Police Station.⁷⁴ Merely 2 days later, the Central Koha Police (“CKP”) started the investigation by summoning a Chirp representative.⁷⁵ Therefore, Kurulu conducted a prompt investigation.

B. Kurulu conducted a thorough and effective investigation

48. An investigation is thorough and effective when the State **(1)** uses all available and proportionate legal means,⁷⁶ and **(2)** carries out the investigation in combination with specific context,⁷⁷ such as the patterns and places of the crime.⁷⁸

(1) Kurulu used all available and proportionate legal means

49. The duty to investigate is not a duty of result, but a duty of means.⁷⁹ The methods used to carry out such investigations shall meet the highest professional standards,⁸⁰ and the investigative means applied must do justice to the severity of the allegations.⁸¹

50. In practice, most investigations of property cases include interviews of the victim

⁷⁴ Fact Pattern [52].

⁷⁵ Fact Pattern [52]-[54].

⁷⁶ *Vladimir Neklyayev* (n 73) [7.4]; *Saodat Kulieva* (n 2) [8.6]; *La Cantuta v Peru* Series C No 162 (IACtHR, 29 November 2006) [157].

⁷⁷ *Sisters Serrano Cruz v El Salvador* Series C No 120 (IACtHR, March 1 2005) (*‘Sisters Serrano Cruz’*) [91].

⁷⁸ *Manuel Cepeda Vargas v Colombia* Series C No 213 (IACtHR, 26 May 2010) (*‘Manuel Cepeda Vargas’*) [149].

⁷⁹ *Prutina et al. v Bosnia and Herzegovina* (Communication No 1917-1918 & 1925/2009 & 1953/2010) UN Doc CCPR/C/107/D/1917-1918 & 1925/2009 & 1953/2010 (*‘Prutina’*) [9.5]; *Rizvanović and Rizvanovic v Bosnia and Herzegovina* (Communication No 1997/2010) UN Doc CCPR/C/110/D/1997/2010 [9.5].

⁸⁰ UNGA, ‘Principles on the Effective Investigation and Documentation of Torture and Other Cruel Inhuman or Degrading Treatment or Punishment’ (4 December 2000) UN Doc A/Res 55/89.

⁸¹ *Puertas v Spain* (Communication No 1945/2010) UN Doc CCPR/C/107/D/1945/2010 [8.6].

and examination of surveillance videos.⁸² For example, in the U.S. and the U.K., an investigation of burglary must examine the route used by the suspect, and the actual place where the crime was performed.⁸³

51. Here, the CKP used all of the proportionate measures that do justice to the severity of Applicants' intrusion. They interviewed Applicants while handling the complaint,⁸⁴ investigated the actual place of the incident by analyzing the forensic evidence,⁸⁵ investigated possible route of the suspect by analyzing the CCTV footage,⁸⁶ and applied for a warrant to identify the suspect.⁸⁷
52. Therefore, the investigation of the CKP has met the highest professional standard of a break-in and vandalism crime.⁸⁸
53. Applicants may propose additional investigative measures for the CKP to obtain the warrant. However, the police should use their knowledge and experience, instead of the victims' instruction, to decide which investigative measures are the

⁸² Kohlhepp, B., 'Investigations: Criminal' (2021) Encyclopedia of Security and Emergency Management <https://link.springer.com/referenceworkentry/10.1007/978-3-319-70488-3_39> accessed 21 November 2022.

⁸³ Drăgănescu and Alexandru, 'Investigation in Criminal Prosecution of Burglary' (2019) Vol 9 Journal of Danubian Studies and Research Galati 77; Association of Chief Police Officers, 'Investigating Burglary: A Guide to Investigative Options and Good Practice' (2011) <<https://www.npcc.police.uk/documents/crime/2011/201109CBAInvBurGP.pdf>> accessed 21 November 2022.

⁸⁴ Fact Pattern [52], [53].

⁸⁵ Fact Pattern [56].

⁸⁶ Fact Pattern [56].

⁸⁷ Fact Pattern [55].

⁸⁸ *Vide Lale and Milojka Blagojević v Bosnia and Herzegovina* (Communication No 2206/2012) UN Doc CCPR/C/119/D/2206/2012 ('*Vide Lale*') [2.15].

most appropriate in the circumstances.⁸⁹ Due to the inevitable lack of resources,⁹⁰ requiring the police to do more will impose a disproportionate burden.⁹¹

54. Additionally, obtaining a warrant is not a guaranteed step in a criminal investigation,⁹² and the Magistrate of Central Koha (“MCK”) had reasonably explained her refusal of the warrant.⁹³ Therefore, the CKP’s investigation did justice to the severity of the break-in and vandalization.

(2) Kurulu took the specific context of this case into account

55. A thorough and effective investigation needs to take the context of the incident into account, such as the status of the victim⁹⁴ and the pattern of the suspects’ action.⁹⁵

56. Here, the CKP recognized that this incident might be pertinent to comments of anonymous users on Chirp targeting a high-profile professor. Consequently, the CKP quickly summoned a Chirp representative to investigate Chirp’s content moderation process and user information storage.⁹⁶ Therefore, the CKP took the specific context into consideration.

C. Kurulu conducted a transparent investigation

57. A State shall provide individuals with specific and relevant information concerning

⁸⁹ ‘Managing investigations’ <<https://www.college.police.uk/app/investigation/managing-investigations>> accessed 21 November 2022.

⁹⁰ ‘The Ethics Surrounding Discretion’ <<https://opentextbc.ca/ethicsinlawenforcement/chapter/the-ethics-surrounding-discretion/>> accessed 21 November 2022.

⁹¹ *Prutina* (n 79) [9.5].

⁹² *ibid.*

⁹³ Fact Pattern [55].

⁹⁴ *Acosta et al. v Nicaragua* Series C No 12.792 (IACtHR, 5 March 2017) [33].

⁹⁵ *Sisters Serrano Cruz* (n 77) [91]; *Manuel Cepeda Vargas* (n 78) [118], [119], [149].

⁹⁶ Fact Pattern [54].

the efforts to investigation.⁹⁷

58. Here, Kurulu has conducted a transparent investigation by providing Applicants with relevant information of the investigation. Firstly, the CKP informed Applicants of the requirements of further investigations, as obtaining a user's information from Chirp needs a warrant.⁹⁸ Secondly, the MCK reasonably explained its refusal of the warrant.⁹⁹

59. In conclusion, Kurulu has fulfilled its duty to investigate under the ICCPR by conducting a prompt, effective, thorough and transparent investigation through the CKP.

III SECTION 24 OF THE ACADEMIC CODE OF CONDUCT IS A VALID RESTRICTION ON FACULTY'S FREEDOM OF EXPRESSION UNDER ARTICLE 19 OF THE ICCPR.

60. Freedom of expression constitutes the cornerstone of every democratic society.¹⁰⁰ However, with special duties and responsibilities, such freedom is subject to restrictions.¹⁰¹ Those restrictions can be justified if they **(A)** are provided by law, **(B)** pursue legitimate aims, and **(C)** are proportionate to achieve the pursued aim.¹⁰²

A. Section 24 of the ACC is prescribed by Kurulu's Constitution and the

⁹⁷ *Saodat Kulieva* (n 2) [10]; *Vide Lale* (n 88) [9].

⁹⁸ Fact Pattern [53].

⁹⁹ Fact Pattern [55]; Clarifications [37].

¹⁰⁰ General Comment 34 (n 3) [2], [4], [25]; *Marina Koltish v Belarus* (Communication No 1985/2010) UN Doc CCPR/C/111/D/1985/2010 ('*Marina Koltish*') [8.5]; *Strizhak v Belarus* (Communication No 2260/2013) UN Doc CCPR/C/124/D/2260/2013 [6.3]; *Leonid Zdrestov v Belarus* (Communication No 2391/2014) UN Doc CCPR/C/128/D/2391/2014 [8.3]; *Vladimir Malei v Belarus* (Communication No 2404/2014) UN Doc CCPR/C/129/D/2404/2014 [9.3].

¹⁰¹ ICCPR (n 1) art 19 [3]

¹⁰² ICCPR (n 1) art 19 [3]; General Comment 34 (n 3) [7], [22], [24]-[36].

University Standard Board Law

61. A restriction under Article 19(3) of the ICCPR must have legal basis in domestic law.¹⁰³ Such legal basis should be accessible to the public and foreseeable as to the consequence.¹⁰⁴ Parliamentary law is presumed to be accessible to the public.¹⁰⁵ A restriction is foreseeable when formulated with sufficient precision as to enable individuals to regulate their conduct accordingly.¹⁰⁶
62. Here, Section 24 of the ACC is validly prescribed by law. First, Section 24 has its legal basis in Article 19 of Kurulu's Constitution and Section 29 of the University Standard Board Law (USBL). Second, both the Constitution and the USBL are state legislations of Kurulu and accessible to Kurulu citizens. Third, faculty of tertiary education institutions can reasonably foresee that academic integrity standards and professional code of conducts would be imposed on them.

B. Section 24 of the ACC pursues the legitimate aim of protecting public order

63. Under Article 19(3) of the ICCPR, a restriction is permissible when it pursues legitimate aims, including the protection of public order.¹⁰⁷ Here, Section 24 of the ACC is necessary to protect public order, specifically, the effective functioning of universities.
64. Protection of "public order" refers to the fundamental principle of ensuring the

¹⁰³ UNHRC, 'Siracusa Principles on the Limitation and Derogation of Provisions in the ICCPR' (28 September 1984) UN Doc E/CN.4/1984/4 ('Siracusa Principles') [15].

¹⁰⁴ General Comment 34 (n 3) [25].

¹⁰⁵ *Špaček, sro v the Czech Republic* App no 26449/95 (EtCHR, 9 November 1999) [57]; *NIT SRL v the Republic of Moldova* App no 8470/12 (EtCHR, 5 April 2022) ('*NIT SRL*') [163].

¹⁰⁶ General Comment 34 (n 3) [25]; *Marina Koktish* (n 100) [8.5]; *Delfi AS v Estonia* App no 64569/09 (ECtHR, 16 June 2015) ('*Delfi AS*') [121]; *Sekmadienis LTD. v Lithuania* App no. 69317/14 (ECtHR, 30 April 2018) (*Sekmadienis LTD.*) [64].

¹⁰⁷ General Comment 34 (n 3) [30].

functioning of society.¹⁰⁸ Universities, like parliaments,¹⁰⁹ guarantee free flow of expressions and peaceful debates.¹¹⁰ Such debates form the foundation of a democratic society.¹¹¹ Universities also shoulder the responsibility of ensuring the right to education, a core human right enshrined in CDESCR,¹¹² ECHR,¹¹³ ACHPR,¹¹⁴ and numerous constitutions of states.¹¹⁵ Therefore, universities play an important role of maintaining the basic function of society.¹¹⁶

65. When effective functioning of universities is impeded, public order will be endangered. Especially in Kurulu, where education plays an integral part to establish its international profile¹¹⁷ despite Kurulu's scarce educational resources,¹¹⁸ disruption of effective functioning at prestigious institutions such as NUK would lead to disruption of Kurulu's long-established academic reputation.

¹⁰⁸ Siracusa Principles (n 103) [22].

¹⁰⁹ *Karácsony and ors v Hungary* App no 42461/13 and 44357/13 (EtCHR, 17 May 2016) [132].

¹¹⁰ Committee on Economic, Social and Cultural Rights ('CESCR'), CESCR, 'CESCR General Comment No.13: The Right to Education (Art.13)' (8 December 1999) UN Doc E/C.12/1999/10 [1], [2].

¹¹¹ UNHRC, 'Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, David Kaye' (28 July 2020) UN Doc A/75/261 [32].

¹¹² International Covenant on Economic, Social and Cultural Rights ('ICESCR') (adopted 16 December 1966, entered into force 3 January 1976) 999 UNTS 3 Article 13.

¹¹³ European Convention on Human Rights ('ECHR') (adopted 4 November 1950, entered into force 3 September 1953), Article 2 of Protocol No.1.

¹¹⁴ African Charter on Human and Peoples' Rights ('ACHPR') (adopted 27 June 1981, entered into force 21 October 1986) Article 17.

¹¹⁵ Constitution of the Republic of South Africa 1996, Article 20; Denmark's Constitution of 1953, Article 76; Greece's Constitution of 1975, Article 4

¹¹⁶ *Leyla Şahin v Turkey* App no 44774/98 (ECtHR, 10 November 2005) ('*Leyla Şahin*') [99]; *Çölgeçen and ors v Turkey* Applications nos 50124/07, 53082/07, 53865/07, 399/08, 776/08, 1931/08, 2213/08 and 2953/08 (ECtHR, 12 December 2017) [53].

¹¹⁷ Fact Pattern [5].

¹¹⁸ Fact Pattern [2].

66. Therefore, Section 24 of the ACC pursues legitimate aim of protecting the effective functioning of universities and public order.

C. Section 24 of the ACC is proportionate to protecting public order

67. Under Article 19(3) of the ICCPR, a restriction is proportionate when the restriction **(1)** strikes a reasonable balance between the interests at stake,¹¹⁹ and **(2)** is the least intrusive measure to achieve the legitimate aim.¹²⁰

(1) There is a reasonable balance between the harm to faculty's freedom of expression and the benefit to protected interests

68. Section 24 of the ACC may potentially interfere with the faculty's freedom of expression and the freedom to engage in a lawful occupation.¹²¹ However, these restrictions are indirect and temporary. First, disciplinary action would not prohibit expressing ideas *per se*. Faculty can still express their views freely, as long as they adhere to the ACC. Second, even the most severe disciplinary action, namely a dismissal, still would not preclude their opportunity to seek an appointment with a different institution or other occupations.

69. In contrast, the harm to the protected rights under Section 24 of the ACC are direct and long-lasting. When the normal functioning of universities is interrupted, students' right of physical safety, right of education, and freedom of expression will be directly threatened. Events that disrupt normal functioning of universities, such as riot, bully, discrimination and unfair criticism, etc., could have long-lasting effect to the students' mental and physical health, educational quality, and freedom

¹¹⁹ General Comment 34 (n 3) [34]; *Evans v United Kingdom* App no 6339/05 (ECtHR, 10 April 2007) ('*Evans*') [64]; *Perincek* (n 59) [75]; *Bédat* (n 10) [54]; *Dareskizb LTD v Armenia* App no 64004/11 (ECtHR, 18 May 2021) ('*Dareskizb LTD*') [36]; *NIT S.R.L.* (n 105) [118].

¹²⁰ General Comment 34 (n 3) [34].

¹²¹ Fact Pattern [4].

of expression.¹²² Therefore, compared with the indirect and temporary restrictions that faculty may incur, the need to protect students' rights is more pressing.

(2) Section 24 of the ACC adopts the least intrusive measure to protect public order

70. The least intrusive restriction can effectively achieve the legitimate aim with the least harm.¹²³

71. Compared with criminal sanctions, which directly restrict the individual's right of liberty, the primary human rights,¹²⁴ disciplinary actions potentially infringe the freedom to engage in a lawful occupation, which is the secondary human rights.¹²⁵

72. Therefore, Section 24 of the ACC is a valid restriction because it is prescribed by law, pursues the legitimate aim and is proportionate under Article 19 of the ICCPR.

IV THE DISCIPLINARY ACTION IMPOSED ON SHIKRA IS A VALID RESTRICTION ON SHIKRA'S FREEDOM OF EXPRESSION UNDER ARTICLE 19 OF THE ICCPR

73. The disciplinary action imposed on Shikra is **(A)** prescribed by law, **(B)** pursues legitimate aims, and **(C)** is proportionate to protect the aim.

A. The disciplinary action imposed on Shikra is prescribed by Section 24 of the ACC

74. Under Article 19 (3) of the ICCPR, a restriction must have legal basis in domestic

¹²² *Mahi v. Belgium* App no 57462/19 (ECtHR, 7 July 2020) [31]-[32].

¹²³ *Ballantyne and Davidson, and McIntyre v Canada* (Communication Nos 359/1989 and 385/1989) UN Docs CCPR/C/47/D/359/1989 and 385/1989/Rev.1 [11.4]; *Womah Mukong v Cameroon* (Communication No. 458/1991) UN Doc CCPR/C/51/D/458/1991 [9.7].

¹²⁴ ICCPR (n 3) Article 9.

¹²⁵ ICESCR (n 112) Article 6(1).

law.¹²⁶ Such domestic law includes regulatory measures that are made under the delegation of parliament power.¹²⁷ Further, the domestic law must be accessible and foreseeable.¹²⁸

75. Here, Section 24 ACC is enacted by NUK under the delegated authority of the UBSL.¹²⁹ Upon entering a contractual relationship with NUK, faculty is presumably informed of relevant academic integrity standards and codes of conduct, including the ACC. Therefore, the disciplinary action is solidly prescribed and accessible.

76. A law is foreseeable when it is formulated with sufficient precision as to enable individuals to regulate their conduct accordingly.¹³⁰ To avoid rigidity, vague terms are permissible¹³¹ as long as the discretion to interpret such vague terms have sufficient procedural guarantees.¹³² Moreover, the level of precision required depends on the profession field the law is designed to cover.¹³³ The person engaging in such profession bears higher duty to assess the legal risk involved.¹³⁴

¹²⁶ Siracusa Principles (n 103) [15].

¹²⁷ *Leyla Şahin* (n 116) [88]; *Sanoma Uitgevers B.V. v The Netherlands* App no 38224/03 (ECtHR, 14 September 2010) [83]; *NIT S.R.L.* (n 105) [157].

¹²⁸ General Comment 34 (n 3) [25].

¹²⁹ Fact Pattern [58].

¹³⁰ General Comment 34 (n 3) [25]; *Marina Koktish* (n 100) [8.5]; *Delfi AS* (n 106) [121]; *Sekmadienis LTD.* (n 106) [64].

¹³¹ *Centro Europa 7 S.R.L. and Di Stefano v Italy* App 38433/09 (ECtHR, 7 June 2012) [143]; *Satakunnan Markkinapörssi Oy and Satamedia Oy v Finland* App no 931/13 (ECtHR, 27 June 2017) [143]; *NIT S.R.L.* (n 105) [159].

¹³²; *Magyar Kétfarkú Kutya Párt v Hungary* App no 201/17 (ECtHR, 20 January 2020) [94]; *NIT S.R.L.* (n 105) [159].

¹³³ Council of the European Union, ‘Guide on Article of the European Convention on Human Rights’ (31 August 2022) [65]; *Kruslin v France* App no 11801/805 (ECtHR, 24 April 1990) [29]; *Kokkinaki v Greece* App no 14307/88 (ECtHR, 25 May 1993) [49]; *Delfi AS* (n 106) [121].

¹³⁴ *Cantoni v France* App no 17862/91 (ECtHR, 11 November 1996) [35]; *Chauvy and ors v France*

77. Applicants may argue that Section 24 of the ACC is not sufficiently precise. However, wordings including “disciplinary action”, although broad at first glance, are sufficiently precise to enable Shikra to foresee that certain disciplinary action may entail following her post.
78. First, the interpretation of “disciplinary action” has sufficient procedural guarantee.¹³⁵ Pursuant to the procedural requirements under the ACC, Shikra was informed in writing of the allegations and grounds for her conduct on 10 July.¹³⁶ An independent third-party hearing of peers was held on 17 July, one week after sending the notice.¹³⁷ Shikra fully enjoyed her right of defense in the inquiry process,¹³⁸ and the disciplinary decision was informed to her in writing afterwards.¹³⁹ Unsatisfied with the result, Shikra further exercised her right to appeal NUK’s decision to the Constitution Court of Kurulu on 20 July.¹⁴⁰
79. Second, the types of disciplinary actions available to NUK under Section 24 of the ACC are limited. Without special enforcement power, NUK could only discipline its employees by reprimand, loss of prospective benefits, salary reduction, suspension, removal of position and dismissal.¹⁴¹ In practice, renowned

App no 64915/01 (ECtHR, 29 June, 2004) [45].

¹³⁵ UNESCO, ILO, ‘Recommendation concerning the Status of Teachers’ (5 October 1966) [47]-[51]; UNESCO, ‘Recommendation concerning the Status of Higher-Education Teaching Personnel’ (1 October-12 November 1997) [48]-[50].

¹³⁶ Fact Pattern [51].

¹³⁷ Fact Pattern [57].

¹³⁸ Fact Pattern [59].

¹³⁹ Fact Pattern [61].

¹⁴⁰ Fact Pattern [69].

¹⁴¹ American Association of University Professors (AAUP), ‘Faculty Misconduct and Discipline’, <<https://www.aaup.org/issues/appointments-promotions-discipline/faculty-misconduct-and-discipline-2005>>, accessed 21, November 2022; The University of Kansas, ‘Faculty Code of Rights, Responsibilities, and Conduct’, <<https://policy.ku.edu/FacultyCodeKULawrence/faculty-code-of->

institutions such as Cambridge, Oxford and Harvard University all simply refer to “disciplinary action” or “sanctions” in its code of conducts without enumeration.¹⁴²

80. Third, Shikra is a tenured professor at NUK¹⁴³ and should have known what disciplinary actions stand for in universities.

81. Therefore, Section 24 of the ACC is sufficiently precise for Shikra to foresee the consequence of her violation.

B. The disciplinary action imposed on Shikra pursues the legitimate aim of protecting public order and rights of others

82. The restriction is legitimate when **(1)** the aim of the restriction is to protect the rights of others or public order, and when **(2)** the particular speech being restricted manifests direct threats to the protective aim.¹⁴⁴ Here, Shikra’s speech manifested a direct threat to public order and right of others, specifically, the effective functioning of universities and students’ right of education.

(1) Public Order

83. As established in Section III (B), the restriction of Section 24 pursues legitimate aim to protect effective functioning of universities. Considering the content,¹⁴⁵

rights> accessed 21 November 2022; Potlan State University, ‘PSU Faculty Code of Conduct’ <<https://www.pdx.edu/dean-student-life/psu-faculty-code-conduct>> accessed 21, November 2022.

¹⁴² Cambridge University, <<https://www.admin.cam.ac.uk/univ/so/pdfs/2021/statuted.pdf>> accessed 21 November 2022; Oxford University, <<https://lincoln.ox.ac.uk/asset/disciplinary-policy.pdf>> accessed 21 November; Harvard University, <<https://infoforfaculty.fas.harvard.edu/book/conduct>> accessed 21 November.

¹⁴³ Fact Pattern [7].

¹⁴⁴ *Robert Faurisson v France* (Communication No 550/1993) UN Doc CCPR/C/58/D/550/1993 (‘*Robert Faurisson*’) [9.6]; *Malcolm Ross v Canada* (Communication No 736/1997) UN Doc CCPR/C/70/D/736/1997 (‘*Malcolm Ross*’) [11.5]

¹⁴⁵ *Incal* (n 12) [50]; *Sürek v Turkey (no. 1)* App no 26682/95 (ECtHR 8 July 1999) (‘*Sürek*’) [62]; *Perinçek v Switzerland* App no 27510/08 (ECtHR, 15 October 2015) (‘*Perinçek*’) [205].

extent,¹⁴⁶ speaker,¹⁴⁷ and context¹⁴⁸, Shikra’s post constitutes imminent threat to the effective functioning of NUK.

a. Content

84. The content of a speech should be construed under its context.¹⁴⁹ Here, Shikra’s statement is a direct call for students and faculty to disrupt the effective functioning of NUK.
85. First, Shikra explicitly provoked her supporters to physical attack, verbal abuse and discrimination of others. Her post stigmatized people who oppose university privatization as “traitors,” glorified the unlawful strike and occupation as “vigil,” and abused the use of capital letters in violent words such as “REFUSE” “OCCUPY” and “DO NOT TOLERAT.”¹⁵⁰
86. Second, assemblies might cause disruptive consequence, especially when they are used to pursue contentious goals.¹⁵¹ Here, Shikra’s post called for an immediate assembly for the contentious topic of university privatization without prior notification.¹⁵² NUK was denied the opportunity to provide effective arrangements to guarantee peacefulness.¹⁵³

¹⁴⁶ *Karataş* (n 63) [52]; *Delfi AS* (n 106) [110]; *Savva Terentyev* (n 5) [79].

¹⁴⁷ *Zana v Turkey* App no 69/1996/688/880 (ECtHR, 25 November 1997) [49].

¹⁴⁸ *Özgür Gündem v. Turkey* App no 23144/93 (ECtHR, 16 March 2000) [63].

¹⁴⁹ *Incal* (n 12) [50]; *Sürek* (n 145) [62]; *Perinçek* (n 145) [206].

¹⁵⁰ Forbes, ‘Hate Speech Rises on Twitter After Elon Musk Takes Over, Researchers Find’ <<https://www.forbes.com/sites/shaunharper/2022/10/31/elon-musk-twitter-takeover-leads-to-n-word-and-hate-speech-increase-lebron-james-calls-for-action/?sh=276f8502dd99>> accessed 16 November 2022.

¹⁵¹ HRC, ‘General comment No. 37 (2020) on the right of peaceful assembly (article 21)’ (17 September 2020) UN Doc CCPR/C/GC/37 (‘General Comment 37’) [7].

¹⁵² Fact Pattern [37].

¹⁵³ General Comment 37 (n 151) [70].

87. In practice, many “Occupy” movements inevitably led to severe violence. For example, in September 2011, when the “Occupy Wall Street” movement began, clashes with police, shooting and killing occurred.¹⁵⁴ The same happened in January 2021, when supporters of President Trump tried to occupy the US Capitol building.¹⁵⁵

b. Extent

88. Online speech can be disseminated worldwide in seconds, exacerbating the potential impact of the statements.¹⁵⁶ Here, Shikra demonstrated her post as “public mode”,¹⁵⁷ thus can be viewed by any user.¹⁵⁸ Her post was actually viewed by numerous people considering over 15,000 ‘Likes’ she received and several thousand times share of the hyperlink.¹⁵⁹

c. Speaker

89. Shikra is a tenured professor at NUK,¹⁶⁰ the president of CPE,¹⁶¹ and the opinion leader for establishing private-owned universities in Kurulu. She maintained numerous young followers from SANUK¹⁶² and CPE.¹⁶³

¹⁵⁴ Fox News, < 'Occupy Wall Street' Protests Turn Violent When Demonstrators Clash With Police | Fox News> accessed 21 November 2022.

¹⁵⁵ UN News, <<https://news.un.org/en/story/2021/01/1081542>> accessed 21 November 2022.

¹⁵⁶ *Editorial Board of Pravoye Delo and Shtekel v Ukraine* App no 33014/05 (ECtHR 5 May 2011) [63]; *Animal Defenders International v the United Kingdom* App no 48876/08 (ECtHR 22 April 2013) [119]; *Delfi AS* (n 106) [133]; *Savva Terentyev* (n 5) [79].

¹⁵⁷ Fact Pattern [38].

¹⁵⁸ Fact Pattern [17].

¹⁵⁹ Fact Pattern [38].

¹⁶⁰ Fact Pattern [7].

¹⁶¹ Fact Pattern [7].

¹⁶² Fact Pattern [12].

¹⁶³ Fact Pattern [6].

d. Context

90. The public debate of privatization of universities has garnished heated attention and even resulted in hostility. In 2019, the IUSU expelled SANUK from its membership because of SANUK's support for privatization. Against this background,¹⁶⁴ Shikra posted a one-sided argument for privatization without reasonably engaging with the other side. After Shikra's post, the two different student organizations continue to amplify the divide of the student body on the topic of university privatization.¹⁶⁵
91. Combing all these factors, Shikra called for actions such as occupying universities premises and stopping classes. Shikra's post disseminated widely on the internet and attracted large audiences. Among the audience, most of Shikra's supporters are readily influenced and provoked universities students.¹⁶⁶ Given the heated and divisive debate of university privatization in Kurulu, Shikra's supporters are very likely to take actions, and indeed, took actions by boycotting classes.¹⁶⁷ Therefore, Shikra's post constitutes imminent threat to the effective functioning of NUK.

(2) Rights of Others

92. The restriction is permissible if it aims to protect the rights of others, including rights recognized by international human rights law.¹⁶⁸ Here, Shikra's post threatens students' right of education.
93. Right of education includes the states' duty to ensure physical accessibility of

¹⁶⁴ Fact Pattern [12].

¹⁶⁵ Fact Pattern [13].

¹⁶⁶ Arguments [30].

¹⁶⁷ Clarifications [16].

¹⁶⁸ General Comment 34 (n 3) [28].

educational institutions.¹⁶⁹ When a student is prevented from entering the education institution,¹⁷⁰ or when a student's safety at school is endangered,¹⁷¹ the right of education is violated.

94. Here, Shikra's post (a) called for school occupation, which will stop other students from entering the campus, and (b) manifested intolerance towards people with opposite or different political views. Following Shikra's post, SANUK members boycotted classes on 10 July 2022.¹⁷² NUK students' educational right was violated as they cannot get access to the class and teachers were absent from class without reasonable cause.

C. The restriction imposed on Shikra is proportionate to the aim of protecting universities' effective functioning and students' educational rights

95. Under Article 19(3) of the ICCPR, Proportionality requires the restriction **(1)** strikes a reasonable balance between the interests at stake;¹⁷³ **(2)** is the least intrusive measure to achieve the legitimate aim.¹⁷⁴ Here, the disciplinary action imposed on Shikra is proportionate.

(1) There is a reasonable balance between the harm to Shikra's freedom of expression and the benefit to the protected interests

¹⁶⁹ General Comment 34 (n 3) [6].

¹⁷⁰ Council of the European Union, 'Guide on Article 2 of Protocol No. 1 to the European Convention on Human Rights' (31 August 2022) [13]; *Leyla Şahin* (n 116) [134]-[140]; *Temel and ors v. Turkey* App no 36458/02 (ECtHR, 3 March 2009) [40].

¹⁷¹ African Commission on Human and Peoples' Rights, '346 Resolution on the Right to Education in Africa', ACHPR/Res.346 (20 April 2016) Article ii.

¹⁷² Clarifications [16].

¹⁷³ General Comment 34 (n 3) [34]; *Evans* (n 119) [64]; *Perincek* (n 145) [75]; *Bédat* (n 10) [54]; *Dareskizb LTD* (n 119) [36]; *NIT S.R.L.* (n 105) [118].

¹⁷⁴ General Comment 34 (n 3) [34].

96. First, as elaborated in Section B(1), disciplinary action imposed on Shikra is indirect and temporary, while the harm of Shikra's speech is direct and long-lasting.
97. Second, suspension only lasts for one week. For an action that is classified as "gross misconduct", dismissal can be imposed.¹⁷⁵ Despite the suggestion that dismissal should be imposed on Shikra,¹⁷⁶ NUK still only imposed a one-week suspension.
98. Third, the condition for lifting the suspension is merely a restatement of the ACC, the code of conduct that Shikra has assumed the duty to obey by serving as a faculty at NUK. Similar to the system of conditionally removing prohibition order that the U.K. has adopted for educationalists, such condition is necessary to maintain public confidence in the educational profession.¹⁷⁷

(2) The restriction is the least intrusive measure to protect universities' effective functioning and students' educational rights

99. The applicant may propose other alternative disciplinary actions. However, no other alternatives could suppress Shikra's inflammatory speech¹⁷⁸ and prevent the future school disorder.¹⁷⁹
100. First, Shikra's speech is extremely harmful in the context of university, where she works as a tenured professor. Removing her post on Chirp does not mitigate the impacts of her speech on her students.

¹⁷⁵ American Association of University Professors, 'Faculty Misconduct and Discipline', <<https://www.aaup.org/issues/appointments-promotions-discipline/faculty-misconduct-and-discipline-2005>> accessed 21 November 2022; UK Government, <<https://www.gov.uk/dismiss-staff/dismissals-on-capability-or-conduct-grounds>> accessed 21 November 2022.

¹⁷⁶ Fact Pattern [42], [41].

¹⁷⁷ The Teachers' Disciplinary Regulations 2012, SI 2004/560 article 16.

¹⁷⁸ *Robert Faurisson* (n 144) [9.7].

¹⁷⁹ Barrie Sander, 'Freedom of Expression in the Age of Online Platforms: The Promise and Pitfalls of a Human Rights-Based Approach to Content Moderation' (2020) 43 *Fordham Intl LJ* 939, 985

101. Second, suspension is the least intrusive measure to achieve the protective aim compared with measures such as reprimand or salary reduction. While all three measures can in some degree minimize the impact of Shikra's post, only suspension can prevent future violence. Reprimand, without detriments to Shikra's existing benefits, could signal to the public NUK's leniency towards such speeches. Salary deduction have no deterrence effect on students that are provoked by Shikra's speech. In the present case, such deterrence effect is crucial to protect public order and rights of others, as SANUK's following statement intimidated non-compliance of Shikra's post.¹⁸⁰

102. In conclusion, Shikra's suspension and removal condition were prescribed by law, pursued a legitimate aim, and was proportionate under Article 19 of the ICCPR.

¹⁸⁰ Fact Pattern [39].

PRAYER OF RELIEF

For the foregoing reasons, the Respondent respectfully request this Honorable Court to adjudicate and declare that:

1. The State of Kurulu did not violate Shikra and Besra’s rights under Article 17 and Article 19 read with Article 2(3) of the ICCPR, by failing to impose a statutory duty on social media service providers to remove content that is likely to cause imminent harm of a serious nature.

2. The State of Kurulu’s action with respect to investigations into the break-in and vandalization of Shikra and Besra’s home, did not violate their rights under Article 17 and Article 19, read with Article 2(3), of the ICCPR.

3. The State of Kurulu’s action with respect to the suspension of Shikra and the imposing of conditions on the removal of her suspension did not her rights under Article 19 of the ICCPR.

Respectfully submitted 21 November 2022,

701R,

Counsel for the Respondent.