



Bonavero
Institute
of Human
Rights



PRICE MEDIA LAW MOOT COURT COMPETITION CASE

2021/2022 COMPETITION YEAR

**Official case of the 2022 International Rounds and the
2021/2022 Regional Rounds in South Asia, Asia Pacific,
South-East Europe, North-East Europe, Northern Europe, the
Americas, the Middle East, and Africa Regional Rounds**

Background

1. Sargon is an island nation with a population of just over 60 million people. It has a multi-party democratic system. The Sargon National Front (SNF) is the political party in government. Its leader, Emilia Bos, is the current president of Sargon. The Democratic Party of Sargon (DPS) is the main opposition party. The country holds presidential and parliamentary elections every four years.
2. Over 60% of the population in Sargon are adherents of Phi, a religion that has been practiced on the island for over four centuries. A historical figure by the name of Philemenon the Great is said to have founded the religion. Adherents of Phi are colloquially referred to as the 'phaithful'. These adherents are divided across the political spectrum. Both the SNF and the DPS have voters who identify as adherents of Phi, although opinion polls in the past suggest that a slightly higher number of adherents prefer the DPS.
3. The Church of Phi was founded in the late Eighteenth Century, over two centuries after Phi was introduced to Sargon. It is headed by 'spiritual leader' Philemon Gen. Spiritual leaders of the Church of Phi are appointed based on ancestry, allegedly dating back to Philemenon the Great. Gen was anointed spiritual leader in 2000 following the demise of his father, who was the spiritual leader before him.
4. The remainder of the population in Sargon comprises descendants of an immigrant community who arrived on the island in several waves during the last one hundred and fifty years. Members of this community usually identify themselves as 'non-religious', or 'agnostic'.
5. In recent years, a strong nationalist discourse has emerged among this immigrant community. The discourse draws from the claim that the community comprises descendants of the original inhabitants of the island. It is contended that these original inhabitants were banished from the island by invading forces led by Philemenon the Great during the Sixteenth Century. While there is no archaeological proof for this historical event, several eminent historians both within and outside Sargon have argued that historical texts and oral tradition appear to support this claim.
6. Many young nationalists call themselves 'returnees' based on the claim that they are descendants of the original inhabitants of the island. This development has led to the emergence of several nationalist campaigns that appear to be distinctly anti-Phi. One such campaign features the phrase, 'We were here First'. These campaigners have demanded that the government include the origin story of 'returnees' in official history curricula, and for the teaching of religion – specifically instruction of the religious tenets of Phi – in public schools to be prohibited.

Natter

7. 'Natter' is Sargon's most popular social media platform. It is run by a privately-owned company based in Sargon. It has over 25 million users, including politicians such as Bos, and religious leaders such as Gen. It is the media platform (i.e. both social media and mainstream media) with the widest reach among the Sargonian public.
8. The platform has a simple interface that enables a user to post text, audio, pictorial, and video content. Users can 'follow' other users of their choice, and also 'share' and 'like' another user's posts.

9. A user can go to their 'settings' page and select topics of interest from a long list of options. These options are periodically updated by Natter. A user's 'Friends' Feed', which is the home page of the platform, displays all posts (including shared posts) by those who a user chooses to follow.
10. Additionally, a user may also visit a separate page called 'Natter Matter', which curates content based on an algorithm that captures popular posts relevant to the topics that a user is interested in.
11. The Natter Matter algorithm uses artificial intelligence and has an accuracy rating of about 90%, i.e. it is able to capture, through automated search functions, posts that are relevant to a particular topic. The algorithm then ensures that a user's Natter Matter features content based on three criteria: (1) most recent posts; (2) posts with the greatest number of shares and likes; and (3) posts that are relevant to the user's topics of interest.
12. A user will see content on Natter Matter regardless of whether it originates from someone they happen to follow. On occasion, if a particular post is extremely popular and relevant, it will appear on a user's Natter Matter for a longer period of time.
13. Natter has a Community Standards Policy (CSP), which contains the basic code of conduct for any user, and sets out what content is permitted and prohibited on the platform. It has a grievance and reporting mechanism through which any user can report content that violates the CSP.
14. According to the CSP, 'Content Liable to be Taken Down' is listed in several clauses, including sections 4 and 8. The two sections read as follows:

Section 4 (Hate Speech):

 - (a) *An attack against people on the basis of a characteristic such as race, ethnicity, national origin, disability, religious affiliation, caste, sexual orientation, sex, gender identity, and serious disease.*
 - (b) *Such an attack may include violent or dehumanising speech, harmful stereotypes, statements of superiority or inferiority, expressions of contempt, disgust or dismissal, cursing, and calls for exclusion or segregation.*

Section 8 (Elections):

 - (a) *Deliberate misrepresentation of the facts with regard to dates, locations, times, methods, and outcomes of elections, or the eligibility of candidates at an election.*
 - (b) *Any content containing statements of intent, calls for action, conditional or aspirational statements, or advocating for violence due to voting, voter registration or the administration or outcome of an election.*
15. The CSP states in section 20 that Natter reserves the right to suspend or permanently block a user for violating the CSP. No further details on the criteria for suspension or permanent blocking are contained in the CSP.
16. Natter has a team of 1,000 content moderators who monitor content on the platform, and evaluate reports of CSP violations. A senior content reviewer oversees the work of a cluster of 50 content moderators. A total of 20 senior reviewers have been appointed.

17. Content moderators are authorised to ‘take-down’ material based on complaints received from users. A user can appeal a take-down decision, in which case the content moderator must refer the matter to a senior reviewer for a final decision.
18. Content moderators are required to proactively monitor any content that qualifies to be viewed on Natter Matter. Natter maintains a non-public ‘master feed’ of all content that qualify for display on users’ Natter Matter. Content moderators then review the relevant content on the master feed to assess whether any violations have taken place. If violations on Natter Matter are detected – either based on a complaint, or through proactive monitoring – the content can be taken down.
19. In cases where there is no direct violation, but the content moderator forms an opinion that the content can lead others to commit violations of the CSP, the case can be referred to a senior reviewer. The senior reviewer may decide to ‘stay’ the Natter Matter algorithm, i.e. suspend the operation of the algorithm to prevent the content from being viewed excessively by users on their Natter Matter.
20. Senior reviewers have the power to temporarily suspend a user for a particularly serious violation of the CSP, or for repeated minor violations of the CSP. Content moderators are required to refer a user to a senior reviewer in order for a decision to be taken on the user’s suspension. Each of the twenty senior reviewers has the authority to independently, and without any further deliberation, suspend a user for a violation of the CSP. Suspensions can extend to a maximum period of one month.
21. In August 2020, the government enacted the Regulation of Social Media Act. Section 12 of the new Act required all social media service providers to establish ‘transparent and independent’ oversight mechanisms to curb online hate speech, cyber-bullying, and ‘religious extremism’ within six months of enactment. The Act, however, does not offer definitions for these terms.
22. Separately, section 400 of the Penal Act of Sargon makes it an offence to ‘advocate hatred against any group with the intention to incite violence, discrimination or hostility against that group’. The Act does not criminalise cyber-bullying or ‘religious extremism’.
23. On 1 January 2021, Natter appointed an Oversight Council comprising five experts from the fields of law, media, religious studies, sociology, and technology respectively. Natter decided to establish this Oversight Council to comply with the Regulation of Social Media Act.
24. The Oversight Council is tasked with making decisions on certain matters regarding the CSP, including the permanent blocking of a user due to serious violations of the CSP. The jurisdiction of the Oversight Council may be invoked in three ways. First, a senior reviewer can refer a case where a decision has to be made as to whether a user should be permanently blocked from Natter. Second, a user may present an appeal to the Oversight Council in the event that the user has been temporarily suspended. The Oversight Council has a publicly accessible website and a complaints portal. Third, any important policy issue with regard to the CSP may be referred to the Oversight Council by the Board of Management of Natter.
25. All decisions of the Oversight Council are published on its website. The Council is required to issue its decision within three weeks of receiving a referral or complaint. It has thus far issued eight decisions, all of which concerned permanent blocking of users. In each decision, the Council found that the user needed to be permanently blocked due to a serious violation of the CSP. Five violations concerned death threats issued against private individuals, whereas three violations concerned breaches of the standards on hate speech (i.e. a violation of section 4 of the CSP).

26. Users who are aggrieved by decisions of the Oversight Council have the option of challenging such decisions in Sargon's courts on the basis that the Council has violated their fundamental rights.

Presidential election campaigns

27. On 3 February 2021, the Election Commission of Sargon announced that a presidential election would be held on 4 June 2021. Bos immediately announced that she would run for re-election.

28. The SDP initially did not announce any candidate. However, on 4 May 2021, Spiritual Leader Gen announced that he had decided to contest the presidential election. He described himself as 'the common candidate of the faithful'. The SDP thereafter issued a statement endorsing Gen's candidacy.

29. Natter added a new special topic titled 'presidential election 2021', and enabled users to select this topic as one of their preferences. Those who selected this special title could view the most popular posts with regard to the upcoming election on their Natter Matter feed.

30. Both candidates ran media campaigns on Natter. Bos, who has a following of over 4 million Natter users, promised greater economic development, and improved access to jobs and social services. She also promised to respond to 'growing religious extremism', and reform the history curricula to 'recognise Sargon's multicultural heritage'.

31. Bos was born to Phi parents, but avoided describing herself as an adherent of Phi. She is regularly described in the media as an 'agnostic', and has not contradicted that description. Bos has, however, openly criticised the Church of Phi for corruption and 'spreading extremism'. Her main criticisms have been with respect to the Church's refusal to ordain women, and its endorsement of child betrothals. While the Church has not endorsed child marriage, it has openly defended the cultural practice of child betrothal – where children are promised in marriage, which they enter into upon attaining adulthood.

32. Gen's campaign focused on 'revitalising spirituality within the nation'. His campaign speeches rarely featured economic or social policy, but instead focused on restoring 'spirituality' within Sargon. Gen has a following of over 7 million users on Natter.

33. On 28 May 2021, Gen posted a statement on Natter claiming that more and more people were abandoning Phi due to 'degradation' in society. He claimed that political leaders have abandoned their faith to 'cater to the fallen'. Gen's post was shared by over a million users on Natter, and featured on the Natter Matter of every user who had picked the topics 'politics' or 'presidential election 2021'. He also recalled election violence that took place during the previous presidential election in 2017 when a dozen DPS supporters were brutally attacked by Bos supporters during a rally. The perpetrators were, however, prosecuted and convicted, and are currently serving prison sentences. Gen called on voters to refrain from violence, and to ensure a 'peaceful transition' in 2021.

34. During a television interview on 31 May 2021, Bos accused her opponent Gen of using his religious status to pressure adherents of Phi to vote for him. She claimed that his comments about past violence were a deliberate attempt to create tensions ahead of election day. She also asserted that religion should not be 'weaponised' in politics, and that Gen and the DPS were attempting to manipulate voters to vote along religious identity rather than on policy. In the interview, she explicitly quoted the 18 commitments on 'Faith for Rights', which include the pledge not to instrumentalise religions, beliefs or their followers to incite hatred

and violence, for example for electoral purposes or political gains. She also emphasised the right not to receive religious instruction that is inconsistent with one's conviction, and she ended the interview by suggesting that teaching the tenets of Phi should be abolished in public schools. She reiterated her promise to reform history curricula to 'reflect the histories of all the peoples of Sargon'.

35. The following day, Bos received significant praise on Natter. Several posts praising Bos were in fact shared thousands of times, and featured on the Natter Matter feed of every user who had picked the topics 'politics' or 'presidential election 2021'. Some of these posts included the phrase 'We were here First', which appeared under the hashtag '#WeWereHereFirst'. Some very popular posts also contained a new hashtag '#Phinished!'. Bos's following on Natter increased by nearly one million users in just 24 hours.
36. Natter began to receive complaints with respect to some of the posts that featured the hashtag '#Phinished'. Content moderators took down these posts throughout 1 June 2021. Towards the end of the day, content moderators proactively removed any post with this hashtag. Instructions on this course of action had been issued by senior reviewers to all the clusters of content moderators. By the end of the day, a decision was also collectively taken by senior reviewers to stay the algorithm with respect to any post containing the hashtag '#WeWereHereFirst'.

Restriction of posts

37. Santos Darl, a social media influencer with over 400,000 followers on Natter, was identified by content moderators as a user who often posted original content with the hashtags '#WeWereHereFirst!' and '#Phinished'. Darl's bio on his profile contained the words 'Proud Returnee' and 'VoteBos'. Darl's posts regularly featured on Natter Matter due to their popularity.
38. A total of 43 posts by Darl containing the hashtag #Phinished, and another 12 posts containing the hashtag #WeWereHereFirst were taken down by content moderators between 31 May and 2 June 2021. These 55 posts constituted the entirety of Darl's posts during these three days. All the posts also included the hashtag '#VoteBos'. His final two posts (which were taken down by content moderators) read as follows:

Is criticism of religious extremism no longer allowed on Natter? Do we look away when these Phaithful interlopers harm women and children? #Phinished #VoteBos [2 June 2021, 8.33pm]

Every single one of my posts has been taken down by Natter. What is wrong with saying 'We were here First' when #WeWereHereFirst? #VoteBos [2 June 2021, 9.50pm]

39. Darl decided to deactivate his Natter profile at around 10.00pm on 2 June 2021.

40. On 3 June 2021, Bos posted the following words on Natter:

It is really unfortunate to see many voices that support me stifled by extremist forces that are intent on undermining democracy in Sargon. I hope the election tomorrow will be free and fair, and your voices will not be suppressed. #VoteBos

41. Bos's post was shared over a million times and featured on almost every user's Natter Matter that day. However, whenever a new post that shared Bos's statement contained the hashtag '#Phinished', it was immediately removed by content moderators. Also, the Natter Matter algorithm was stayed with respect to any new post that shared Bos's statement alongside the hashtag '#WeWereHereFirst'.

The election

42. On 4 June 2021, polling began throughout Sargon, and a record number of voters turned up to vote. Early polling data based on exit polls suggested that Gen would receive around 50.5% of the popular vote, and that Bos would not be re-elected.
43. Polls closed at 4pm that day. Election results began to trickle in by around 9pm, and early results depicted Gen leading the race.
44. At around 11.45pm, around 80% of the votes had been counted, and Gen appeared to be comfortably ahead with 51% of the valid votes in his favour.
45. Several users on Natter began to express doubt over the legitimacy of the election. A majority of these users included the words 'Bos 2021' or 'VoteBos' on their Natter bios, and openly identified as Bos supporters. These posts did not contain any anti-Phi hashtags such as '#Phinished' or '#WeWereHereFirst', but included phrases such as 'Stop the Phraud'. Some users made allegations such as 'the Election Commission is full of the Phaithful', thereby directly casting aspersions on the impartiality of the Commission.
46. Although these posts were viewed by users on Natter, they were not popular enough to reach Natter Matter, and no complaints were actually made against these posts. The Natter content moderation team therefore did not detect these posts to evaluate their compliance with the CSP.
47. At 12 midnight, Bos posted the following on Natter:

It has come to my attention that the election has been undermined by undemocratic and extremist forces. STOP THE FRAUD!!!
48. Around 12.15am, the Election Commission of Sargon convened an emergency meeting to discuss the incumbent president's allegations. All further counting was suspended until the conclusion of the meeting. News that the Commission had ordered a suspension of the counting quickly spread on Natter.
49. At 12.35am, while the Commission was still deliberating, Bos posted the following:

The Election Commission now suspects that FRAUD has been committed. Will justice prevail?
50. Both Bos's posts (at 12 midnight and 12.35am) were widely shared, and appeared on users' Natter Matter. At 12.50am, senior reviewers at Natter decided to stay the algorithm with respect to both posts.
51. At 1.00am, the Election Commission issued a statement declaring that there was no evidence of any election fraud, and that it had decided to resume counting. By then a crowd of around 200 Bos supporters had gathered outside the headquarters of the Commission. Many shouted the slogan 'Stop the Fraud'. Some were wearing t-shirts and caps with the slogan 'Phinished!'
52. Around 1.05am, Bos posted a photograph depicting protestors outside the Election Commission. Her post contained the following caption:

This is crazy!!! They are going to let the religious extremists win. STOP THE PHRAUD! #Phinished!

53. Moments after Bos's post, the group outside the Election Commission became extremely boisterous. Some attempted to force their way into the building, while others threw various objects, including rocks and other projectiles, at law enforcement officials guarding the Commission. A projectile struck one officer in the throat and severely injured him. As the violence escalated, riot police were called to the location. Several individuals were arrested, and the crowd soon dispersed.
54. Bos's 1.05am post was taken down by content moderators at around 1.25am after several complaints. Due to significant sharing of the post, it had initially made it onto Natter Matter. Around 2.00am, a senior reviewer made a decision to suspend Bos's profile on Natter until further notice. Shortly thereafter, Natter released an official communique stating that it had decided to suspend Bos's profile for repeated violations of sections 4 and 8 of the CSP. The statement did not indicate a specific timeframe of the suspension.
55. At 9am on 5 June 2021, the Election Commission formally declared Philemon Gen the new president of Sargon. Gen had secured 50.3% of the valid votes, whereas Bos had secured 49.6% of the votes. The remaining 0.1% of the votes were shared among several minor candidates. The margin of victory was the closest in Sargon's electoral history.
56. At around 5.00pm on 5 June 2021, Bos issued a statement apologising for anything she said 'that may have inadvertently encouraged people to take law into their own hands'. She condemned the violence against the Election Commission, but stated that 'a full and impartial investigation should be launched into the composition of the Commission and possible religious prejudice at an institutional level'. The statement was carried in the mainstream media, and was posted by several users on Natter.

Oversight Council decision

57. In the days following the presidential election, a formal inquiry was launched by the Sargonian Police Department into the attack on the Election Commission's office, and the possible role played by Bos in instigating the violence.
58. The officer injured during the attack on the Election Commission was compelled to seek early retirement from the police service due to the injury. He filed separate lawsuits against the individual who threw the projectile at him, and against Bos, and sought compensation for the loss of his livelihood. Bos and this officer reached an out-of-court settlement where Bos was reported to have paid the officer compensation. The quantum of the compensation remains undisclosed.
59. On 8 June 2021, the senior reviewer who had decided to suspend Bos's Natter profile on 5 June referred the matter to the Oversight Council for a further decision on whether Bos should be permanently blocked from Natter.
60. The Council received a report from the senior reviewer on the impugned posts made at 12 midnight, 12.35am and 1.05am respectively. The report recommended the permanent blocking of Bos on the basis of 'serious and repeated violations of sections 4 and 8 of the Community Standards Policy'. It also stated that the temporary suspension of Bos's profile would remain until the Council issued its decision.
61. Santos Darl reactivated his Natter profile on 8 June 2021 and immediately made a complaint to the Oversight Council. He alleged that the take-down of each and every one of his posts from 31 May to 2 June 2021 effectively amounted to a suspension of his profile, and that he wished to challenge the decision. He claimed that he was prevented from meaningfully

engaging in legitimate political speech during an election due to the systematic take-down of all his posts.

62. On 15 June 2021, the Council published its decisions with respect to both matters.
63. First, the Council decided that Bos should be permanently blocked from Natter, as she had engaged in a direct attack on adherents of Phi in a manner that displayed contempt for them and called for their exclusion. It found that the hashtag '#Phinished!' signified such exclusion in no uncertain terms, and that the deliberate misspelling of the word 'fraud' as 'phraud' conveyed contempt for adherents of Phi. The Council noted that acting swiftly before influential users might cause significant harm should take priority over considerations such as newsworthiness and other values of political communication. The Council's decision stated that it had taken into account the context, content and extent of the posts, the imminence of harm, and Bos's status when determining that she had committed serious and repeated violations of section 4 of the CSP.
64. The Council also found that Bos deliberately misrepresented facts with regard to the outcome of the election by claiming that a fraud had been committed. It observed that Bos had advocated violence in response to the presumed outcome of the election, and had incited followers to prevent the Election Commission from counting votes. The Council found that Bos had committed a very serious violation of section 8 of the CSP.
65. Second, the Oversight Council found that senior reviewers had not suspended Darl's profile, but had instead taken down posts that clearly violated the CSP. It found that Darl's posts that contained the hashtags '#Phinished' or '#WeWereHereFirst' violated section 4 of the CSP, as they promoted exclusion of the adherents of Phi, and insinuated the superiority of the so-called 'returnee' community. It also noted the term 'interlopers' amounted to hate speech.
66. The Council found that Darl's posts fell within the ambit of section 4, as they were directed at adherents of Phi. The Council accordingly dismissed Darl's complaint.

Supreme Court decision

67. Both Bos and Darl challenged the decisions of the Oversight Council before the Supreme Court of Sargon. They alleged that their rights under article 10 of the Constitution of Sargon had been violated by the Council's decisions. Article 10 provides:
 - (1) *The freedom of opinion and the expression of opinion shall be protected.*
 - (2) *Every person has the right to receive and impart information freely.*
 - (3) *Everyone has the right to access and freely use the internet. Neither the government nor any non-state actor shall monopolise the internet or the means of dissemination of information.*
 - (4) *The rights in subsections (1), (2), and (3) do not extend to propaganda for war, incitement of imminent violence, or advocacy of hatred that is based on race, ethnicity, gender, religion or belief, and that constitutes incitement to cause significant harm.*
 - (5) *The rights in this article may be limited only in terms of law to the extent that the limitation is reasonable and justifiable in an open and democratic society, taking into account all relevant factors, including the nature of the right, the importance of the purpose of the limitation, the nature and extent of the limitation, the relationship between the limitation and its purpose, and the least restrictive means to achieve the purpose.*

68. Article 25 of the Constitution of Sargon provides: 'When interpreting any provision of this Chapter on Fundamental Rights, a court shall ensure such interpretation is consistent with Sargon's obligations under international law.'
69. Apart from the arguments on the merits of their cases, both Bos and Darl alleged that the Council was incapable of acting objectively, as it only had access to a religious studies expert on Phi. They claimed that the Council lacked any understanding of the philosophy of agnosticism, and had a bias in favour of theistic beliefs.
70. On 1 July 2021, the Supreme Court issued its judgment and held that neither case involved a violation of article 10. It also specifically found that the Oversight Council had acted objectively.

Universal Court of Human Rights

71. The Universal Court of Human Rights exercises exclusive jurisdiction to receive and consider applications from individuals alleging the violation of rights recognised in the International Covenant on Civil and Political Rights (ICCPR). Sargon ratified the ICCPR in 2010 without reservations.
72. Bos and Darl have exhausted all domestic remedies. They filed applications before the Universal Court of Human Rights alleging that Sargon had violated their rights under article 19, read with article 25(b) of the ICCPR.
73. The Court decided to hear the applications together, and certified the applications on two discrete issues:
- Issue A:** Whether Sargon violated Emilia Bos's rights under article 19 read with article 25(b) of the ICCPR by upholding the Natter Oversight Council's decisions to suspend Emilia Bos and permanently block her from Natter.
- Issue B:** Whether Sargon violated Santos Darl's rights under article 19 read with article 25(b) of the ICCPR by upholding Natter's decision to remove every single post by Santos Darl from 31 May to 2 June 2021.
74. Bos and Darl have sought from the Universal Court of Human Rights: (1) declarations that their rights under the ICCPR have been violated, and (2) directions to Sargon to take immediate measures to fulfil its obligations under the ICCPR.