



Bonavero
Institute
of Human
Rights



PRICE MEDIA LAW MOOT COURT COMPETITION CASE

2018/2019 COMPETITION YEAR

***Official case of the 2019 International Rounds and
the 2018/2019 Regional Rounds in South Asia,
Asia Pacific, South-East Europe, North-East
Europe, the Americas, the Middle East and Africa
Regional Rounds***

Fact Pattern

1. Cyanisia

- 1.1 Cyanisia has a population of approximately 5 million people. The Cyanisian National Party (CNP) has governed the country for more than three decades. Its supporters are predominantly from the Cyan tribe, which constitutes approximately 90 percent of the population in Cyanisia. The Democratic Party of Cyanisia (DPC), the main opposition party, was established in 2000 by Unger Ras, a former professor of the State University of Cyanisia.
- 1.2 In **February 2001**, a story was published in the state newspaper *The Cyanisian Times*, which reported that a warrant had been issued against Ras for alleged misappropriation of university funds during his previous tenure as a professor. The Director of State Police was quoted in the article as having issued instructions for Ras's immediate arrest. Soon after the story broke, Ras fled Cyanisia and sought asylum in neighbouring Magentonia. He claimed that he was being persecuted for his political opinions. In April 2001, Ras's former university issued a public statement in its quarterly bulletin. The statement clarified that Ras had in fact been accused of misconduct in 1995, but that he was fully exonerated following an investigation by the University.
- 1.3 During the past 17 years, state authorities in Cyanisia have systematically persecuted the members of DPC, most of whom are from the Celadon tribe, a minority group constituting approximately 10 percent of the population in Cyanisia. Many party leaders and supporters were subjected to violence and intimidation. Some were forced into exile due to false charges against them. The systematic violence resulted in a mass exodus of DPC party members to Magentonia. According to UNHCR, approximately 65,000 Cyanisians – a vast majority of whom were from the Celadon tribe – crossed the border between January and December 2010.
- 1.4 In **January 2011**, the Cyanisian government passed the Citizenship Registration Act. Section 2 of the Act provided that 'any person resident in Cyanisia who cannot prove that his or her great grandparents were born in Cyanisia must apply in person to be naturalised within six months of this Act coming into operation.' Due to the operation of the Act, the entire population of Cyanisian asylum seekers who crossed into Magentonia lost their Cyanisian citizenship in July 2011.

2. Magentonia

- 2.1 Magentonia has a population of 1 million people. The two main political parties – the United Magentonia Party (UMP) and the Magentonian Popular Front (MPF) – contest in national parliamentary elections every five years. In **August 2013**, the UMP won by a broad margin at the national parliamentary election. It secured 65% of the seats in parliament. The MPF secured 30% of the seats, and several smaller parties secured the remainder.
- 2.2 Ras became a naturalised Magentonian citizen in **2011**, ten years after he fled Cyanisia. Section 4 of Magentonia's Immigration Act of 1996 stipulates that a person must be resident in Magentonia for ten years before he or she is entitled to apply for citizenship. Soon after acquiring citizenship, Ras joined the UMP. He actively

campaigned to raise awareness on the human rights abuses in Cyanisia. In **2012**, he set up the Cyanisian Refugee Centre, an organisation dedicated to supporting Cyanisian refugees and promoting their employment. Ras's popularity was not confined to the refugee population. He was highly respected among the wider UMP voter base and was considered to be a viable candidate at the parliamentary election scheduled for **June 2018**. In **January 2018**, Ras announced that he was running for office at the next parliamentary election, and that he would work to ensure that Cyanisian refugees receive a faster track to Magentonian citizenship if he becomes a Member of Parliament.

- 2.3 Magentonia's economy relies heavily on the export of natural gas. The natural gas industry was one of the only industries in Magentonia that regularly employed non-citizens, including Cyanisian refugees. In **February 2018**, world prices in natural gas plummeted by 20%. The market crash resulted in widespread fears that Magentonia would enter a period of economic recession. In the lead up to the parliamentary election in **June 2018**, MPF pledged to restore the economy if it was installed in power. Its leader, the current leader of the opposition, Alexis Lin, promised his supporters that he would also take steps to prevent the further influx of immigrants, and secure employment for 'native' Magentonians. The MPF campaign slogan under Lin was 'Take back Magentonia!' The campaign sought to frame Cyanisian refugees as a major strain on the Magentonian economy, and the main cause of the economic crisis.
- 2.4 Magentonia is a party to the International Covenant on Civil and Political Rights. When it ratified the Covenant, Magentonia submitted a declaration stating that:

Articles 17 and 19 of the Covenant do not authorise or require legislation or other action by Magentonia that would recognise or restrict any right in a manner inconsistent with the Constitution of Magentonia.

3. UConnect

- 3.1 UConnect is a social media platform with its headquarters in Magentonia. It is recognised as a legal person under Magentonian law. It has over 100 million users worldwide and is the most popular platform in both Cyanisia and Magentonia. Over 60% of the populations in each country actively use the platform.
- 3.2 The platform has two basic functions. First, it enables users to post news stories and stories about their personal lives, and to comment and share other stories they see on the platform.
- 3.2.1 Each user is provided with a 'personal page' that: (1) displays the user's posts, and (2) a 'live feed' of posts by other users who a user chooses to follow. These posts on the 'live feed' are interspersed with 'promoted' and 'trending' posts, which the platform determines according to an algorithm based on user preferences and the popularity of posts.
- 3.2.2 The platform ascertains user preferences by (a) enabling users to specify specific themes that they are particularly interested in, and (b) collecting and analysing data on user behaviour in posting and sharing content. It ascertains

popularity of posts by aggregating the number of shares and views of particular posts.

- 3.2.3 'Promoted' and 'trending' content that appear on a user's 'live feed' includes the posts of users that a particular user is not currently following.
 - 3.2.4 'Promoted' content can include posts by advertisers who pay the platform to promote their products and services. Ordinary users can also pay the platform to have their posts 'promoted'. Higher payments ensure more frequent appearance of promoted content on users' 'live feeds'.
 - 3.2.5 'Trending' posts appear on a user's 'live feed' based on popularity alone.
 - 3.2.6 Posts that are 'promoted' have a greater chance of 'trending', as they are more likely to be viewed and shared.
 - 3.2.7 Users have the option of blocking posts from particular users and advertisers from appearing on their 'personal page'.
 - 3.2.8 The default option on UConnect is for a user's posts to be visible only on the 'live feeds' of users who follow him or her. However, users can also opt to label their posts as 'public'. A user is required to label a post as 'public' in order for the post to be searchable through UConnect, and for the post to benefit from the platform's functionality with respect to 'promoted' and 'trending' content.
- 3.3 Second, the platform includes a search functionality. Users can search for content on the Internet, including 'public' posts on UConnect, through a 'search bar' that appears at the top of the user's personal page. When a user searches for a particular search term, the platform displays the search results on the user's personal page. Search results are only visible to the user concerned. However, these results can be integrated into a user's posts, which then become visible to other users (either to all users if the post is labelled as 'public', or only to followers of the user concerned if the post is not labelled as 'public').
- 3.4 The platform organises search results according to user preferences. Therefore, each user receives customised search results for the search terms they enter. The customisation depends on users' stated preferences, and on user behaviour, including the types of content a user posts and shares on his or her personal page.
- 3.5 UConnect has a Complaints Portal through which any person can complain about a post visible in the person's country and request its removal on the grounds that it violates UConnect Community Standards. The Standards provide that a post would be taken down if it: a) incited violence, b) amounted to defamation, or c) violated any law in the country concerned. Complaints are assessed by a team of dedicated human reviewers and are usually processed within 72 hours.
- 3.6 UConnect's advertising revenue in 2017 was approximately USD 250 million.

4. Article on Unger Ras

- 4.1 On **1 April 2018**, a privately owned online news website in Magentonia named the *Magentonian Mail* published a so-called ‘exposé’ on Ras.¹ The article claimed that Ras fled Cyanisia in 2001 following a ‘corruption scandal’ in his university, and that an arrest warrant had been issued against him. The article linked the online version of the story published in 2001 in *The Cyanisian Times*, which appeared to corroborate the article’s claims. Ras immediately issued a statement clarifying that the contents of the story from 2001 were false and reproduced a copy of the statement by his former university. The *Magentonian Mail* carried Ras’s statement on **3 April 2018**, but did not remove the article that appeared on 1 April.
- 4.2 Ras thereafter wrote to the *Magentonian* requesting that the article be removed. After two weeks of deliberation, the *Magentonian Mail*’s editorial board decided to remove the article on **15 April 2018**.
- 4.3 By **15 April 2018**, the article on Ras had begun to ‘trend’ on UConnect and was featured on users’ ‘live feeds’ and search results. First, a number of ‘public’ posts that linked the article were highly viewed and shared, and therefore started ‘trending’ on the ‘live feeds’ of users who had included ‘Magentonian politics’ or similar themes in their list of preferences. Second, public posts that linked the article started appearing high on the search results page for search terms such as ‘Ras’ and ‘Magentonia’. However, during the following week, the trending subsided, as the 1 April article had been taken down by the *Magentonian Mail*.
- 4.4 On **25 April 2018**, an anonymous user named *TakeBackMag200* posted a web link to online version of the original 2001 story appearing in *The Cyanisian Times* with the caption, ‘you can’t erase history’. The user paid the platform to promote the story, and soon it began to ‘trend’ on users’ live feeds. The story also began to appear high on the list of search results whenever the search terms ‘Ras’ or ‘Unger Ras’ were entered.
- 4.5 On **29 April 2018**, Ras wrote to the head office of UConnect based in Magentonia requesting that the post by *TakeBackMag200* be removed. He also requested that all search results depicting the 2001 *Cyanisian Times* story be blocked or removed. He did not use the online Complaints Portal, as he wished to write a formal letter using his official letterhead. He referred to the UConnect Community Standards and requested that the content be removed on the basis that it violated his privacy under the Magentonian Constitution. UConnect responded to Ras on **30 April 2018** stating that it would remove the post by *TakeBackMag200*, but would not remove search results depicting the 2001 story, unless ordered to do so by the Information and Data Protection Commission of Magentonia. It explained that it was against its policies to censor search results that do not clearly violate its Community Standards.
- 4.6 On **5 May 2018**, Ras filed a petition before the Information and Data Protection Commission of Magentonia seeking an order to compel UConnect to remove all search results depicting *The Cyanisian Times* story. Ras cited section 22 of the Magentonian Public Information and Data Protection Act of 2016 (PIDPA). At the hearing, Ras also cited article 7 of the Magentonian Constitution, which guarantees

¹ All news stories, posts and search results referenced in the Competition Case are in English, and English is the first language of all UConnect users in Magentonia and Cyanisia.

to all persons the right to privacy. UConnect stated that it was not contesting the case and would comply with any order made by the Commission.

PIDPA

Section 22: *Any person shall have the right to obtain from a data controller –*

(a) The rectification, erasure or blocking of data which is irrelevant, incomplete or inaccurate;

(b) Notification to third parties to whom the data has been disclosed of any rectification, erasure or blocking carried out in compliance with subsection (a), unless such notification is impossible or involves disproportionate effort.

(c) Nothing in subsections (a) and (b) shall be interpreted to mean a data controller is obliged to rectify, erase or block data the publication or other processing of which is in the public interest.

Section 30: *Any person aggrieved under any provision of this Act may submit a petition in writing to the Information and Data Protection Commission, stating the provision of this Act under which such person is aggrieved.*

Section 31: *Any party aggrieved by a decision of the Commission may submit an appeal in writing to the High Court of Magentonia within fourteen days of such decision. The High Court's decision with respect to such appeal shall be final.*

Magentonian Constitution

Article 7: *Every person shall have the right to privacy and shall be free from unlawful attacks on his reputation. Such right shall be subject only to reasonable limitations necessary for the protection of the rights and freedoms of others, or in the public interest.*

Article 10: *Every person shall have the right to freedom of expression, including the freedom to seek, receive and impart information. Such right shall be subject to limitations prescribed by law, and necessary for the protection of the rights and reputations of others, or the protection of public order, or public health.*

- 4.7 On **10 May 2018**, the Commission issued its decision rejecting Ras's request for an injunction and dismissing the petition. The Commission reasoned that 'the information appearing in the search results was relevant to the public interest, as the complainant was a public figure and a candidate at an upcoming election.' The Commission found that 'the complainant had failed to establish that UConnect had an obligation under the PIDPA or the Magentonian Constitution to remove the search results.'

- 4.8 On **11 May 2018**, Ras appealed to the High Court of Magentonia, which fixed the hearing date for **July 2018**. Ras requested the High Court to overturn the Commission's decision and direct UConnect to remove the search results.

5. Anti-refugee Posts

- 5.1 In **early May 2018**, an organisation calling itself Take Back Magentonia (TBM) began posting on UConnect regularly characterising Ras as a 'thief' and a 'fraudster' referring to Cyanisian refugees as 'bottom feeders' – a derogatory term often associated with Cyanisian refugees. One TBM post that appeared on UConnect on **26 May 2018**, and 'trended', included the following caption:

These stateless bottom feeders have no loyalty to any country; they were kicked out of Cyanisia for plotting terrorist attacks and protecting thieves and fraudsters. Now they are championed by Unger Ras, who wants to give them our citizenship and our jobs. They are stateless and want to form their own nation, kicking us out.

- 5.2 UConnect users in Magentonia reported the above post using UConnect's online Complaints Portal. The complainants requested that UConnect take the posts down for violation of the UConnect Community Standards. The UConnect review team met with its lawyers on **27 May 2018** to discuss the contents of the post, as it was not clear as to whether the post violated any Community Standards. UConnect nevertheless removed the said post on **30 May 2018** but decided not to terminate or suspend TBM's account.
- 5.3 On a separate occasion, however, UConnect removed a post by an anonymous user named *TBM6000* that stated 'bottom feeders should be swimming with the fishes'. UConnect's review team deemed the post to be incitement to violence. UConnect also terminated the said user's account.
- 5.4 Between **10-31 May 2018**, several thousand new users subscribed to UConnect, and began to share and view content posted by TBM and other anti-UMP users. The posts generally claimed that re-electing UMP would result in further influx of Cyanisian refugees. One post by TBM on **30 May 2018** claimed: '*Recent study by the University of Magentonia has revealed that Cyanisian refugees would outnumber Magentonians by 2025. Take back Magentonia!*'. The post 'trended' between **30 May and 1 June 2018** and became the most viewed post on UConnect in Magentonia during this period. However, no user reported the post as violating any of UConnect's Community Standards.
- 5.5 Owing to the proliferation of anti-refugee posts on UConnect, the Magentonian government filed action before the High Court of Magentonia seeking an injunction against UConnect under the PIDPA. The case was instituted on **1 June 2018**, i.e. three days before the parliamentary election. UConnect was charged under sections 3 and 5 of the Act, respectively for the TBM posts on **26 and 30 May 2018**. On **2 June 2018**, the High Court issued an interim injunction ordering UConnect to suspend all operations in Magentonia until the conclusion of the trial.

PIDPA

Section 3: *No person shall engage in the advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.*

Section 5: *No person shall knowingly or recklessly, by any means whatsoever, engage in the dissemination of false propaganda that coerces or misleads members of the public to do or refrain from doing anything, or causes public disorder.*

Section 32: *“Person” shall also include incorporated and unincorporated bodies carrying out any business or other activity within the territory of the Republic of Magentonia.*

- 5.6 The UMP narrowly won the parliamentary election of **4 June 2018**, securing 50% of the seats in parliament. The MPF secured 45% of seats. Ras failed to secure a seat in parliament. Magentonia Watch, an independent civil society organisation that monitors elections in Magentonia, conducted a study on the impact of social media on the parliamentary elections. Its final report was issued on **30 June 2018**. The report argued that the significant decline in the UMP’s seats, and Ras’s unexpected electoral failure, might be attributed to the successful campaign conducted by TBM via UConnect.

6. Outcome of Domestic Proceedings

- 6.1 On **1 July 2018**, the High Court of Magentonia dismissed Ras’s appeal. It held that Ras was not entitled to any rectification, erasure or blocking of search results under section 22 of the PIDPA. It further held that the right to privacy under the Constitution had to be balanced with UConnect users’ freedom to receive information, as guaranteed by article 10 of the Magentonian Constitution. It also held that UConnect was not obliged to remove the search results under the PIDPA, as it was entitled to retain the information in the ‘public interest’.
- 6.2 On **10 July 2018**, the High Court issued its verdict on the charges against UConnect under the PIDPA.
- 6.2.1 It found that, by failing to ‘expeditiously remove’ the TBM post of 26 May 2018, UConnect had failed to prevent the advocacy of national and/or racial hatred that constituted incitement to hostility on its platform. It accordingly found UConnect guilty under section 3 of the PIDPA.
- 6.2.2 It also found that the claim made in the TBM post of 30 May 2018 was false, as the University of Magentonia had not conducted any study on population estimates. The Court took cognizance of the fact that the post was the most viewed post on UConnect between 30 May and 1 June 2018, and accordingly found UConnect guilty of recklessly disseminating false propaganda in violation of section 5 of the PIDPA.
- 6.3 The Court ordered UConnect to pay a fine of USD 100,000.

7. Applications before the Universal Court of Human Rights

- 7.1 The Supreme Court of Magentonia, which has discretionary review, declined to consider Ras's and UConnect's appeals against the High Court's decisions. Thus, both Ras and UConnect exhausted all domestic remedies.
- 7.2 The Universal Court of Human Rights exercises exclusive jurisdiction to receive and consider applications from persons alleging the violation of rights recognised in the ICCPR.
- 7.3 Ras and UConnect submitted applications before the Universal Court of Human Rights respectively alleging violations of article 17 and article 19 of the ICCPR.
- 7.4 The Court decided to hear the applications together, and certified the applications on three discrete issues:
 - 7.4.1 **Issue A:** Whether Magentonia's decision not to grant Ras any rectification, erasure or blocking of search results depicting *The Cyanisian Times* story of 2001 violated article 17 of the ICCPR.
 - 7.4.2 **Issue B1:** Whether Magentonia's decision of 2 June 2018 to direct UConnect to suspend all operations until the conclusion of the trial violated article 19 of the ICCPR.
 - 7.4.3 **Issue B2:** Whether Magentonia's prosecution and conviction of UConnect under sections 3 and 5 of the PIDPA violated article 19 of the ICCPR.
- 7.5 Both Ras and UConnect sought from the Universal Court of Human Rights: (1) declarations that their rights under the ICCPR have been violated, and (2) directions to Magentonia to take immediate measures to fulfil its obligations under the ICCPR.