

Facts¹

There are two neighbouring countries, Cyanisia and Magentonia.

Cyanisia has two main political parties, the Cyanisian National Party (CNP) and the Democratic Party of Cyanisia (DPC).

The CNP has governed the country for more than three decades. The DPC was established in 2000 by Unger Ras, a former professor of the State University of Cyanisia.

Magentonia has a population of 1 million people. The two main political parties are the United Magentonia Party (UMP) and the Magentonian Popular Front (MPF).

In February 2001, a story was published in the state newspaper *The Cyanisian Times*, which reported that a warrant had been issued against Unger 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.

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.

In August 2013, the UMP won at the national parliamentary election.

Soon after the story broke of alleged misappropriation, Ras fled Cyanisia and sought asylum in Magentonia. He claimed that he was being persecuted for his political opinions. Ras became a naturalised Magentonian citizen in 2011, ten years after he fled Cyanisia. Soon after acquiring citizenship, Ras joined the UMP. He actively campaigned to raise awareness on the human rights abuses in Cyanisia.

In January 2018, Ras announced that he was running for office at the next parliamentary election.

¹ Based on the Price Media Law Moot Court Competition Rules. See: <http://pricemootcourt.socleg.ox.ac.uk/wp-content/uploads/2018/11/2018-2019-Price-Media-Law-Moot-Court-Competition-Rules1.pdf>

On 1 April 2018, a privately owned online news website in Magentonia named the *Magentonian Mail* published an article on Ras. The article linked the online version of the story published in 2001 in *The Cyanisian Times*. 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.

On 3 April 2018, the *Magentonian Mail* carried Ras's statement, but did not remove the article. Ras thereafter wrote to the *Magentonian* requesting that the article be removed.

On 15 April 2018, the *Magentonian Mail's* editorial board decided to remove the article. By this time, the article on Ras had begun to trend on a social media platform called UConnect (see Annexes). A number of 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. 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*.

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*. The user paid the platform to promote the story. The story also began to appear high on the list of search results whenever the search terms 'Ras' or 'Unger Ras' were entered.

On 29 April 2018, Ras wrote to the head office of UConnect 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 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.

On 30 April 2018, UConnect responded to Ras 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.

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 (PIDPA) (see Annexes).

On 10 May 2018, the Commission issued its decision rejecting Ras's request for an injunction and dismissing the petition.

On 11 May 2018, Ras appealed to the High Court of Magentonia.

In early May 2018, an organisation calling itself Take Back Magentonia (TBM) began posting on UConnect.

On 26 May 2018, one TBM post that appeared on UConnect, 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.

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.

On 30 May 2018, UConnect removed the said post on but decided not to terminate or suspend TBM's account.

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.

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 (in case of *Magentonia v UConnect*).

In June 2018, the leader of MPF 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 was '*Take back Magentonia!*' The campaign sought to frame Cyanisian refugees as a major strain on the Magentonian economy.

On 1 July 2018, the High Court of Magentonia dismissed Ras's appeal (*Ras v UConnect*). At the hearing, Ras cited article 7 of the Magentonian Constitution, which guarantees to all persons the right to privacy (see Annexes). UConnect stated that it was not contesting the case and would comply with any order made by the Commission.

On 10 July 2018, the High Court issued its verdict on the charges against UConnect under the PIDPA (in case of *Magentonia v UConnect*). It accordingly found UConnect guilty under section 3 of the PIDPA. The Court ordered UConnect to pay a fine of USD 100,000.

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.

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.

Ras and UConnect submitted applications before the Universal Court of Human Rights respectively alleging violations of article 17 and article 19 of the ICCPR. The Court decided to hear the applications *together*, and certified the applications on three discrete issues:

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.

Issue B1: Whether Magentonia's decision to direct UConnect to suspend all operations until the conclusion of the trial violated article 19 of the ICCPR.

Issue B2: Whether Magentonia's prosecution and conviction of UConnect under sections 3 and 5 of the PIDPA violated article 19 of the ICCPR.

Applicant1: Unger Ras (See Ras v UConnect Case) Respondent1: Magentonia

Applicant2: UConnect (See Magentonian government v UConnect Case) Respondent2: Magentonia

ANNEXES

1. 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.

2. 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.

3. ICCPR

Article 17

No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

Everyone has the right to the protection of the law against such interference or attacks.

Article 19

Everyone shall have the right to hold opinions without interference.

Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

- (a) For respect of the rights or reputations of others;
- (b) For the protection of national security or of public order (*ordre public*), or of public health or morals.

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.

Terms of Use

UConnect

1. UConnect is a social media platform with its headquarters in Magentonia and a legal person under Magentonian law.
2. The platform enables users to post news stories and stories about their personal lives, and to comment and share other stories they see on the platform.

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. 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.
 4. ‘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.
 5. ‘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’.
 6. ‘Trending’ posts appear on a user’s ‘live feed’ based on popularity alone.
 7. Posts that are ‘promoted’ have a greater chance of ‘trending’, as they are more likely to be viewed and shared.

Users have the option of blocking posts from particular users and advertisers from appearing on their ‘personal page’.

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.
9. 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').
10. 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 behavior.
11. 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.