



9th RMLNLU – SCC ONLINE[®]

**INTERNATIONAL MEDIA LAW
MOOT COURT COMPETITION,
2021**

February 26 – February 28, 2021

MOOT PROPOSITION

JOINT NOTIFICATION ADDRESSED TO THE REGISTRAR OF THE COURT

The Hague, 28th February 2021

On behalf of the State of Histanbul and the State of Alsara, and in accordance with Article 40 paragraph 1, of the Statute of the International Court of Justice, we have the honor to transmit to you an original copy of the Special Agreement for submission to the International Court of Justice on the differences between the Applicant and the Respondent concerning the Alsarian Elections, signed in The Hague, The Netherlands, on the thirty first day of July in the year two thousand eighteen.

/s/ _____

/s/ _____

Ambassador of the State of Histanbul

Ambassador of the State of

Alsara

to the State of Alsara

to the State of Histanbul

SPECIAL AGREEMENT

**SUBMITTED TO THE INTERNATIONAL COURT OF JUSTICE BY THE
STATE OF HİSTANBUL AND THE STATE OF ALSARA ON THE
DIFFERENCES BETWEEN THEM CONCERNING THE ALSARIAN
ELECTIONS**

**The State of Histanbul (the Applicant) and the State of Alsara (the Respondent)
(hereinafter the Parties):**

Recalling that the Parties are Members of the United Nations and that the Charter of the United Nations calls on Members to settle international disputes by peaceful means;

Considering that differences have arisen between them concerning the Alsarian Elections and other matters;

Noting that the Parties have been unable to settle these differences by direct negotiations;

Desiring further to define the issues to be submitted to the International Court of Justice (the Court) for resolution;

In furtherance thereof the Parties have concluded this Special Agreement:

Article 1

The Parties submit the questions contained in this Special Agreement (the Case) to the Court pursuant to Article 40(1) of the Statute of the International Court of Justice.

Article 2

It is agreed by the Parties that the State of Histanbul shall appear as Applicant and the State of Alsara as Respondent, but such agreement is without prejudice to any question of the burden of proof.

Article 3

- (a) The Court is requested to decide the Case on the basis of the rules and principles of International Law, including any applicable treaties.
- (b) The Court is also requested to determine the legal consequences, including the rights and obligations of the Parties, arising from its Judgment on the questions presented in the Case.

Article 4

- (a) The proceedings shall consist of written pleadings and oral arguments.
- (b) The written pleadings shall consist of memorials to be submitted simultaneously to the Court by the Parties. Procedures shall be regulated in accordance with the applicable provisions of the Official Rules of the 9th RMLNLU-SCC OnLine® International Media Law Moot Court Competition 2021.
- (c) No change can be made in any written pleadings once it has been submitted as per the Official Rules of the 9th RMLNLU-SCC OnLine® International Media Law Moot Court Competition 2021.

Article 5

- (a) The Parties shall accept any Judgment of the Court as final and binding upon them and shall execute it in its entirety and in good faith.
- (b) Immediately after the receipt of any Judgment, the Parties shall enter into negotiations on

the modalities for its execution. In witness whereof, the undersigned, being duly authorized, have signed the present Special Agreement and have affixed thereto their respective seals of office. Done in The Hague, The Netherlands, this thirtieth day of April in the year two thousand twenty one.

/s/ _____

/s/ _____

Ambassador of the State of Histanbul
Alsara
to the State of Alsara

Ambassador of the State of
to the State of Histanbul

Statement of Facts

1. Histanbul is the largest and the oldest democracy in the world. It is situated in the continent of Panlaysia which has had a long history of autocratic regimes. Histanbul and its neighboring country Vangal have democratic governments. Over the last decade, the relations of Histanbul and Vangal have not been cordial with other countries of Panlaysia. This is specifically because these two democratic nations have been vocal critics of the authoritarian regimes and the human rights violations occurring in other countries. However, this has not affected the diplomatic ties or trade relations among countries of Panlaysia.
2. Histanbul is a strong believer of independent media and freedom of expression is considered a non- negotiable liberty in its legal framework. The Histanbulian media has a global presence and its leading television network ‘Freedom News’ has been at the forefront of several national and international exposé. It has recently drawn the ire of Alsara, another country in Panlaysia for highlighting the human rights violations committed by the Alsarian government on ‘Siman’ community, an ethnic minority in Alsara as well as Histanbul. Alsara is another developed nation in Panlaysia having a Parliamentary Democracy. Alsarian People’s Congress (APC) has been in power in Alsara for the last 30 years. APC enjoys majority in both the upper house as well as the lower house of the Parliament of Alsara.
3. Simans are well represented in Histanbul government and are considered a powerful community. It is believed that the Simans in Histanbul have been extremely critical of the incumbent Alsarian government and have been actively involved in creating pressure groups through the use of media and otherwise to expose the human rights violations in Alsara.
4. ‘Jumbo’ is a popular online social media and social networking service that allows individuals to connect with friends and share news, opinions and images. It has become so

popular that more than 40 percent of the world population is said to be a part of it. 'Jumbo' is based in Histanbul and its co-founders are Zafran and Panth, citizens of Vangal and Histanbul respectively. The server of 'Jumbo' is also located on the riverine border of Histanbul and Vangal, such that it lies partly in Histanbul and partly in Vangal. Several government companies of Histanbul are shareholders of 'Jumbo', such that the total shareholding of the different government companies in 'Jumbo' amounts to 45 percent.

5. In order to increase its membership, 'Jumbo' has come up with a referral scheme, wherein the account of its members is credited with 5 anaa for every referral made and 10 anaa if the person referred joins the platform. This credit can be used to shop at certain online retail platforms. The referral process includes filling up of a survey where some personal information is sought. It is not necessary to be a part of the referral scheme to join 'Jumbo' and an individual may opt not to be a part of this scheme.
6. This referral scheme helped 'Jumbo' grow its membership, and the continent of Panlaysia saw a steep rise in 'Jumbo' usage. Jumbo's growing user base has made it a go-to platform for public figures to connect with masses. Almost every public figure in all walks of life is a part of this platform and uses it to communicate with the people. 'Jumbo' also verifies the account of such public figures to ensure that fake profiles of such people are not created. Such verified accounts are distinguished by a green star sign.
7. 'Jumbo' has recently seen a rise in membership in Alsara. Its rising popularity in Alsara is also attributed by many to the several programmes funded by 'Jumbo' for achieving 'digital equality' in Alsara. One of its initiatives 'Connect' provides internet access at low rates in far flung areas of Alsara. This initiative is being run in collaboration with 'Pride', an Alsarian telecom company.
8. The Alsarian Simans have been vociferously voicing their discontent with the incumbent

government for its discriminatory attitude. A law was passed on April 14, 2020 in Alsara that required all residents of Alsara to enroll in a National Register (NR). It was proposed that over a period of time, the National Register Identity Number (NRIN) would be linked to all social welfare schemes. This law required residents of Alsara to prove that they or their ancestors have been residents of Alsara since January 1, 1961. It was believed that this law specifically targeted minority communities in Alsara, because a large percentage of minority community had immigrated to Alsara from the neighboring countries in search of job and livelihood. This law was also criticized because it was believed that the cut-off date of January 1, 1961, would deprive many immigrants who formed the minority group in Alsara from social benefits and perhaps citizenship. Many members of ‘Krashans’, an ethnic group which forms approximately 40 percent of Alsarian population, have been critical of the lenient immigration rules of Alsara. ‘Krashans Unified Front (KUF)’, an Alsarian organization, has been making legal and policy interventions for years to bring about a stricter immigration law in Alsara. KUF publicly supported NRIN and hailed it as a landmark decision that would change the political landscape of Alsara. The conflict between the supporters and critics of NRIN intensified to such an extent that the entire Alsara was embroiled in protests. In July, 2020, Alsara witnessed unprecedented civil society movement against NRIN in the form of peaceful protests, candle marches and sit-in protests. The internal strife boiled over on social media platforms, including ‘Jumbo’. ‘Jumbo’ was accused by KUF of being biased towards the critics of NRIN as many accounts of KUF members were suspended for engaging in abusive and hate speech. On August 12, 2020, ‘Jumbo’ defended this accusation by releasing the following public statement:

“We, as an organization, are extremely committed to upholding free speech and are committed towards ensuring diversity and plurality. The suspension of accounts of members of ‘Jumbo’ is strictly in compliance with the terms

and conditions of ‘Jumbo’ membership as well as the international standards on free speech.”

9. A political party ‘Alsaran Independent Coalition’(AIC) has been at the forefront of these protests. The leader of this party ‘Sasha’ has been the most vocal critic of NRIN and other policies of APC. She has also been critical of APC for destroying democratic institutions in Alsara. AIC’s slogan is ‘Transparency and Accountability’. As an indication of its commitment to democratic values, AIC has published the source of its funding on its website. Every contributor’s name is displayed public unless the contribution is anonymous. ‘Pride’, the telecom company of Alsara, is one of the major contributors to AIC, according to the information on its website.
10. Elections were due in Alsara and voting was to begin from February 14, 2021. The election was to be held in four phases, concluding with the declaration of result on March 14, 2021. The preliminary survey conducted by some news channels showed that APC may return to power again. However, it was also predicted that AIC would pose strong challenge to APC in the forthcoming elections. The growing support to AIC was imputed to the successful movement launched against National Register.
11. In the midst of this strife and ongoing elections, Panth, the co-founder of ‘Jumbo’, visited Alsara on February 10, 2020 to promote Jumbo’s digital initiatives, especially project ‘Connect’ and its referral scheme. On February 12, 2020, just two days before the commencement of voting, Rayan, a member of AIC published a statement on his account on ‘Jumbo’, alleging that the Prime Minister of Alsara was guilty of corruption and had misappropriated public funds to the tune of 10,000,000 anaa. This statement was picked up by newspapers and other media platforms across the globe presumably causing severe damage to the electoral prospects of APC. The very next day Panth and Rayan were arrested by the

Alsarian government under Section 190 of Alsara Criminal Law Code, 1910 (ACLC) which made defamation, a criminal offence. The maximum penalty for defamation under ACLC is ten years of rigorous imprisonment. The Consulate of Histanbul in Alsara was denied the permission to meet Ms. Panth on February 13, 2020, who was held in judicial custody after the arrest.

12. A huge public outcry occurred against this arrest. However, ignoring such outcry, the government of Alsara constituted an investigation committee to inquire into the operation of 'Jumbo' in Alsara on February 13, 2020. The Investigation Committee was also mandated to inquire whether 'Jumbo' complied with the privacy laws of Alsara and whether the data collected by 'Jumbo' through its various initiatives was secure or not.

13. The Investigation Committee released its report on February 20, 2020. According to the report 'Jumbo' had been involved in using the data of Alsarian citizens to create psychographic profiles of its users. This profile according to the report was used to target Alsarian citizens with negative opinions about APC. It was also found that based on their search history, Alsarians were also shown information about 'Protest against NR' events. It was stated in the report that there is enough evidence to presume that data was being shared by 'Jumbo' with opposition parties in Alsara to help them target voters and this is one of the main reasons for the growing popularity of AIC.

14. Histanbul was extremely upset with the arrest of Panth. The Ministry of External Affairs of Histanbul released the following statement on February 21, 2020:

“The arrest of Ms. Panth, a citizen of Histanbul, is a serious affront on the freedom of expression. Any allegation of any wrongful conduct by Ms. Panth, needs to be investigated in a fair and neutral manner. The action of the Government of Alsara is in violation of International Law. The Government of Histanbul calls upon the

Government of Alsara to immediately hand over the custody of Ms. Ms. Panth to Histanbul where she will be tried for any alleged offences.”

15. Alsara’s response to this statement was:

“The Government of Alsara is well within its right to arrest and try Ms. Panth for the offences committed by her. Histanbul has interfered with the political independence of Alsara by trying to manipulate our democratic election process through its agent ‘Jumbo’ for which it should issue a public apology to the Government of Alsara and should immediately cease any further activities that may impinge upon Alsara’s sovereignty.”

16. Concerned with the aggravating situation, Histanbul and Alsara initiated several diplomatic negotiations to settle their disputes. However, all such efforts failed and as a result, the Parties agreed to submit the matters of dispute to the International Court of Justice under the Special Agreement.

17. Histanbul and Alsara have, at all relevant times, been parties to the Charter of the United Nations, the Statute of the International Court of Justice, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention Relating to the Status of Refugees, the Vienna Convention on Diplomatic Relations, the Vienna Convention on Consular Relations, and the Vienna Convention on the Law of Treaties.

18. Histanbul respectfully requests the Court to adjudge and declare that:

- i. Histanbul has not violated the territorial integrity or political independence of Alsara.
- ii. Alsara is responsible for violating the freedom of speech and expression of Ms. Panth, a citizen of Histanbul.

- iii. Alsara has no jurisdiction to try Ms. Panth and she must be immediately transferred to the custody of Histanbul.

19. Alsara respectfully requests the Court to adjudge and declare that:

- i. Histanbul has violated the territorial integrity or political independence of Alsara.
- ii. Alsara is not responsible for violating the freedom of speech and expression of Ms. Panth, a citizen of Histanbul.
- iii. Alsara has jurisdiction to try Ms. Panth for the violation of Alsarian laws.

Note: Participants are not allowed to frame additional issues.

APPENDIX

Section 190 of the Alsara Criminal Law Code, 1910¹

Defamation—Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter expected, to defame that person.

Explanation 1

It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives.

Explanation 2

It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.

Explanation 3

An imputation in the form of an alternative or expressed ironically, may amount to defamation.

¹ Please note that the law of defamation in Histanbul allows for truth as an exception. It stipulates that it is not defamation to impute anything which is true concerning any person, if it be for the public good that the imputation should be made or published. Whether or not it is for the public good is a question of fact.

Explanation 4

No imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.

Exceptions

1. Public conduct of public servants – It is not defamation to express in good faith any opinion whatever respecting the conduct of a public servant in the discharge of his public functions, or respecting his character, so far as his character appears in that conduct, and no further.
2. Conduct of any person touching any public question. -It is not defamation to express in good faith any opinion whatever respecting the conduct of any person touching any public question, and respecting his character, so far as his character appears in that conduct, and no further.