



Case 2020-003-FB-UA  
Case referred by user

### *Facts*

A user posted alleged historical photos showing churches in Baku, Azerbaijan, with accompanying text stating that Baku was built by Armenians and asking where the churches have gone. The user stated that Armenians are restoring mosques on their land because it is part of their history. The user said that the "Т.а.з.и.к.и" are destroying churches and have no history. The user stated they are against "Azerbaijani aggression" and "vandalism". The content was removed for violating Facebook's Hate Speech Policy. The user indicated in their appeal to the Oversight Board that their intention was to demonstrate the destruction of cultural and religious monuments.

### *Contextual Issues*

The first point to note is that the user, using (alleged) historical photos of churches in Baku, stated that the destruction of the churches was going on. In terms of this point, it must be noted that between 1997 and 2006 [nearly 90 churches](#) were destroyed by the Azerbaijan government whilst in the [current conflict](#), there are a plethora [of images circulating social media](#) which allegedly show the vandalization or destruction of Armenian churches (and monuments). As such, the user is evidently seeking to discuss an issue of politics as well as religious heritage. The fact that such expression may come with a polemical or hyperbolic tone, referring to Azerbaijani 'aggression' and 'vandalism' could be reasonably expected in political speech, particularly in the current climate marking the relationship between Armenia and Azerbaijan.

### *Relevant Rules*

Facebook defines hate speech as a 'direct attack on people based on what we call protected characteristics — race, ethnicity, national origin, religious affiliation, sexual orientation, caste, sex, gender, gender identity, and serious disease or disability. We protect against attacks on the basis of age when age is paired with another protected characteristic, and also provide certain protections for immigration status. We define attack as violent or dehumanizing speech, harmful stereotypes, statements of inferiority, or calls for exclusion or segregation.' Nowhere in the user's post is there an attack against a protected group as defined above. Instead, the user is seeking to shed light on alleged occurrence from his/her own political perspective. As such, the user may be demonstrating a polemical tone against the Azerbaijan practices but is not targeting or attacking a protected characteristic but rather is critical of the Azerbaijan government. Facebook, however, did not contextualise the post. Had it done so it would be clear that this post was not an attack against a protected characteristic. Moreover, given the current conflict between

Azerbaijan and Armenia it is expected that political speech is to be found on social media platforms. Silencing or censorship such speech has a chilling effect on the public debate.

Beyond the internal rules of Facebook, the Oversight Board must take into account the present post in light of Article 19 and Article 20(2) of the International Covenant on Civil and Political Rights as well as the threshold test set out by the Rabat Plan of Action. In fact, this case does not seem to meet even one of the six requirements to the threshold test set out by the [Rabat Plan of Action](#). As noted by the [Special Rapporteur on Freedom of Expression in 2019](#), hate speech must be narrowly defined in order to ensure the protection of freedom of expression. The Board must also consider the significance of political speech and the danger of hate speech laws infringing on political dissent was underlined in the [Special Rapporteur's 2019 report on Online Hate Speech](#). A broad interpretation of hate speech and a removal of posts such as the one in this case essentially serves to mute criticism of State practices and does little to promote a marketplace of ideas and public debate. Also, we would recommend the Board to consider a Norwegian Supreme Court judgement in which it noted that one cannot *assume* that what is said is, in fact, hateful. As underlined by the majority: ‘...The rule of law, and especially the consideration of foreseeability, dictates restraint when it comes to an expansive interpretation based on context. When it comes to punishable expressions the point must be that you can only be punished for what you have said, not what could possibly have said.’<sup>1</sup>

### *Conclusion*

As such, we do not consider this to constitute hate speech even within the broad conceptualisation that Facebook has granted this term under its Community Standards. Moreover, we consider that Facebook should have taken into account the current conflict in the region and expected speech that relate to this conflict. There is no advocacy or incitement to violence or hatred nor is there the slightest attainment of any of the elements within the Rabat Plan of Action. Instead, this case is a silencing/censoring activity of a matter of public issue/debate.

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<sup>1</sup> HR- 2001-01428 – Rt-2002-1618, (Saks nr. 361-2002) 17 December 2002