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2016

THE 2016-2017 OXFORD PRICE MEDIA LAW MOOT COURT COMPETITION

Blenna Ballaya & SeeSey

(Applicants)

v

Amostra

(Respondent)

MEMORIAL FOR APPLICANTS

WORD COUNT: 4998

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LIST OF ABREVIATIONS

ACHPR	African Charter on Human and Peoples' Rights
ACHR	American Convention on Human Right
The Case	The 2016–2017 Price Media Law Moot Court Competition Case
The Court	Universal Freedom of Expression Court
CoE	Council of Europe
ECtHR	European Court of Human Rights
CJEU	Court of Justice of the European Union
ESA	Election Safety Act
EU	European Union
FOA	Freedom of Assembly
FOE	Freedom of Expression/ Freedom of Opinion and Expression
HR	Human Rights
HRC	United Nations Human Rights Committee

ICCPR or **CCPR**	International Covenant on Civil and Political Rights
ISP or **Intermediary**	Internet Service Provider
NEA	National Election Authority
OAS	Organization of American States
OSCE	Organization for Security and Co-operation in Europe
Para(s)	Paragraph(s)
SIA	Stability and Integrity Act of 2014
Supreme Court	Supreme Court of the United States
UDHR	Universal Declaration of Human Rights
UK	United Kingdom
UN	United Nations
UN OHCHR	United Nations Office of the High Commissioner for Human Rights
UNGA	United Nations General Assembly
US	United States of America

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STATEMENT OF RELEVANT FACTS

I. SOCIO-POLITICAL BACKGROUND

1. Amostra is a small country with an unstable political history. The majority of inhabitants are members of two major religious groups, 30 % Yona and 70 % Zasa.

2. Amostra has experienced increased social unrest in the past five years, as members of the Yona religious minority maintain that the primarily Zasa-led government has systematically subjected Yona people to various forms of political and economic discrimination.

3. There have been frequent non-violent protests and occasional skirmishes between the Yona protestors and Zasa counter-protestors that have resulted in arrests of protestors primarily from the Yona sect.

4. On February 15, 2016, violence erupted during a protest outside Parliament. Protestors threw bottles and rocks and police responded with tear gas and physical force. During the clash, a Yona protestor was killed by a blow to the head, possibly from police forces or a small group of Zasa counter-protestors.

5. On June 6, 2016, after months of continued protests and political pressure from the international community, both of which were amplified by the protestor's death, the Prime Minister of Amostra announced that general elections would be held in 60 days, on August 5. The announcement received positive reaction in the international community and was followed by a period of relative calm in Amostra.

II. ADOPTION OF ELECTION SAFETY ACT

5. On June 6, the NAE, a group of government-appointed regulators who are responsible for managing Amostra's elections, announced the ESA to prevent public disorder.

6. ESA restricted elections-related speech by prohibiting political demonstrations of more than ten people on the public streets of Amostra within 30 days of general election where participants in such a demonstration spread an extremist or seditious message, or seek to incite hatred, violence, or disrupt the democratic process.

7. ESA established criminal liability for the attendance and the incitement of the barred demonstrations.

III. SEESEY AND ITS PRESENCE IN AMOSTRA

8. SeeSey is a social media platform that allows users to post content and also share or comment on posts they see. SeeSey accounts are free, and all content is publicly visible to anyone who is logged into an account. The platform is accessible worldwide, including in Amostra, which has many SeeSey users, though these users only make up a small fraction of SeeSey's worldwide users.

9. Citizens of Amostra have access to the Internet, and the use of social media is popular. The government of Amostra has the ability to block Amostra-based Internet users' access to specific Internet services, but they have never carried out such a block. The government does not have the technical ability to block specific posts from a specific social media service; if they block, they must block the entire service.

10. SeeSey has the technical ability to block individual posts in individual countries. For instance, it could make a post invisible in Amostra but visible in the rest of the world. To date, SeeSey has not blocked any posts or accounts in Amostra.

11. SeeSey has its headquarters and hosts all worldwide data on servers in Sarranto, a large, affluent, politically stable country located more than 1000 miles from Amostra. Sarranto also has a large immigrant population from a number of countries, including Amostra.

12. SeeSey owns a subsidiary company, SeeSALES, which is headquartered and has its sole office in Amostra. SeeSALES is independently operated in Amostra and has 10 employees, all of whom work to promote the use of SeeSey by Amostra businesses, including the purchase of paid ads on SeeSey. SeeSALES earned 5 million USD in revenue last year and paid all appropriate taxes to the Amostra Bureau of Taxation. SeeSey has many such subsidiaries around the world, and does not provide any of them access to the data stored on SeeSey servers.

IV. ADOPTION OF STABILITY AND INTEGRITY ACT

13. In 2014, the government of Amostra enacted the SIA - laws prohibiting extremist or anti-patriotic statements, after a protest outside of Parliament led to significant destruction of government property and a series of threats against the lives of the Prime Minister and leading officials. Any "person" guilty of a criminal offence under the SIA is to be subjected to fines and prison sentences.

14. The SIA also requires all media organisations providing content to citizens of Amostra to register and consult with the Ministry of Defense. Any media organisation failing to do so may

have its operating licence withdrawn. SeeSey does not maintain a media operating license in Amostra, and the Ministry of Defense has never asked SeeSey to register.

V. BLENNA BALLAYA'S COLUMN

15. Blenna Ballaya, a citizen of Amostra who is resident in Sarranto, is a famous blogger who regularly writes about political matters on her blog.

16. A Sarranto-based domestic newspaper popular with Amostran immigrants, paid Ballaya to write a one-time column as an opinion contributor.

17. Ballaya's column was published on July 7, 2016, in The Times print edition, on The Times website, and on The Times' account on SeeSey. The column accused the Prime Minister and other members of the Zasa sect of corruption and human rights violations against Yona people, and called the August election a sham for Zasa political gain. The column echoed calls by other anti-government Amostrans for an active but peaceful Day of Resistance on August 1. The column was read by many citizens of Amostra, a large number of Yona sect who read the column on SeeSey posted comments underneath, including some who said they were prepared to defend themselves and would carry knives or other available weapons in case of persecution by law enforcement or the government on the Day of Resistance.

18. On the called-for Day of Resistance, Ballaya attended a largely peaceful public protest, at which participants held signs and chanted in support of Yona-affiliated candidates. However, a minority of the Yona sect demonstrators chanted hard-line political messages, set fire to a Zasa religious building frequented by leading government officials, and attacked law enforcement who tried to prevent the arson attack. Although there was no evidence that the attackers had

read the column, they chanted the words of a famous Yona unity song, which Ballaya had used in the column.

VI. FEEDBACK

19. The column was read by many citizens of Amostra. In Sarranto, where citizens have access to The Times website and The Times in print, the vast majority nevertheless accessed the column via SeeSey. The column was quickly shared among users on SeeSey, including being viewed by thousands of people in Amostra.

20. A large number of Yona sect who read the column on SeeSey posted comments underneath, including some who said they were prepared to defend themselves and would carry knives or other available weapons in case of persecution by law enforcement or the government on the Day of Resistance.

21. On the called-for Day of Resistance, Ballaya travelled to Amostra to attend a largely peaceful public protest, at which participants held signs and chanted in support of Yona-affiliated candidates. However, a minority of the Yona sect demonstrators chanted hard-line political messages, set fire to a Zasa religious building frequented by leading government officials, and attacked law enforcement who tried to prevent the arson attack. Although there was no evidence that the attackers had read the column, they chanted the words of a famous Yona unity song, which Ballaya had used in the column: "*We trust that our faith will carry us home. We are not afraid to fight, not afraid to die*".

VI. LEGAL PROCEEDINGS

23. Following the riots and violence Ballaya was arrested and marked as an organizer of the protest in connection with her column.

24. Amostra charged Ballaya under Sections A and B of the SIA; she was found guilty and sentenced to three years' imprisonment. Ballaya was also prosecuted pursuant to Section 3 of the ESA; she was found guilty and was fined $300,000.

25. Amostra also applied for a civil order forcing SeeSey to take down the material worldwide and post a form of an apology to calm tensions. An Amostran court issued an order against SeeSey requiring it to remove "*all offensive content replicating or relating to Ballaya's column, including comments made by users of SeeSey, so that such content is no longer accessible anywhere on SeeSey from any location worldwide, including in Amostra and Sarranto*.

STATEMENT OF JURISDICTION

Blenna Ballaya & SeeSey (Applicants) has approached the Universal Freedom of Expression Court, the special chamber of the Universal Court of Human Rights hearing issues relating to the right of freedom of expression under Articles 19 and 29 of the UDHR and Article 19 of the ICCPR.

Both Ballaya's conviction and the order against SeeSey were upheld in Amostra's Supreme Court, exhausting their domestic appeals. This Honourable Court has jurisdiction once parties have exhausted all domestic remedies.

Blenna Ballaya & SeeSey (Applicants) requests this Honourable Court to issue a judgment in accordance with relevant international law, including any applicable declarations and treaties.

QUESTIONS PRESENTED

A. Whether Amostra's prosecution of Ballaya under the SIA violates international principles, including Article 19 of Universal Declaration of Human Rights ('UDHR') and Article 19 of the International Covenant on Civil and Political Rights ('ICCPR')?

B. Whether Amostra's prosecution of Ballaya under the ESA violates international principles, including Article 19 UDHR and Article 19 of the ICCPR?

C. Whether Amostra has jurisdiction to obtain and enforce the civil order against SeeSey in Amostra and Sarranto?

D. Whether Amostra's civil order against SeeSey violates international principles, including Article 19 of UDHR and Article 19 of the ICCPR?

SUMMARY OF ARGUMENTS

A. Ballaya's prosecution under the SIA violates international principles, including Article 19 of UDHR and Article 19 of ICPR, because the restriction of Ballaya's FOE does not pass the three-part cumulative test. Firstly, prosecution is not prescribed by law, as the law is formulated in vague and unclear manner and leaves the national authorities too much latitude. Secondly, restriction pursued none of the legitimate aims, set out in ICCPR. Thirdly, restrictions were not necessary in a democratic society because there was no immediate link between Ballaya's expression and a threat. Lastly, the prosecution was disproportionate because there was a clear asymmetry between the offense and the punishment.

B. Ballaya's prosecution under the ESA violates international principles, including Articles 19 and 20 of UDHR and 19 and 21 of the ICCPR. Ballaya's expression is covered by the scope of FOE even though the expressed political ideas might disturb or provoke. Ballaya's called demonstration is protected by the FOA – she did not commit any violence or reprehensible act, thus nonviolent intentions of the protest's organiser demonstrate the peaceful character of the demonstration. Moreover, restrictions imposed under the ESA are not permissible limitations under the three-part test. Firstly, they were not prescribed by law since the ESA is formulated in unclear and ambiguous manner and cannot be regarded as 'law'. Secondly, restrictions were not pursuant to the legitimate aim of public order. Thirdly, restrictions were not necessary in a democratic society as there was no clear link between the expression and reprehensible acts that later were committed. Furthermore, the criminal nature of Ballaya's sanction imposed by the severe fine infringes the principle of proportionality.

C. Although a state is free to determine its policy for extra-territorial personal jurisdiction, it also should comply with certain common jurisdictional standards and international principles. The

analysis of common practice of different countries and the EU leads to the conclusion that Amostra has neither general nor specific jurisdiction over SeeSey. Firstly, SeeSey is established in Sarranto and only this country, not Amostra, has general jurisdiction over SeeSey. Secondly, SeeSey and Ballaya's column are equally accessible worldwide and there is no exceptional link between SeeSey and Amostra. Thirdly, the existence of SeeSALES and the fact that negative consequences occurred in Amostra, should not be taken in consideration in this Case. Finally, refusal to acknowledge Amostra's jurisdiction over SeeSey will be in compliance with principles of fairness and legal certainty.

D. The order violates Articles 19 and 29 of UDHR and Article 19 of ICCPR, since it restricts SeeSey's and its' users FOE and related rights, as well as it does not pass the three-part cumulative test. Firstly, the SIA and the order are not prescribed by law, since both provisions of the SIA and terms of the order in question are not sufficiently precise and could result in arbitrary restriction of publication of lawful content. Secondly, it is not in pursuit of a legitimate aim. Thirdly, the order is not necessary in a democratic society, since less restrictive measure existed, but was not used by the court of Amostra. In addition, the order does not correspond to a pressing social need, since Ballaya's column, which was accompanied by comments, does not intend to incite violation, also, column and comments itself does not incite violence, therefore there is no direct connection between the column, accompanied by comments, and the arson attack.

ARGUMENTS

A. Amostra's prosecution of Ballaya under the SIA violates international principles, including Article 19 of UDHR and Article 19 of ICCPR

1. FOE, enshrined in various international and regional legal instruments[1], is a fundamental human right and its importance in a democratic society has been reiterated numerous times[2]. It encompasses discussion on human rights[3], public affairs[4] as well as religious[5], political discourse[6], entailing not only information or ideas that are favourably received, but also those that offend, shock or disturb[7]. Means of expression are also considered to include Internet – based forms[8].

[1] UDHR (adopted 10 December 1948) UNGA Res 217 A(III) Article 19; ICCPR (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 Article 19; International Convention on the Elimination of All Forms of Racial Discrimination (adopted 21 December 1965, entered into force 4 January 1969) UNGA Res 2106 (XX) Art 5(d)(viii); Convention for the Protection of Human Rights and Fundamental Freedoms (adopted 4 November 1950, entered into force 3 September 1953) Article 10; ACHPR (adopted 27 June 1971, entered into force 21 October 1986) OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M.58 (1982) Article 9; American Convention on Human Rights (adopted 22 November 1969, entered into force 18 July 1978) 08/27/79 no 17955 (ACHR) Article 13.

[2] *Tae Hoon Park v Republic of Korea*, Communication no 628/1995, UN Doc. CCPR/C/64/D/628/1995 (3 November 1998) para 10.3; *Handyside v United Kingdom* App no 5493/72 (ECtHR, 7 December 1976) para 49; Communication no 1173/2003, *Benhadj v Algeria* (20 July 2007); Communication no 628/1995 UN Doc. CCPR/C/90/D/1173/2003 (2007), HRC, 'General comment No 34' on 'Article 19 (Freedom of Opinion and Expression)' (2011) UN Doc CCPR/C/GC/34, para 2.

[3] *Vladimir Velichkin v Belarus*, Communication no 1022/2001, UN Doc. CCPR/C/85/D/1022/2001 (2005).

[4] *Coleman v Australia*, Communication no 1157/2003, UN Doc. CCPR/C/87/D/1157/2003 (2006).

[5] *Malcolm Ross v Canada*, Communication no 736/1997, UN Doc. CCPR/C/70/D/736/1997 (2000).

[6] *Essono Mika Miha v Equatorial Guinea*, Communication no 414/1990, UN Doc. CCPR/C/51/D/414/1990 (1994).

[7] *Handyside v United Kingdom* App no 5493/72 (ECtHR, 7 December 1976) para 49; La Rue, Report of the Human Rights Council's Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, A/HRC/17/27, 16 May 2011, para 37.

[8] HRC, 'General comment No 34' on 'Article 19 (Freedom of Opinion and Expression)' (2011) UN Doc CCPR/C/GC/34, para 12; HRC, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (11 May 2016) para 21.

2. FOE can be subject to restrictions on specific and limited grounds, which are set out in the Article 19 (3) of the ICCPR[9] and Article 29 (2) of the UDHR[10]. However, restrictions imposed by a State may not put the right in jeopardy[11]. Therefore they must satisfy the three-part test, meaning that they have to be provided by law and be justified as being necessary for a particular legitimate purpose, as it has been elaborated by the UNHRC[12], the IACtHR[13], the ECtHR[14], AHRLR[15] and the ACommHPR[16].

3. Therefore, in order for the restriction to be legitimate, the aforementioned requirements must be satisfied.

[9] ICCPR (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, Article 19.

[10] UDHR (adopted 10 December 1948) UNGA Res 217 A(III), Article 19.

[11] HRC, 'General Comment No 10' on 'Article 19 (Freedom of Expression)' (1983), para 1.

[12] *Hak-Chul Shin v Republic of Korea*, UN Doc. CCPR/C/80/D/926/2000 (HRC, 19 March 2004) para 7.2; *Womah Mukong v Cameroon* UN Doc CCPR/C/51/D/458/1991 (HRC, 10 August 1994) para 9.7; *Sohn v Republic of Korea* UN Doc CCPR/C/54/D/518/1992 (HRC, 19 July 1995) para 10.4; *Malcolm Ross v Canada* UN Doc CCPR/C/70/D/736/1997 (HRC, 18 October 2000) para 11.2; *Vladimir Velichkin v Belarus* UN Doc CCPR/C/85/D/1022/2001 (HRC, 20 October 2005) para 7.3; UNHRC 16 May 2011 Report (n 4) para 24; General Comment 34 (n 3) para 35; UNHRC, 'Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression' (17 April 2013) UN Doc A/HRC/23/40 ('UNHRC April 2013 Report'), para 29.

[13] *Francisco Martorell v Chile* (IACtHR, 3 May 1996) para 55; *Herrera-Ulloa v Costa Rica* (IACtHR, 2 July 2004) para 120; IACHR, "Freedom of expression and the Internet" OEA/Ser.L/V/II., CIDH/RELE/INF. 11/13, 31 December, 2013, para. 58; IACHR, 'Report of the Special Rapporteur for Freedom of Expression' (2009) OEA/SER L/V/II Doc. 51, para 626.

[14] *Handyside v UK* App no 5393/72 (ECtHR, 7 December 1976) para 49; *Sunday Times v UK* (no 1) App no 6538/74 (ECtHR, 26 April 1979) para 45; *Ceylan v Turkey* App no 23556/94 (ECtHR, 8 July 1999) para 24; Murat Vural v Turkey App no 9540/07 (ECtHR, 21 January 2015) para 59; *Perinçek v Switzerland* App no 27510/08 (ECtHR, 15 October 2015), para 124.

[15] *The Law Society of Zimbabwe v The Minister of Transport and Communications and Another* (2004) AHRLR 292 (ZwSC 2004), para 18.

[16] ACommHPR, 'Resolution on the Adoption of the Declaration of Principles of Freedom of Expression in Africa' (2002) ACHPR/Res 62(XXXII)02 Principle II (2); *Interights and Others v Mauritania* AHRLR 87 Comm no 242/2001 (ACommHPR, 2004), paras 78–79; *Zimbabwe Lawyers for Human Rights & Institute for Human Rights and Development in Africa v Zimbabwe* AHRLR 268 Comm no 294/04 (ACommHPR, 2009), para 80.

I. Ballaya's prosecution under SIA is not consistent with Amostra's international obligations as it does not pass the three-part cumulative test

(i) Ballaya's prosecution under the SIA is invalid because the SIA does not meet the requirements of 'law'

(i) The definition of illegal conduct in the SIA is not sufficiently clear and precise

4. According to Art. 19 (3) of the ICCPR and the case law of the ECtHR[17], for a restriction to be legitimate, it must be provided by law. Moreover, it has to be publicly accessible[18], clear[19], drawn narrowly and with precision[20] in order to be understood by everyone and to enable individuals to regulate their behaviour accordingly[21].

5. *Firstly*, the SIA is too vague as it does not explicitly and definitely specify what conduct is punishable under this Act. In *Gaweda v. Poland*[22] ECtHR held, that the law must provide a '*clear indication*' of the circumstances when restraints are permissible. Conversely, the SIA only indicates

[17] *Handyside v UK* App no 5393/72 (ECtHR, 7 December 1976) para 44; *Sunday Times v UK* App no 6538/74 (ECtHR, 26 April 1979) para 45; *Ceylan v Turkey* App no 23556/94 (ECtHR, 8 July 1999) para 25; *Murat Vural v Turkey* App no 9540/07 (ECtHR, 21 January 2015) para 59; *Perinçek v Switzerland* App no 27510/08 (ECtHR, 15 October 2015), para 131.

[18] HRC, 'General comment No 34' on 'Article 19 (Freedom of Opinion and Expression)' (2011) UN Doc CCPR/C/GC/34, para 24.

[19] Recommendation CM/Rec (2014)6 of the Committee of Ministers to member States on a guide to human rights for Internet users – Explanatory Memorandum, para 47.

[20] The Johannesburg Principles on National Security, Freedom of Expression and Access to Information, Freedom of Expression and Access to Information, UN Doc. E/CN.4/1996/39 (1996).

[21] The principles compiled by the Special Rapporteur from various public sources, including the Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights (E/CN.4/1985/4, annex) and the general comments adopted by the Human Rights Committee, including No. 10 (Article 19 of the Covenant); Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, A/HRC/14/23, paras 78, 20 April 2010.

[22] *Gaweda v Poland* App no 26229/95, (ECtHR, 14 March 2012), para 40.

in a generalist manner six types of conduct, which constitute forbidden statements, without giving any further details or clarifications. Such offence as extremist activity should be clearly defined to ensure that it does not lead to unnecessary and disproportionate interference of FOE[23]. However, the SIA is vague and allows for arbitrariness in its application.

6. *Secondly*, one of the requirements flowing from the expression 'prescribed by law' is '*foreseeability, which obliges law to be formulated with sufficient precision, in order to enable a person to regulate his conduct accordingly*'[24]. Because the SIA does not clearly set out what constitutes the punishable conduct, it is not possible for a citizen to foresee the consequences of his behaviour.

7. *Thirdly*, the SIA is imprecise as the ECtHR has emphasised that '*the level of precision required of domestic legislation … depends … on the number and status of those to whom it is addressed*'[25]. Given that the SIA is addressed to the entirety of Amostra's population, it must carry a high degree of specificity.

8. *Fourthly*, as the SIA is vague, it leaves the national authorities too much latitude. As it is observed in the *Sunday Times* case[26], provisions that allow restrictions are to be interpreted strictly. However, SIA does not clearly express the scope of the discretion conferred on public authorities thus leaving

[23] HRC, Concluding observations on the Russian Federation (CCPR/CO/70/RUS).

[24] *Delfi AS v Estonia* App no 64569/09 (ECtHR, 16 June 2015) para 121; *Rekvenyi v Hungary* App no 25390/94 (ECtHR 20 May 1999), para 34.

[25] *Karacsony v Hungary* App nos 42461/13 and 44357/13 (ECtHR, 17 May 2016) para 125; *Centro Europa 7 S.r.l. and Di Stefano v Italy* App no 38433/09 (ECtHR, 2012) para 142; *Delfi AS v Estonia* App no 64569/09 (ECtHR, 2015) para 122); *Lindon, Otchakovsky-Laurens and July v France* App nos 21279/02 and 36448/02 (ECtHR, 22 October 2007), para 41.

[26] *Sunday Times v United Kingdom* App no 6538/74 (ECtHR, 26 April 1979).

plenty of room for interpretation. FOE as a fundamental right is too important to be left to interpretation.

9. Because of the aforementioned factors, the SIA was not properly drafted and therefore does not meet the requirement for being prescribed by law.

(ii) The definition of sanctions in the SIA does not meet requirements of clarity and precision.

10. In *Kafkaris v Cyprus*[27], the ECtHR held that the definition of the penalty must be '*accessible and foreseeable'*. It means that an individual must know '*from the wording of the relevant provision ... what penalty will be imposed*'. Also, '*the scope of the penalty ... and the manner of its execution*' has to be clear.

11. In section B of the SIA it is established that any person guilty of a criminal offense under this Act is subject to 'fines and prison sentences'[28]. The SIA however does not provide any information on minimum and maximum fines and imprisonment terms, nor what these depend on. Therefore, the SIA does not meet the requirement of 'prescribed by law', because it is not clear nor foreseeable as it does not enable Ballaya to regulate her conduct by understanding its seriousness.

(ii) The prosecution of Ballaya does not serve a legitimate purpose

[27] *Kafkaris v Cyprus* App no 21906/04 (ECtHR, 12 February 2008), para 140.

[28] The Case, para 10 B.

12. For a restriction of FOE to be permissible, it must serve a legitimate purpose[29]. ICCPR and UDHR state that a legitimate aim for a restriction of FOE can be only in situation of a threat to national security, public order, public health, morals or rights or reputations of others[30].

13. Invoking national security provisions, such as sedition laws, to prosecute human right defenders for disseminating information of public interest is not compatible with the ICCPR[31]. Ballaya's expression was not intended to incite violence, nor was it likely to incite such violence; she posed no risk to national security, public order or public health. In her column, Ballaya exposed government's wrongdoings and invited people to take part in peaceful public protest[32]. There was no evidence that the attackers were aware of Ballaya's expression[33].

14. Although States should promote plurality of the media[34], in the case at hand the Government has restricted Ballaya's FOE in order to protect the image of its authorities and to protect itself from criticism domestically and in international community. However, this is not a legitimate aim for restricting FOE, therefore it cannot be justified.

[29]African Court on Human and Peoples' Rights; *Lohé Issa Konaté v The Republic of Burkina Faso* (December 5, 2014); CM/Rec/2014 CoE, Guide to human rights for internet users; HRC, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (11 May 2016), para 7.

[30] ICCPR (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR), Article 19 (3); UDHR (adopted 10 December 1948) UNGA Res 217 A(III), Article 19.

[31] HRC 'General comment No 34' on 'Article 19 (Freedom of Opinion and Expression)' (2011) UN Doc CCPR/C/GC/34, para 31.

[32] The Case, para 18.

[33] The Case, para 21.

[34] Concluding observations on Guyana (CCPR/CO/79/Add.121); concluding observations on the Russian Federation (CCPR/CO/79/RUS); concluding observations on Vietnam (CCPR/CO/75/VNM); concluding observations on Italy (CCPR/C/79/Add. 37).

(iii) Ballaya's prosecution is not necessary in a democratic society

15. Applicants submit that the prosecution of Ballaya was not necessary in a democratic society, because it did not correspond to a pressing social need[35], which was defined by the ECtHR in *Chauvy and Others v. France*[36] as a need to determine whether the reasons adduced by the national authorities to justify the interference were '*relevant and sufficient*'. Moreover, to prove necessity, the direct and immediate connection between the expression and the threat has to be established[37].

16. Considering that the Government sought to protect an illegitimate aim, the prosecution and its reasons do not correspond to a pressing social need. Subsequently, there is no direct and immediate link between Ballaya's column, which was peaceful, and the riots.

17. Therefore the measures taken by the Government were not necessary as they were not under a pressing social need.

II. Ballaya's imprisonment was disproportionate sanction for violating a restriction on free speech in a democratic society

18. Restriction of FOE has to be proportionate, which means that a restrictive measure is the least intrusive instrument among those which might achieve their protective function and proportionate

[35] *Delfi AS v Estonia* App no 64569/09 (ECtHR, 16 June 2015); *Pentikäinen v Finland* App no 11882/10 (ECtHR, 20 Ocotber 2015); *Mouvement Raëlien Suisse v Switzerland* App no 16354/06 (ECtHR, 13 July 2012); *Kurier Zeitungsverlag und Druckerei Gmbh v Austria* App no 1593/06 (ECtHR, 19 June 2012); *Cumpănă and Mazăre v Romania* App no 33348/96; (ECtHR, 17 December 2004*); Chauvy and others v France* App no 64915/01 (ECtHR, 29 September 2004); *Janowski v Poland* App no 25716/94 (ECtHR, 21 January 1999).

[36] *Chauvy and others v France* App no 64915/01 (ECtHR, 29 September 2004) para 70.

[37] *Hak-Chul Shin v Republic of Korea*, UN Doc. CCPR/C/80/D/926/2000 (HRC, 19 March 2004), 'General Comment No 34' in 'Article 19: Freedoms of Opinion and Expression' (2011) UN Doc CCPR/C/GC/34, para 35.

to the interest to be protected[38]. It is customary that in case of FOE violation, custodial sentences can be applied only in very exceptional circumstances[39]. Application of criminal law should only be counteracted in the most serious of cases and imprisonment is never an appropriate penalty[40].

19. Therefore, Ballaya's imprisonment is inconsistent with international principles and case law as there was a clear disproportion and asymmetry between the offence and the punishment.

B. Amostra's prosecution of Ballaya under the ESA violates international principles, including Articles 19 and 20 of UDHR and 19 and 21 of the ICCPR

21. FOE forms a basis for the full enjoyment of a wide range of other human rights, including FOA[41] undertaken to express an opinion or position[42]. FOE is one of the objectives of FOA[43], so these rights will be interpreted in the light of each other[44] when analysing the permissible limitations under the three-part test[45].

[38] HRC, 'General comment No 34' on 'Article 19 (Freedom of Opinion and Expression)' (2011) UN Doc CCPR/C/GC/34, para 34.

[39] *Lohé Issa Konaté v Burkina Faso* (2014) App no 004/2013 (ACHPR 2014), para 165.

[40] HRC, 'General comment No 34' on 'Article 19 (Freedom of Opinion and Expression)' (2011) UN Doc CCPR/C/GC/34, para 47.

[41] HRC, 'General Comment No 34' on 'Article 19: Freedoms of Opinion and Expression' (2011) UN Doc CCPR/C/GC/34, para 4.

[42] UNESCO training manual-Freedom of expression and public order (2015) No ISBN 978-92-3-100066-9.

[43] *Ezelin v France* App no 11800/85 (ECtHR, 26 April 1991) para 37; *Djavit An v Turkey* App No 20652/92 (ECtHR 2003) para 39; *Women on Waves and Others v Portugal* App no 31276/05 (ECtHR 3 February 2009) para 28; *Barraco v France* App no 31684/05 (ECtHR, 5 March 2009) para 26; and *Palomo Sánchez and Others v Spain* App nos 28955/06, 28957/06, 28959/06 and 28964/06 (ECtHR, 12 September 2011).

[44] *Women on Waves and Others v Portugal* App no 31276/05 (ECtHR, 3 February 2009), para 28.

[45] UNGA Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression (2013) A/HRC/23/40, para 28.

I. Ballaya‘s expression falls within the scope of FOE

22. Ballaya, as a famous blogger[46], exercise the journalistic function[47] that needs special protection[48], especially when criticising government actions[49]. The applicant would like to recall that FOE is also applicable to those ideas that offend shock or disturb[50]. In *Dalban* case, the ECtHR held that journalistic freedom also covers possible recourse to a degree of exaggeration, or even provocation[51]. The case law of the HRC confirms that the scope of FOE includes, as in the present situation, opinion on public affairs[52], discussion of human rights[53] or political expression[54]. Therefore, even though the political ideas expressed in Ballaya‘s column might disturb or provoke, they are still covered by the scope of the FOE.

[46] The Case, para 15.

[47] HRC, ‘General Comment No 34’ on ‘Article 19: Freedoms of Opinion and Expression’ (2011) UN Doc CCPR/C/GC/34, para 44.

[48] UNESCO training manual-Freedom of expression and public order (2015) No ISBN 978-92-3-100066-9, P. 21.

[49] UN HCHR Expert meeting on the Links between Article 19 and 20 of the ICCPR: Freedom of expression and Advocacy of Religious Hatred that Constitutes incitement to Discrimination, Hostility or Violence (2008), p. 4.

[50] Resolution 2035 (2015) Protection of the safety of journalists and of media freedom in Europe, para 4.; *Handyside v United Kingdom* App no 5493/72 (ECtHR, 7 December 1976); UNGA Human Rights Council Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue (2011) A/HRC/17/27 para 37; *Arslan v Turkey* App no 23462/92 (ECtHR, 8 July 1999), para 66; *Chauvy and others v France* App no 64915/01 (ECtHR, 29 September 2004) para 69; Organization of American States, ‘Annual Report of the Inter-American Commission on Human Rights 2009’, (2009) OEA/Ser.L/V88. Doc 9, Chapter V. *Hertel v Switzerland*, 1998-VI Eur. Ct. H.R. 2298, 2329.

[51] *Dalban v Romania* App No 28114/95 (ECtHR, 28 September 1999); *Tromsø and Stensaas v Norway* App no 21980/93 (ECtHR, May 20 1999); *Prager and Oberschlick v Austria* 15974/90 (ECtHR, 26 April 1995).

[52] *Coleman v Australia* Communication no 1157/03, UN Doc CCPR/C/87/D/1157/2003 (2006) (HRC).

[53] *Vladimir Velichkin v Belarus* Communication no 1022/2001, UN Doc CCPR/C/85/D/1022/2001 (2005) (HRC).

[54] *Mpandanjila el. al. v Zaire* Communication No 138/83, UN Doc Supp. no 40 (A/41/40) at 121 (1986) (HRC); *Kalenga v Zambia* Communication no 326/88, UN Doc CCPR/C/48/D/326/1988 (1993) (HRC); *Joana v Madagascar* African Commission on Human and Peoples' Rights, Comm. no 108/93 (1996); *Kivenmaa v Finland* Communication no 412/90, UN Doc CCPR/C/50/D/412/1990 (1994) (HRC); *Aduayom el. al. v Togo* Communications nos 422/1990, 423/1990 and 424/1990, UN Doc. CCPR/C/51/D/422/1990, 423/1990 and 424/1990 (1996); *Korneenko v Belarus* Communication no 1553/07, UN Doc CCPR/C/88/D/1274/2004 (2006) (HRC).

II. Demonstration is protected by the FOA as it was peaceful

23. FOA covers the right to a peaceful demonstration[55] without censorship or restraint to FOE[56]. These rights are ensured to the peaceful participants who do not themselves commit any reprehensible act[57] even if the further demonstration becomes violent[58].

24. In *Stankov*[59] case, the ECtHR held that nonviolent intentions of the protest's organisers demonstrate the peaceful character of the demonstration[60].

25. In the case at hand, the protest on August 1 was peaceful – participants held signs, chanted and Ballaya did not participated in attacks[61]. She called for an 'active but peaceful Day of Resistance'[62] without any violent intentions[63].

[55] *Stankov and the United Macedonian Organisation Ilinden v Bulgaria* App nos 29221/95 and 29225/95, (ECtHR, 2 October 2001) para 77; *Galstyan v Armenia* App no 26986/03 (ECtHR, 15 November 2007), para 101; Nowak, UN Covenant on Civil and Political Rights: CCPR Commentary, 375.

[56] HRC, 'General Comment No 25' on 'Article 25 (Participation in Public Affairs and the Right to Vote), The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service' (1996) UN Doc CCPR/C/21/Rev.1/Add.7. P.

[57] *Taranenko v Russia* App no 19554/05 (ECtHR, 15 May 2014); *Ezelin v France* App no 11800/85 (ECtHR, 26 April 1991), para 53.

[58] Sarah Joseph and Melissa Castan, The international Covenant on Civil and Political Rights: cases, materials, and commentary, p. 646.

[59] *Stankov and the United Macedonian Organisation Ilinden v Bulgaria* App nos 29221/95 and 29225/95, (ECtHR, 2 October 2001).

[60] *Stankov and the United Macedonian Organisation Ilinden v Bulgaria* App nos 29221/95 and 29225/95, (ECtHR, 2 October 2001) para 77.

[61] The Case, para 21.

[62] The Case, para 18.

[63] Memorial Part B (V)(i), para 11.

26. Since Ballaya called a peaceful protest and did not commit any violence or reprehensible act, demonstration is protected by the FOA.

III. Restrictions are not prescribed by law

(i) The ESA cannot be regarded as 'law'

27. Restriction of FOE should always receive the democratic legitimacy given by the Parliament[64]. The concepts of legality and legitimacy require that only a law that has been passed by democratically elected and constitutionally legitimate bodies may restrict the enjoyment of freedoms[65]. In the present situation, restriction was issued by the NEA which is functioning within the framework of the executive power as a government-appointed regulator[66]. Obviously, it is not a legislative body of the state, thus the ESA lacks democratic legitimacy and cannot be regarded as 'law'.

(ii) The ESA is formulated in unclear and ambiguous manner

28. The interference is only considered to be provided by law when the law is accessible and sufficiently precise to enable a citizen to regulate his conduct[67]. Laws imposing restrictions or

[64] Monica Macovei. A guide to the implementation of Article 10 of the European Convention on Human Rights (Council of Europe Publishing 2004) p. 30-31 <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168007ff48> accessed 4 November 2016; UNGA Human Rights Council Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue (2010) A/HRC/14/23 section C, from p. 12. (http://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.14.23.pdf) accessed 4 November 2016.

[65] The Word 'Laws' in Article 30 of the American Convention on Human Rights, Advisory Opinion OC-6/86, Inter-American Court of Human Rights Series A No 6 (9 May 1986), para. 37.

[66] The Case, para 3.

[67] *Sunday Times v United Kingdom* App no 6538/74 (ECtHR, 26 April 1979) para 49; *Hashman and Harrup v the United Kingdom*, App no 25594/94 (ECtHR, 25 November 1999) para 31; *Kokkinakis v Greece* App no 14307/88 (ECtHR, 25 May 1993), para 40; *Lambert v California* 350 US 225, 229-230 (1957); Anna-Lena Svennson McCarthy,

limitations must be accessible, concrete, clear and unambiguous, such that they can be understood by everyone and applied to everyone[68]. In this regard, states should not use vague terms but adequately and clearly defined it[69].

29. In case at hand, the applicant was prosecuted under Section 3 of the ESA for inciting a violent political demonstration[70]. Incitement to violence falls outside the protection of FOE only where an intentional and direct wording incites violence[71]. However, it is not explicitly stated in the ESA what kind of conduct is sufficient to constitute incitement[72].

30. Therefore, vagueness of the ESA does not enable individuals, including Ballaya, to foresee how exercise of their right of expression could cause attacks in a peaceful protest and to regulate their conduct by preventing it.

IV. Restrictions did not pursue a legitimate aim of protecting public order

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The International Law of Human Rights and States of Exception: With Special Reference to the Travaux Preparatoires and the Case & law of the International Monitoring Organs (Martinus Nijhoff, 1998) 93.

[68] UNGA Human Rights Council Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue (2010) A/HRC/14/23 <http://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.14.23.pdf)> accessed 4 November 2016.

[69] Defence Handbook for Journalist and bloggers on freedom of expression and freedom of information principles in international law http://www.trust.org/contentAsset/raw-data/dceec155-7cb8-4860-a68e-4b463e562051/file, p. 26.

[70] The Case, paras 22-23.

[71] *Sürek v Turkey* (no 4) App no 24762/94 (ECtHR, 8 July 1999); Monica Macovei, A guide to the implementation of Article 10 of the European Convention on Human Rights (Council of Europe Publishing 2004) p. 17 <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168007ff48> accessed 18 November 2016.

[72] The Case, para 4.

31. The applicant submits that the restrictions cannot be justified because international law permits interference on the right to expression only by the demand of the legitimate aim[73]. As it was previously discussed[74], Ballaya's prosecution did not pursue any legitimate aim of protecting public order. Thus, the interference on Ballaya's right to expression is not permissible.

V. Restrictions are not necessary and proportionate

(i) There is no link between the expression and a violent protest

32. Necessity for any restrictions must be convincingly established[75] and meet a pressing social need[76]. Reasons for justification for a restriction must be relevant[77]. The anticipated danger should not be remote, conjectural or far-fetched. It should have proximate and direct nexus with the expression[78], which should be intrinsically dangerous and unequivocally call for violence[79] inciting or producing imminent lawless action[80]. This is not the situation in the case at hand. The Applicant's column did not cause danger itself – it was political opinion about situation in Amostra and invitation to a

[73] ICCPRC (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) Article 19(3)(b), Article 21; American Convention of Human Rights (adopted 22 November 1969, entered into force 18 July 1978) 13(2); UNHRC, 'General comment No 34' on 'Article 19 (Freedom of Opinion and Expression)'(2011) UN Doc CCPR/C/GC/34; *Dahlab v Switzerland* App no 42393/98 (ECtHR, 15 February 2001); *Interights and Others v Mauritania* (ACtHPR, 2004) AHRLR 87.

[74] Memorial Part A (I)(ii), paras 12-14.

[75] *Thorgeirson v Iceland* App no 13778/88 (ECtHR, 25 June 1992), para 63.

[76] *Zana v Turkey* App no 18954/91 (ECtHR, 25 November 1997), para 51; *Lingens v Austria* App no 9815/82 (ECtHR, 8 July 1986), paras 39-40.

[77] *Lingens v Austria* App no 9815/82 (ECtHR, 8 July 1986), paras 39-40.

[78] *Oberschlick v Austria* App no 15974/90, (ECtHR, 23 May 1991); *Sürek v Turkey* (no 4) App no 24762/94 (ECtHR, 8 July 1999); Joint Partly Dissenting Opinion of Judges Talkens, Casadevall and Greve.

[79] *S. Rangarajan v P.J. Ram* 1989 (2) SCR 204, p. 226. India; *S v Nathie* [1964] (3) SA 588 (AD) (South Africa).

[80] *Bradenburg v Ohio* 395 US 444, 447 (1969).

peaceful demonstration[81]. It is confirmed by the fact that there was no evidence that attackers even had read the Ballaya's expression[82].

33. Finally, the government has a burden of proof to demonstrate direct nexus with the expression and an allegedly threat of it[83]. Thus, until proved otherwise, it is considered that the actual link between the concrete expression and the later unlawful actions was not sufficiently substantiated. It leads to the conclusion that in the case at hand, the restrictions were not necessary.

(ii) Criminal conviction are not proportionate

34. Restrictions must be sufficient and proportionate to the aim pursued[84]. Restrictions that least restrict the rights and are rationally objective must be selected[85]. The use of criminal sanctions should be seen as last resort measures[86] when other alternative sanctions are already considered[87]. In *Jersild*[88] and *Lehideux and Isorni*[89], the ECtHR considered that imposition of a criminal conviction to restrict FOE is enough to violate the proportionality principle.

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[81] The Case, para 18; Memorial Part B (II), paras 23-26.

[82] The Case, para 21.

[83] Article 19, 'The Johannesburg Principles on National Security, Freedom of Expression and Access to Information' (1996) <https://www.article19.org/data/files/pdfs/standards/joburgprinciples.pdf> ('Johannesburg Principles') accessed 18 November 2016, p. 9.

[84] *Lingens v Austria* App no 9815/82 (ECtHR, 8 July 1986), paras 39-40.

[85] *R. v Oakes* Inter-American Court of Human Rights, Compulsory Membership, note 8, para 46; 1986 1 SCR 103, pp. 138-139.

[86] Venice Commission, Report on the Relationship Between Freedom of Expression and Freedom of Religion (17-18 October 2008) <http://www.venice.coe.int/docs/2008/CDL-AD(2008)026-e.pdf> acessed 1 November 2016.

[87] *Lehideux and Isorni* App no 24662/94 (ECtHR 23 September 1998), para 57.

[88] *Jersild v Denmark* App no 15890/89 (ECtHR, 23 September 1994) para 35.

[89] *Lehideux and Isorni* App no 24662/94 (ECtHR, 23 September 1998) para 57.

35. Moreover, severity of the penalties imposed is also a factor to be taken into account assessing the proportionality of the imposed measure[90]. The fine of $ 300,000, as in the present case, exceeds the amount recognized as proportionate in relevant case law[91]. There, the imposition of such a fine obviously infringes the principle of proportionality.

36. In conclusion, Ballaya‘s prosecution under the ESA violates international principles, including Articles 19 and 20 of UDHR and 19 and 21 of the ICCPR. Ballaya’s expression calling to a peaceful assembly is covered by the scope of FOE and FOA. Restrictions imposed under the ESA are not permissible limitations under the three-part test. Firstly, they were not prescribed by law. Secondly, restrictions were not pursuant to the legitimate aim. Thirdly, restrictions were not necessary and proportionate in a democratic society.

C. Amostra has no jurisdiction to obtain and enforce the civil order against SeeSey in Amostra and Sarranto

37. It should be noted at the outset that the term ‘jurisdiction’ primarily refers to the power of a court to hear and decide a case or make certain order. In this case, the extra-territorial personal jurisdiction over SeeSey is of most significance.

[90] *Ceylan v Turkey* App no 23556/94 (ECtHR, 8 Jul 1999); *Tammer v Estonia* App no 41205/98 (ECtHR, 6 February 2001); *Skałka v Poland* App no 43425/98 (ECtHR, 27 May 2003).

[91] *Cojocaru v Romania* App no 32104/06 (ECtHR, 10 February 2015).

38. Currently, there are no international legal acts establishing specific rules on personal jurisdiction[92] in Internet-related cases, where issues of extra-territorial jurisdiction often arise[93]. Besides, international courts are not directly concerned with this question[94].

39. Because of the above-mentioned reasons, primarily and mainly national courts struggle with difficulties of determining personal jurisdiction in Internet-related cases[95]. As a result, domestic courts have adopted various tests to determine whether they can assert jurisdiction over non-resident actors in cases involving online content[96].

40. Also, the EU – an international organization representing legal practice of 28 countries – attaches great importance to the development of the information society[97]. Therefore, the legislation of the EU[98] and the case law of the CJEU[99] give useful guidelines to establishment of jurisdiction over out-of-state defendants in Internet cases and will be reviewed too.

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[92] Faye Fangfei Wang. 'Obstacles and Solutions to Internet Jurisdiction. A Comparative Analysis of the EU and US laws'. Journal on International Commercial Law and Technology, Vol. 3, Issue 4 (2008), p. 233.

[93] Gwenn M. Kalow. 'From the Internet to Court: Exercising Jurisdiction over World Wide Web Communications', 65 Fordham L. Rev. 2241 (1997), p. 2248-2249; Faye Fangfei Wang. 'Obstacles and Solutions to Internet Jurisdiction. A Comparative Analysis of the EU and US laws'. Journal on International Commercial Law and Technology, Vol. 3, Issue 4 (2008), p. 233.

[94] ECtHR, Research Division. 'Internet: case-law of the European Court of Human Rights'. Updated: June 2015, p. 4.

[95] Cindy Chen. 'United States and European Union approaches to Internet jurisdiction and their impact on e-commerce', p. 423, <http://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1231&context=jil> accessed 10 November 2016.

[96] Corey Omer. 'Intermediary Liability for Harmful Speech: Lessons from Abroad'. Harvard Journal of Law & Technology.Volume 28, Number 1, fall 2014, p. 296.

[97] Opinion of Mr Advocate General Jääskinen delivered on 25 June 2013 in the CJEU case *Google Spain SL and Google Inc. v Agencia Española de Protección de Datos (AEPD) and Mario Costeja González* C-131/12.

[98] Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, OJ L 351, 20.12.2012, p. 1–32.

[99] *E. g., Peter Pammer v Reederei Karl Schlüter GmbH & Co. KG* C-585/08 and *Hotel Alpenhof GesmbH v Oliver Heller* C-144/09 (European Court of Justice, 7 December 2010).

41. It should be observed, that although a state is free to determine its policy for extra-territorial personal jurisdiction[100], it also should comply with certain common jurisdictional standards and international principles as a fundamental condition for its judgements recognition in other states[101].

42. Therefore, two of the most developed approaches (namely, one national taken by the US and the EU) will be examined below.

43. It should be stated at the outset, that both the EU and the US distinguish general and specific jurisdiction[102]. On the basis of their practice it will be demonstrated that Amostra has neither general nor specific jurisdiction over SeeSey.

I. Amostra has no general jurisdiction to obtain and enforce the civil order against SeeSey

(i) The Amostran court has no general jurisdiction over SeeSey, because its place of establishment is in another country

44. As established in the practice of the US, a general jurisdiction is usually premised on '*continuous and systematic*' contacts between the defendant and the forum[103]. Though this abstract and unduly broad[104] concept was narrowed in the *Goodyear* decision[105]. The court emphasized that general

[100] *S. S. Lotus (France v Turkey)* P. C. I. J. (ser. A) no 10 (Permanent Court of International Justice, 7 September 1927); Arthur Lenhoff. 'International Law and Rules on International Jurisdiction'. Cornell Law Review, 5 (1964), p. 8.

[101] Arthur Lenhoff. 'International Law and Rules on International Jurisdiction'. Cornell Law Review, 5 (1964), p. 23.

[102] Alan M. Trammell & Derek E. Bambauer. 'Personal jurisdiction and the "interwebs"'. Cornell Law Review, Vol. 100:1129 (2015), p.1136.

[103] *International Shoe Co v Washington* 326 US 310 (1945).

[104] Meir Feder, Eric E. Murphy. 'Supreme Court Limits Personal Jurisdiction over Out-of-State Defendants' (July 2011) <http://www.jonesday.com/supreme_court_limits_personal_jurisdiction/> accessed 25 October 2016.

jurisdiction over a corporation is permissible only in a state 'in which the corporation is fairly regarded as at home' and indicated that it is the state of incorporation or principal place of business[106].

45. In this case, SeeSey: (i) has its headquarters[107] and (ii) hosts all worldwide data on its servers in Sarranto[108]. As a result, it should be concluded that its domicile, as well as principal place of business, is in Sarranto. Respectively, only Sarranto's courts have a general jurisdiction over SeeSey.

46. SeeSey's merely virtual activity in Amostra does not create sufficient nexus between SeeSey and Amostra for the purpose of establishing general jurisdiction. The creation of a website that is accessible world-wide is no indication that the creator had purposefully availed himself of the benefits of a particular forum[109] and alone foreseeability that the site might be accessed in the forum is by itself insufficient to satisfy due process[110].

47. Thus, according to the above-mentioned practice the sole fact that SeeSey is equally accessible in every place around the world[111], including Amostra, is not a sufficient basis to establish Amostra's jurisdiction over it.

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[105] *Goodyear Dunlop Tires Operations, S.A. v Brown* no 10-76 (US, 27 June 2011).

[106] *Goodyear Dunlop Tires Operations, S.A. v Brown*, no 10-76 (US, 27 June 2011).

[107] The Case, para 8.

[108] The Case, para 8.

[109] *Bensusan Restaurant Corp. v King* 937 F. Supp. 295 (S. D. N. Y. 1996).

[110] *Bensusan Restaurant Corp. v King* 937 F. Supp. 295 (S. D. N. Y. 1996).

[111] The Case, para 6.

(ii) The Amostran court has no general jurisdiction over SeeSey, because it is not domiciled in this country

48. As stated above, there are no international legal acts dealing with Internet jurisdiction[112]. However, the EU has enacted a legal act that covers *inter alia* rules on Internet jurisdiction[113] – Regulation (EU) No 1215/2012[114]. The general jurisdiction rule under this act is that defendants shall be sued at the place of their domiciles[115].

49. Pursuant to Article 63 (1) of the mentioned Regulation, a company is domiciled at the place where it has: (i) its statutory seat or (ii) its central administration or (iii) its principal place of business[116]. Considering these provision and facts of the Case[117], Sarranto and not Amostra has general jurisdiction over SeeSey.

(iii) The existence of SeeSALES does not lead to conclusion that Amostra has jurisdiction over SeeSay

50. SeeSALES, which is established in Amostra[118] and over which Amostra has general jurisdiction, has its separate legal personality. Its activities are only ancillary to the main day-to-day activities of

[112] Memorial Part C, para 38.

[113] Fangfei Wang. 'Obstacles and Solutions to Internet Jurisdiction. A Comparative Analysis of the EU and US laws'. Journal or International Commercial Law and Technology, Vol. 3, Issue 4 (2008), p. 233.

[114] Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, OJ L 351, 20.12.2012, p. 1–32.

[115] Article 4(1) of the Regulation (EU) No 1215/2012.

[116] Article 63(1) of the Regulation (EU) No 1215/2012.

[117] The Case, para 8; Memorial Part C(I)(i), paras 44-47.

[118] The Case, para 9.

SeeSey and are solely related to the promotion of SeeSey in Amostra[119]. Moreover, the amount of its business is relatively insubstantial in comparison to the SeeSay's operations as a whole[120].

51. Therefore, Amostra cannot be considered as a SeeSey's place of establishment (domicile[121] or '*home*'[122]).

52. Only the CJEU in the judgement *Google Spain*[123] has found that the facts, similar to the circumstances of this Case, are sufficient to hold that company is established in a state, in which it sets up a subsidiary.

53. However, the *Google Spain* judgement is grounded on the special legal act – Directive 95/46[124].

54. This act has very specific objective – to give individual persons control over their personal data. Consequently, nor Directive 95/46, nor respectively the CJEU view given in the judgement *Google Spain*, should be applicable in this Case.

II. Amostra has no specific jurisdiction to obtain and enforce the civil order against SeeSey

[119] The Case, para 9.

[120] The Case, para 6.

[121] Articles 4(1) and 63(1) of the Regulation (EU) No 1215/2012.

[122] *Goodyear Dunlop Tires Operations, S.A. v Brown* no 10-76 (US, 27 June 2011).

[123] *Google Spain SL and Google Inc. v Agencia Española de Protección de Datos (AEPD) and Mario Costeja González* C-131/12 (CJEU, 13 May 2014).

[124] Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

56. Specific jurisdiction is dependent upon character of the dispute[125]. In the US, the most commonly invoked approaches[126] to establish specific personal jurisdiction in Internet-related cases is *'Zippo sliding-scale test'*[127] and *'Calder effects test'*[128], originally developed by the Supreme Court respectively in the *Zippo* case[129] and in the case *Calder v Jones*[130]. None of these tests could justify Amostra's jurisdiction over SeeSey in this Case.

57. *First*, these tests later were supplemented with '*targeting test*'[131]. Under this test, the claimant has to adduce evidences that defendant expressly and purposefully directed his activity to the forum state[132] and '*the creation of a website that is accessible world-wide is no indication that the creator had purposefully availed himself of the benefits of a particular forum*'[133].

[125] Alan M. Trammell & Derek E. Bambauer. 'Personal jurisdiction and the "interwebs"'. Cornell Law Review, Vol. 100:1129 (2015), p.1136.

[126] O'Reilly C. 'Finding jurisdiction to regulate Google and the Internet'. European Journal of Law and Technology, Vol. 2, No. 1 (2011).

[127] *Dedvukaj v Maloney* 447 F. Supp. 2d 813 (E. D. Mich. 2006); *Maritz Inc. v Cybergold Inc.* 947 F Supp 1328 (E. D. Mo. 1996), etc.

[128] *IMO Industries, Inc. v Kiekert AG* 155 F.3d (3d Cir. 1998); *Mavrix Photo, Inc. v Brand Technologies, Inc.* 647 F. 3d (9th Cir. 2011); *Herman v Cataphora, Inc*. 730 F.3d (5th Cir. 2013); *Gorman v Jacobs* 597 F.Supp.2d (E. D. Pa. 2009); *Walden v Fiore* 134 S. Ct. 1115 (2014), etc.

[129] *Zippo v Zippo Dot Com* 952 F. Supp. III9 (W.D. Pa. I997).

[130] *Calder v Jones* 465 US 783 (1984).

[131] *Bancroft & Masters, Inc. v Augusta Nat'l Inc.* 223 F. 3d 1082, 1087 (9th Cir. 2000); Cindy Chen. 'United States and European Union approaches to Internet jurisdiction and their impact on e-commerce', p. 435 <http://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1231&context=jil> accessed 10 November 2016.

[132] *J. McIntyre Machinery, Ltd. v Nicastro* no 09-1343 (US, 27 June 2011). *Also Cybersell, Inc. v Cybersell, Inc.* (1997); *ALS Scan, Inc. v Digital Serv. Consultants, Inc.* 293 F.3d (4th Cir. 2002).

[133] *Bensusan Restaurant Corp. v King* 937 F. Supp. 295 (S.D.N.Y. 1996). *Also McDonough v Fallon McElligott, Inc.* 40 US P.Q.2d (BNA) 1826 (S. D. Cal. 1996).

58. As mentioned above, SeeSey, including Ballaya's column, is equally accessible worldwide[134]. Also, SeeSey has many subsidiaries all around the world, not only in Amostra[135]. Thus, SeeSey's activity is not exceptionally targeted to Amostra.

59. *Second*, if it would be recognized that these facts are sufficient for a state to exercise personal jurisdiction over SeeSey, it actually would be exposed to the jurisdiction of every state around the world. However, such broad conception would be incompatible with the principles of fairness[136], legal certainty[137] and due process[138].

60. The latter proposition is strengthened by the fact, that there is no sufficient national statutory authorization – no '*long-arm statute*'[139], which explicitly would permit to suit foreign subjects in Amostra's courts. The SIA also does not provide appropriate legal ground in this Case[140].

61. *Third*, the '*effects test*' should be applicable only in those cases, where intentional infringement could be determined[141]. In the current Case, SeeSey is merely a passive ISP[142] (or intermediary[143])

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[134] The Case, para 6.

[135] The Case, para 9.

[136] Dan L. Burk. 'Jurisdiction in a World without Borders'. 1 Va. J. L. & Tech. 3 (Spring 1997) <http://www.vjolt.net/vol1/issue/vol1_art3.html> accessed 12 November 2016.

[137] Fangfei Wang. 'Obstacles and Solutions to Internet Jurisdiction. A Comparative Analysis of the EU and US laws'. Journal or International Commercial Law and Technology, Vol. 3, Issue 4 (2008), p. 233; Cindy Chen. 'United States and European Union approaches to Internet jurisdiction and their impact on e-commerce', p. 443 <http://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1231&context=jil> accessed 10 November 2016; O'Reilly C., 'Finding jurisdiction to regulate Google and the Internet', European Journal of Law and Technology, Vol. 2, No. 1 (2011), part 3, para 11.

[138] *ALS Scan, Inc. v Digital Serv. Consultants, Inc.* 293 F. 3d 707, 714 (4th Cir. 2002). *World-Wide Volkswagen Corp. v Woodson* 444 US 286, 297 (1980).

[139] *International Shoe Co v Washington* 326 US 310 (1945).

[140] The Case, para 10.

and only Ballaya's aims could be appreciated. Therefore, the 'effects test' does not provide a reasonable basis to assert Amostra's jurisdiction over SeeSey.

62. Additionally, no basis for Amostra's special jurisdiction over SeeSey could be found in the EU law[144].

III. SeeSey's role in fostering human rights

63. The international community agrees that the free Internet should play a key role in mobilizing the population to call for justice, equality, accountability and better respect for human rights[145]. If a very broad approach to the extraterritorial jurisdiction in Internet-related cases would be adopted, it would determine serious obstacles for Internet intermediaries to foster human rights[146].

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[141] *Walden v Fiore* 134 S. Ct. 1115 (2014); *IMO Indus., Inc. v Kiekert AG*, 155 F.3d 254, 256 (3d Cir. 1998); *Mavrix Photo, Inc. v Brand Technologies, Inc*. (9th Cir. 2011) 647 F.3d 1218, 1228; *Pavlovich v Superior Court* 29 Cal. 4th 262 (Cal. 2002); Fangfei Wang. 'Obstacles and Solutions to Internet Jurisdiction. A Comparative Analysis of the EU and US laws'. Journal or International Commercial Law and Technology, Vol. 3, Issue 4 (2008), p. 239.

[142] The Case, paras 6, 14.

[143] UNESCO. 'Fostering Freedom Online: the Role of Internet Intermediaries' (authors: Rebecca MacKinnon, Elonnai Hickok, Allon Bar, Hae-in Lim) (2014), p. 19, 131-132, 199. *Also* UNESCO. Freedom of connection, freedom of expression. The Changing Legal and Regulatory Ecology Shaping the Internet'. Oxford Internet Institute, University of Oxford (2011), p. 85.

[144] Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, OJ L 351, 20.12.2012, p. 1–32.

[145] Human Rights Council. 'Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression'. Frank La Rue, A/HRC/17/27 (16 May 2011); UNESCO. 'Fostering Freedom Online: the Role of Internet Intermediaries' (authors: Rebecca MacKinnon, Elonnai Hickok, Allon Bar, Hae-in Lim) (2014), p. 131.

[146] UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS Special Rapporteur on Freedom of Expression and ACHPR Special Rapporteur on Freedom of Expression and Access to Information Joint Declaration on Freedom of Expression and the Internet (1 June 2011) <https://www.osce.org/fom/99558?download=true> accessed 20 October 2016. *Also* Global Network Initiative. 'Protecting and Advancing Freedom of Expression and Privacy in Information and Communications Technologies' <https://www.globalnetworkinitiative.org/sites/default/files/GNI_-_Principles_1_.pdf> accessed 20 October 2016.

64. Taking into account all the presented arguments, the Applicants submit that the Amostran court has neither general nor specific jurisdiction to issue an order against SeeSey.

D. Amostra's civil order against SeeSey violates Amostra's international obligations, including Articles 19 and 29 of UDHR and Article 19 of ICCPR

I. The order is not a justified restriction, as it does not pass the three-part cumulative test

65. Applicants submit that the order against SeeSey is not compatible with Article 29(2) of UDHR and Article 19(3) of ICCPR, as it does not pass the three-part cumulative test. The order (i) is not prescribed by law, (ii) it does not pursue a legitimate aim and (iii) it is not necessary in a democratic society[147].

(i) The order is not prescribed by law

66. Applicants submit that the order issued under the SIA was not prescribed by law, since both the provisions of the SIA[148] and the terms of the order are overly vague.

67. *Firstly*, as it was stated by the ECtHR in *Sunday Times v. United Kingdom*, a restriction cannot be

[147] *Sürek v Turkey* App no 26682/95 (ECtHR, 8 July 1999); *Kurier Zeitungsverlag und Druckerei Gmbh v Austria* App no 1593/06 (ECtHR, 19 June 2012); *The Sunday Times v United Kingdom* App no 6538/74 (ECtHR, 26 April 1979); *Ríos v Venezuela* IACtHR (2009) Series C No 194, para 346; *Herrera Ulloa v Costa Rica* IACtHR (2004) Series C No 107; *Vladimir Petrovich Laptsevich v Belarus*, Communication no 780/1997, UN Doc. CCPR/C/68/D/780/1997 (2000) (HRC), para 8.2; *Womah Mukong v Cameroon*, Communication no 458/1991, UN Doc. CCPR/C/51/D/458/1991 (1994) (HRC); *Jong-Kyu Sohn v Republic of Korea*, Communication no 518/1992, UN Doc. CCPR/C/54/D/518/1992 (1995) (HRC).

[148] Memorial Part A (I)(i)(i), paras 4-10.

considered as prescribed by law if it is not foreseeable, i. e. sufficiently precise[149]. In addition, measures, which enforce the removal of Internet content, may be taken if they are directed at clearly identifiable Internet content[150].

68. *Secondly,* States should refrain from pressuring, punishing or rewarding intermediaries of restricting lawful content[151].

69. In the present case, first of all, the SIA is vague, since section D of it establishes that '… *the offending statement must be physically distributed or published in Amostra …*'. It is not clear from the wording whether statement should be read as meaning either 'distributed or published physically' or 'distributed or published regardless of the form (online, in a book, in a journal)'. Therefore, the provision of the SIA is not foreseeable as to its effects[152].

70. In addition, the order is vague, as Amostran court requires to remove: '*all offensive content replicating or relating to Ballaya's column, including comments made by users of SeeSey …*'[153]. Terms 'all', 'replicating' and especially 'relating' are overly vague and do not direct at clearly identifiable content. The order itself does not directly specify which particular content and

[149] *Delfi AS v Estonia* App no 64569/09 (ECtHR, 16 June 2015) para 121; *Lindon, Otchakovsky-Laurens and July v France*, no 21279/02 and 36448/02, (ECtHR, 22 October 2007), para 41; *The Sunday Times v United Kingdom* App no 6538/74 (ECtHR, 26 April 1979); *Malone v United Kingdom* App no 8691/79 (ECtHR, 2 August 1984); *Gillan and. Quinton v United Kingdom* App no 4158/05 (ECtHR, 12 January 2010); *Rekvényi v Hungary* App no 25390/94 (ECtHR, 20 May 1999).

[150] Council of Europe, 'Declaration on Freedom of Communication on the Internet' (28 May 2003) Principle 6.

[151] The United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples' Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information Joint Declaration on Freedom of Expression and countering violent extremism, para 2 (e).

[152] *Rotaru v Romania* App no 28341/95 (ECtHR, 4 May 2000); *Amann v Switzerland* App no 27798/95 (ECtHR, 16 February 2000); *Kopp v Switzerland* App no 13/1997/797/1000 (ECtHR, 25 March 1998).

[153] The Case, para 24.

comments have to be removed.

71. As the order is framed in overly-broad terms, the SeeSey is pressed to block lawful content, since the burden of decision-making in order to determine which material is considered to be offensive falls particularly to the SeeSey. Therefore, it can lead to the removal of lawful content, which may result in a violation of Internet users' FOE[154].

72. Taking into account that both provisions of the SIA and terms of the order in question was not sufficiently precise and could result in arbitrary restriction of publication of lawful content, the Applicants submit that the order against SeeSey was not prescribed by law.

(ii) The order is not in pursuit of a legitimate aim

73. As it was discussed above[155], Applicants submit that the order pursues none of the legitimate aims under Article 19 (3) of ICCPR and Article 29 (2) of UDHR.

(iii) The order is not necessary in a democratic society

74. Applicants submit that the order is not necessary in a democratic society, since (i) it is not proportionate and (ii) it does not correspond to a pressing social need[156].

[154] Recommendation CM/Rec (2014) 6 of the Committee of Ministers to member States on a guide to human rights for Internet users – Explanatory Memorandum, para 53, <https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805c6f85?> accessed 17 November 2016.

[155] Memorial Part A (I)(ii), para 12-14.

[156] *Delfi AS v Estonia* App no 64569/09 (ECtHR, 16 June 2015); *Pentikäinen v Finland* App no 11882/10 (ECtHR, 20 Ocotber 2015) *Mouvement Raëlien Suisse v Switzerland* App no 16354/06 (ECtHR, 13 July 2012); *Kurier Zeitungsverlag und Druckerei Gmbh v Austria* App no 1593/06 (ECtHR, 19 June 2012) *Cumpănă and Mazăre v Romania* App no 33348/96 (ECtHR, 17 December 2004*); Chauvy and others v France* App no 64915/01 (ECtHR, 29 September 2004); *Janowski v Poland* App no 25716/94 (ECtHR, 21 January 1999); *Funke v France* App no 10828/84

a) The order is not proportionate

75. Applicants submit that the order is not proportionate, since the court of Amostra applied not the least restrictive measure.

76. *Firstly*, The ECtHR held in *Handyside v United Kingdom* that restriction imposed in the sphere of FOE must be proportionate to the legitimate aim pursued[157]. It is well established that if there are various options to achieve objective, the one which least restricts the protected right should be selecte[158]. Moreover, actions required of intermediaries must be narrowly tailored and proportionate to protect the fundamental rights of Internet users[159].

77. *Secondly*, a user should be able to access content that is lawful in his or her country even if it is unlawful in another country[160]. If an intermediary receives a request to remove content, it should not restrict access to the content in other countries where the content is lawful[161]. In addition, where the order with only domestic consequences accomplishes all that is necessary to achieve a

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(ECtHR, 25 February 1993); *Z v Finland* App no 22009/93, (ECtHR, 25 February 1997); *Vladimir Velichkin v Belarus* Communication No 1022/2001, UN Doc CCPR/C/85/D/1022/2001 (HRC); *Malcolm Ross v Canada*, Communication no 736/1997, UN Doc. CCPR/C/70/D/736/1997 (2000) (HRC); Article 19, 'Freedom of expression and ICTs: Overview of international standards' (2013) <http://www.article19.org/data/files/Intermediaries_ENGLISH.pdf> accessed 25 October 2016.

[157] *Handyside v United Kingdom* App no 5493/72 (ECtHR, 7 December 1976) para 48; *Funke v France* App no 10828/84 (ECtHR, 25 February 1993); *Z v Finland* App no 22009/93, (ECtHR, 25 February 1997); *Velichkin v Belarus* Communication no 1022/2001, UN Doc CCPR/C/85/D/1022/2001 (HRC); *Malcolm Ross v Canada*, Communication no 736/1997, UN Doc. CCPR/C/70/D/736/1997 (2000) (HRC).

[158] *Doğan v Turkey* App no 50693/99 (ECtHR, 10 January 2006), paras 150, 152; *Ricardo Canese v Paraguay* IACtHR (2004) Series C no 111, para 96; *Shelton v Tucker* 364 US 479 (1960).

[159] The Manila principles on Intermediary Liability (2015) <https://www.eff.org/sites/default/files/manila-principles-background-paper-0.99.pdf> accessed 4 November 2016.

[160] *Ibid.*

[161] *Ibid.*

legitimate aim, a more expansive order to several countries should not be made[162].

78. In the present case, first of all, although SeeSey has the technical ability to block individual posts from individual countries and to make a post invisible, for instance, only in Amostra, but visible in the rest of the world[163], the court of Amostra requires to remove the content *'... from any location worldwide, including Amostra and Sarranto*'[164]. Apparently, the Amostran did not use the least restrictive available measure to remove the content.

79. Secondly, if this Court finds that the content is unlawful in Amostra, it must not be removed in other countries where the content is considered lawful. Removal of the content only in Amostra is considered to be the least restrictive measure, as it accomplishes all that is necessary to achieve a legitimate aim pursued.

b) The order does not correspond to a pressing social need

80. The adjective 'necessary' implies the existence of a 'pressing social need'[165]. Pressing social need exists only in a case there is a direct and immediate connection between the expression and the protected interest[166]. Particularly, (i) the expression has to intend to incite imminent violation, (ii) it is likely to incite violence, (iii) there is a direct and immediate connection between the expression

[162] *Equustek Solutions Inc. v Google Inc.*, The Supreme Court of British Columbia (2015), Case no CA41923, para 106.

[163] The Case, para 7.

[164] The Case, para 24.

[165] *Zana v Turkey* App no 69/1996/688/880 (ECtHR, 25 November 1997), para 51.

[166] *Perinçek v Switzerland* App no 27510/08 (ECtHR, 15 October 2015), para 71; HRC, 'General Comment No 34' in 'Article 19: Freedoms of Opinion and Expression' (2011) UN Doc CCPR/C/GC/34, para 35; Article 19, 'Freedom of expression and ICTs: Overview of international standards' (2013) < http://www.article19.org/data/files/Intermediaries_ENGLISH.pdf> accessed 25 October 2016.

and the likelihood or occurrence of such violence[167].

81. Having regard to the facts that (i) Ballaya's column, which was accompanied by comments, does not intend to incite violation[168], (ii) column and comments itself does not incite violence[169], therefore (iii) there is no direct connection between the column, accompanied by comments, and the arson attack, the order does not correspond to a pressing social need[170].

II. The order violates both SeeSey's and its users freedom of expression and other related rights

83. Applicants submit that the order violates not only SeeSey's, but also its users' freedom of expression and other related rights.

84. The ECtHR held in *Casado Coca v Spain*[171] that Article 10 of the ECtHR guarantees FOE to 'everyone', including legal persons. Therefore, social media platforms and its' users possess the right to FOE.

85. As for the SeeSey and its' users, it is noteworthy that '*CEO of SeeSey has publicly stated that it is*

[167] Article 19, 'The Johannesburg Principles on National Security, Freedom of Expression and Access to Information' (1996) <https://www.article19.org/data/files/pdfs/standards/joburgprinciples.pdf> ('Johannesburg Principles') accessed 5 November 2016, p. 9.

[168] Memorial Part B (V)(i), paras 32-33.

[169] Memorial Part B (V)(i), paras 32-33.

[170] Memorial Part B (V)(i), paras 32-33.

[171] *Casado Coca v Spain* App no 15450/89 (ECtHR, 24 February 1994) para 35; *Autronic AG v Switzerland*, App no 12726/87 (ECtHR, 22 May 1990), para 47.

'the planet's best news source' and *'the best way to promote the causes most important to you'*[172]. Moreover, SeeSey is the most popular source of news and political discussion[173]. Therefore, since the restriction of FOE and other related rights of SeeSey and its' users did not meet the three-part test[174], SeeSey's, as a best news source, ability to promote the most popular news and it's users ability to freely discuss relevant political news are restricted.

86. Having regard to the above-mentioned and to the fact that the order does not pass the three-part cumulative test, Applicants submit that its enforcement contravenes to SeeSey's FOE [175], the right to impart information and ideas[176], as well as impairs online expression[177]. Hence, it must be emphasised that an injunction to an intermediary infringes the fundamental rights of Internet users' to receive or impart information[178], FOE, the right to seek, receive and impart information and ideas[179], as well as online expression[180], freedom of connection and freedom of information[181].

[172] The Case, para 14.

[173] The Case, para 12.

[174] Memorial Part D (I), para 65.

[175] ICCPR Article 19; UDHR Article 19.

[176] *Ibid.*

[177] The Manila principles on Intermediary Liability (2015) <https://www.eff.org/sites/default/files/manila-principles-background-paper-0.99.pdf> accessed 4 November 2016.

[178] *Scarlet Extended SA v Société belge des auteurs, compositeurs et éditeurs SCRL (SABAM)* C-70/10 (CJEU, 24 November 2011), para 50.

[179] ICCPR Article 19; UDHR Article 19.

[180] The Manila principles on Intermediary Liability (2015) <https://www.eff.org/sites/default/files/manila-principles-background-paper-0.99.pdf> accessed 4 November 2016.

[181] W. H. Dutton, A. Dopatka, M. Hills, G. Law, V. Nash. 'Freedom of Expression. Freedom of Connection. The Changing Legal and Regulatory Ecology Shaping the Internet', UNESCO (France, 2011), p. 22, 23.

PRAYER

For the foregoing reasons, the Applicants respectfully request this Honourable Court to adjudge and declare that:

1. Ballaya's prosecution under the SIA violates international principles, including Article 19 of UDHR and Article 19 of ICCPR

2. Ballaya's prosecution under the ESA violates international principles, including Articles 19 and 20 of UDHR and 19 and 21 of the ICCPR.

3. Amostra has no jurisdiction to obtain and enforce the civil order against SeeSey in Amostra and Sarranto.

4. Amostra's civil order against SeeSey violates international principles, including Articles 19 and 29 of UDHR and Article 19 of ICCPR.

On behalf of Blenna Ballaya and SeeSey

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Agents for the Applicants