

2016

THE 2016-2017 OXFORD PRICE MEDIA LAW MOOT COURT COMPETITION

Blenna Ballaya & SeeSey

(Applicants)

v

Amostra

(Respondent)

MEMORIAL FOR RESPONDENT

WORD COUNT: 4990

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LIST OF ABBREVIATIONS

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
CM	Committee of Ministers
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
EWHC	High Court of England and Wales
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
MOA	Margin of appreciation

NEA	National Election Authority
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
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. 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.
3. 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.
4. 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 prohibited 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. SESEY 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.
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. 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. It also 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

12. 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.
13. 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

14. Blenna Ballaya, a citizen of Amostra who is resident in Sarranto, is a famous blogger who regularly writes about political matters on her blog.
15. A Sarranto-based domestic newspaper popular with Amostran immigrants, paid Ballaya to write a one-time column as an opinion contributor.
16. 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.
17. On the 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

18. 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.

19. 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.

20. 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. The attackers 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*”.

VII. LEGAL PROCEEDINGS

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

22. 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.

23. 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

Amostra (Respondent) 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, 20 and 29 of the UDHR and Article 19 and 21 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.

Amostra (Respondent) 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 UDHR and Article 19 of the 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. FOE is a fundamental right in any democratic society, however, it has certain limitations.

Amostra's prosecution of Ballaya under the SIA is in accordance with international law and principles, as it is prescribed by law, in pursuit of a legitimate aim, and necessary in a democratic society. Firstly, the prosecution does satisfy the requirement of being prescribed by law as it is adequately accessible and precise, therefore foreseeable. The SIA was enacted before the publication of Ballaya's column and was constructed to ensure peace and stability in the fragile public environment of Amostra. Ballaya could foresee the consequences of her conduct in accordance with the SIA. Secondly, prosecution of Ballaya meets the legitimate aim of preventing public disorder and securing the wellbeing of its citizens in Amostra. The SIA was adopted in response to the hostilities between Yona and Zasa that already had resulted in civilian casualties. The Amostra's government needed to take the restrictive measures enshrined in the SIA against Ballaya in order to prevent any further unrest between two religious groups, which had been fanned by Ballaya's column. Lastly, restrictions imposed by SIA are necessary in a democratic society as they are proportional and satisfy the 'pressing social need' requirement as established by ECtHR.

B. Ballaya's prosecution under the ESA does not violate international principles. Restrictions imposed under the ESA are permissible limitations under the three-part test. Firstly, they are prescribed by law since ESA is accessible and formulated with sufficiently precision and foreseeability. Ballaya could have foreseen the consequences of expression that incited violent protest. Secondly, restrictions are pursuant to a legitimate aim which, according to sensitivity of political situation in Amostra, is prevention of public disorder. Thirdly, restrictions are necessary as they responded to a pressing social need to protect public safety. Plus, there are a clear link between the expression and violence that occurred on Ballaya's called protest. Finally,

restrictions are framed and applied proportionally – limited duration of the limitations, together with the nature and severity of Ballaya’s sanction, complies with the proportionality principle.

- C.** Under international law Amostra is free to establish its own jurisdictional rules. Besides, Amostra’s extraterritorial jurisdiction over SeeSey in this Case is in line with approaches developed in other countries and the EU. Firstly, there is an inextricable link between Amostra and SeeSey, as the latter has a subsidiary in this country and stable contacts between SeeSey and Amostra could be determined. Secondly, Balaya’s column is accessible in the territory of Amostra and detrimental effects of SeeSey’s activities (provision of access to Balaya’s column) occurred within Amostra’s territory. Therefore, Amostra is most interested in adjudicating the dispute. Finally, SeeSey’s activities are directed towards Amostra’s residents and SeeSey receives considerable benefit from its activities in this country. All these factors are considered as significant and sufficient to establish personal jurisdiction over out-of-state defendants (in this Case – SeeSay) in legal practice of the EU, the US, Canada, Italy, France, UK, Germany.
- D.** Although the order might restrict SeeSey’s and its’ users FOE and related rights, it is consistent with Articles 19 and 29 of UDHR and Article 19 of ICCPR, as these restrictions comply with the cumulative three-part test. Firstly, the order is prescribed by law, since the order is sufficiently precise and SeeSey as a professional should have been familiar with it. Secondly, it is in pursuit of a legitimate aim of protecting public order of Amostra. Thirdly, having regard to the connection between the Ballaya’s column and riots, wide MOA of national authorities, SeeSey’s strong contribution and impact on the flow of popular information in Amostra, as well as to the facts that only SeeSey has the technical ability to block individual posts in individual countries, and that the order does not ask to block the entire service, only specific posts worldwide, the order issued particularly against SeeSey is necessary in a democratic society.

ARGUMENTS

A. Amostra's prosecution of Ballaya under the SIA does not violate international principles, including article 19 of UDHR and article 19 of ICCPR

1. The right to FOE¹ is not absolute and may be subject to reasonable restrictions under international law.² The prosecution of Ballaya under the SIA is justified because it is prescribed by law (i), pursues a legitimate aim (ii) and is necessary in a democratic society (iii). The restriction on FOE enshrined in SIA fulfils the principles and requirements that have been endorsed by the UNHRC³, the IACtHR⁴, the ECtHR⁵, AHRLR⁶ and the ACommHPR.⁷

¹ UDHR (adopted 10 December 1948) UNGA Res 217A (III) article 19; ECHR (adopted 4 November 1950, entered into force 3 September 1953) 213 UNTS 1932 article 10(1); ICCPR (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 article 19(1)(2); ACHR (adopted 22 November 1969, entered into force 18 July 1978) article 13; ACHPR (adopted 27 June 1981, entered into force 21 October 1986) (1982) 21 ILM 58 article 9.

² *Worm v Austria* App no 22714/93 (ECtHR, 29 August 1997); UDHR article 29(2); ECHR (adopted 4 November 1950, entered into force 3 September 1953) 213 UNTS 1932 article 10(2); ICCPR article 19(3); ACHR (adopted 22 November 1969, entered into force 18 July 1978) article 13(2); ACHPR (adopted 27 June 1981, entered into force 21 October 1986) (1982) 21 ILM 58 article 9(2); HRC, 'General Comment No 34' in 'Article 19: Freedoms of Opinion and Expression' (2011) UN Doc CCPR/C/GC/34 para 21; Recommendation CM/Rec(2014)6 of the CM to Member States on a Guide to Human Rights for Internet Users (adopted 16 April 2014) para 3, p. 3.

³ *Hak—Chul Shin v Republic of Korea* no 926/2000, UN Doc. CCPR/C/80/D/926/2000 (2004) para 7.2; *Womah Mukong v Cameroon*, Communication no 458/1991, UN Doc. CCPR/C/51/D/458/1991 (1994) para 9.7; *Jong-Kyu Sohn v Republic of Korea*, Communication no 518/1992, UN Doc. CCPR/C/54/D/518/1992 (1995) para 10.4; *Malcolm Ross v Canada*, Communication no 736/1997, UN Doc. CCPR/C/70/D/736/1997 (2000) para 11.2; *Velichkin v Belarus* Communication no 1022/2001, UN Doc CCPR/C/85/D/1022/2001 (2005) para 7.3; HRC, '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) para 24; UNGA, 'Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression' (10 August 2011) UN Doc A/66/290 para 15; HRC, 'General Comment No 34' in 'Article 19: Freedoms of Opinion and Expression' (2011) UN Doc CCPR/C/GC/34 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 para 29.

⁴ *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.

⁵ *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.

I. The SIA meets the requirement of ‘prescribed by law’

2. Any restriction must be both formally and materially prescribed by law.⁸ A restriction is generally prescribed by law if it has a basis in domestic law and is adequately accessible (i), and sufficiently precise, therefore foreseeable (ii).⁹

(i) The SIA has its basis in domestic law and is adequately accessible.

3. Amostra’s legislator passed the SIA in response to the growing political tensions in the state, thus making it a legitimate act of the country.¹⁰ Restrictions on FOE must be prescribed by law prior to an alleged violation.¹¹ It must be unambiguously established by pre-existing law that the FOE may be limited.¹² Restrictions formulated in SIA were established prior to the publishing Ballaya’s column, therefore, Ballaya’s prosecution undoubtedly has its basis in domestic law.

⁶ *The Law Society of Zimbabwe v The Minister of Transport and Communications and Another* (2004) (ZwSC 2004), para 18.

⁷ 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(ACtHPR 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.

⁸ *Kimel v Argentina* IACtHR (2008) Series C no 177, para 63.

⁹ *The Sunday Times v United Kingdom*, App no 6538/74 (ECtHR, 26 April 1979) para 49; *Silver and others v United Kingdom* App nos 5947/72; 6205/73; 7052/75; 7061/75; 7107/75; 7113/75; 7136/75 (ECtHR, 24 October 1983) para 86-87.

¹⁰ *Ibid.*

¹¹ IACHR, Advisory Opinion OC-5/85 Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Articles 13 and 29 American Convention on Human Rights), (13th November 1985) para 89.

¹² Media Law and Defamation International Press Institute, *Reference and Training Manual for Europe Freedom of Expression* (February 2015), p. 14.

4. As for the accessibility of the SIA, the ECtHR stated that the citizen must have an adequate indication of the legal rules applicable in a given case.¹³ It also underlined that ‘*assumptions and guesses do not suffice*’, and rather ‘*the application of legal rules must be given to any ... case.*’¹⁴ The SIA clearly stipulated restrictions taking into account recent protests that led to the destruction of government property and series of threats against the lives of Amostra’s leading officials. Accordingly, Amostra’s citizens including Ballaya had a clear indication of the legal rules that will be applicable to their behaviour.

ii) The SIA is sufficiently precise, therefore foreseeable

5. A law is foreseeable if it is formulated with sufficient precision to allow a citizen to regulate his conduct and foresee the resulting consequences.¹⁵ Therefore, precision of the law implies foreseeability.¹⁶ However, the ECtHR clarified that norms ‘*don’t have to be foreseeable with an absolute certainty*’¹⁷, and that it ‘*may still satisfy the requirement of foreseeability even if the person concerned has to take appropriate legal advice to assess ... the consequences which a given action*

¹³ *The Sunday Times v United Kingdom* App no 6538/74 (EHHR, 26 April 1979), para. 49.

¹⁴ *Ibid*, para 47.

¹⁵ *Muller v Switzerland*, App no 10737/84 (ECtHR, 24 May 1988), para 29.

¹⁶ Stephen Kabera Karanja, ‘Transparency and Proportionality in the Schengen Information System and Border Control Co-operation’ (2008), p. 221.

¹⁷ *RTBF v Belgium* App no 50084/06, (ECtHR, 29 March 2011), para 103-104; Kindt, Els J. ‘Privacy and Data Protection Issues of Biometric Applications: A Comparative Legal Analysis’ (2013).

may entail'.¹⁸ Furthermore, the level of required precision is determined by the circumstances, depending on the content of the law and to whom it is directed.¹⁹

6. In the present case²⁰, the SIA indicated the possible legal consequences of extremist and anti-patriotic statements with required precision. Ballaya had visibility of the consequences that her actions may entail. Moreover, interpretation and application of any law, including the SIA, depends on practice. This position was confirmed by the ECtHR²¹, which affirmed '*the impossibility of attaining absolute precision in the framing of laws*' and accepted '*the need to avoid rigidity and keep pace with changing circumstances*'.
7. The Respondent would like to underline that Ballaya's conviction was upheld by the Amostra's Supreme Court²², thus it is apparent that the SIA clearly provided for the right to appeal, which constitutes an important safeguard.²³
8. Therefore, the law was sufficiently precise and foreseeable clearly stipulating the requirements for establishing liability for illegal conduct enshrined in the SIA as well as providing for adequate safeguards and thus enabling Ballaya to regulate her conduct accordingly.

¹⁸ *Lindon, Otchakovsky-Laurens and July v France* App nos 21279/02 and 36448/02, (ECtHR, 22 October 2007) para 41.

¹⁹ *Metropolitan Church of Bessarabia and Others v Moldova* App no 45701/99 306 (ECtHR 13 December 2001), para 109.

²⁰ The Case para 1.

²¹ *Müller and Others v Switzerland*, ECtHR 24 May 1988, para 29; *Tammer v Estonia*, no 41205/98, ECtHR 2001-I para 37; *Chauvy and Others v France*, no 64915/01, ECtHR 2004-VI, para 43.

²² The Case para 25.

²³ *Malcolm Ross v Canada*, Communication no 736/1997, UN Doc. CCPR/C/70/D/736/1997 (2000) para 11.4; *Uzun v Germany* App no 35623/05 (ECtHR, 2 September 2010) para 72; *Gurtekin v Cyprus* App nos 60441/13, 68206/13, 68667/13 (ECtHR, 11 March 2014) para 28.

II. The prosecution of Ballaya under the SIA pursues a legitimate aim

9. Restrictions may be justified in the interests of the protection of public order and general welfare.²⁴ This ground for restriction was confirmed in a number of cases.²⁵ Public order can be described as what is ‘*in essential interest of the State or the community*’²⁶ or as ‘*the conditions that assure the normal and harmonious functioning of institutions based on a coherent system of values and principles*’.²⁷ However, the boundaries of public order cannot be precisely defined and may vary according to the time, place and circumstances.²⁸
10. Considering political tensions in Amostra’s society and previous harm to its citizens, the threats to its internal order are ‘*pressing and substantial*’.²⁹ Taking into account all the hostilities between Yona and Zasa, that resulted in civilian casualties and thus seeking to prevent any further unrest between two religious groups, which had been fanned by Ballaya’s column, government of Amostra was under a pressing need to take restrictive measures in order to protect public order and health.

²⁴ UDHR (adopted 10 December 1948) UNGA Res 217 A(III) (UDHR) article 29(2); ICCPR (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) article 19(3).

²⁵ *X v Austria* App no 8170/78 (ECtHR, 13 December 1979); *X v United Kingdom* App no 8231/78 (ECtHR, 5 November 1981); *X v United Kingdom* App no 5442/72 (ECtHR, 3 October 1975); *X v The Federal Republic of Germany* App no 1860/63 (ECtHR, 30 March 1966).

²⁶ Kindt, Els J., ‘Privacy and Data Protection Issues of Biometric Applications: A Comparative Legal Analysis’, (2013) para 324.

²⁷ UNESCO, ‘Freedom of Expression and Public Order Training manual’ (2015) p 33.

²⁸ *HKSAR v Ng Kung Siu*, 2 H.K.C.F.A.R., Hong Kong (CFA, 15 December 1999), para 459-460.

²⁹ *R. v Oakes*, The Supreme Court of Canada 1986 1 SCR 103 paras 15, 48, 54, 59.

11. Therefore, prosecution of Ballaya pursues the legitimate aim of protecting public order, including welfare of the citizens, because protecting these interests includes regulating and sanctioning expression that may incite violence³⁰ and therefore pose a risk to aforementioned interests.

III. The prosecution of Ballaya under the SIA is necessary in a democratic society

12. The restrictions imposed by SIA are necessary in a democratic society as they are proportional (i), and satisfy ‘pressing social need’ requirement (ii).³¹

(i) Restrictions are proportional to the pursuance of the aim

13. When a State makes any restrictions on FOE, it must take only such measures that are proportionate to the pursuance of legitimate aims. The HRC stated that the restriction ‘*must be the least intrusive measure to achieve the intended legitimate objective and the specific interference in any particular instance must be directly related and proportionate to the need on which they are predicated*’.³²

14. In this case, measures taken were proportionate and were exercised in the least restrictive manner, because a more lenient penalty would have been ineffective in achieving public order and welfare of the society. According to the ECtHR, it is not only important to ensure that applied standards are ‘*in conformity with the requirements of the Convention*’, but also by applying the standards all

³⁰ HRC, ‘General Comment No 34’ in ‘Article 19: Freedoms of Opinion and Expression’ (2011) UN Doc CCPR/C/GC/34 para 31.

³¹ *Lingens v Austria* App no 9815/82 (ECtHR, 8 July 1986), paras. 39-40 (ECtHR); *Handyside v United Kingdom* App no 5493/72 (ECtHR, 7 December 1976) para 48; CoE ‘A guide to the implementation of Article 10 of the European Convention on Human Rights’ by Monica Macovei (2004) 10 August 2011; HRC, ‘General Comment No 34’ in ‘Article 19: Freedoms of Opinion and Expression’ (2011) UN Doc CCPR/C/GC/34 para 31.

³² HRC, ‘General Comment No 22’ on ‘Freedom of Thought, Conscience and Religion (Article 18)’ (30 July 1993).

relevant facts have to be diligently assessed.³³ It is noteworthy that tensions in Amostra and its unstable political history necessitated the use of restrictions enshrined in the SIA in order to maintain public order in the society.

(ii) Interference satisfies ‘pressing social need’ requirement

15. FOE restricting state must justify, that the interference was ‘necessary’ considering the facts and circumstances prevailing in the specific case before it.³⁴ However, the ECtHR in *S. and Marper v UK*³⁵ case left a wide MOA to States in assessing whether pressing social need exists as they can better evaluate the necessity, suitability and overall reasonableness of a limitation on fundamental rights.

16. Following the ECtHR judgement in *News Verlags GmbH v Austria*,³⁶ the pressing social need has to be determined with consideration of the general context. Furthermore, the ECtHR in *Klass* stated that, ‘*some compromise between the requirements for defending democratic society and individual rights is inherent in the system of the Convention*’.³⁷

17. The Respondent submits that the situation in Amostra meets the necessity requirement since the social unrest, violence and resulting threat to the citizens’ health required to take the measures that

³³ *Oberschlick v Austria* App no 15974/90, (ECtHR, 23 May 1991), para 60.

³⁴ Murat Tumay LLB. ‘The European Convention on Human Rights: Restricting Rights in a Democratic Society with Special Reference to Turkish Political Party Cases’ (2013), p. 54.

³⁵ *S and Marper v UK* App nos 30562/04 and 30566/04 (ECtHR, 4 December 2008); *Z v Finland* App no 22009/93 (ECtHR, 25 February 1997); *Chassagnou and others v France* App nos 25088/94, 28331/95 and 28443/95 (ECtHR, 29 April 1999).

³⁶ *News Verlags GmbH & Co KG v Austria* App no 31457/96 (ECtHR, 11 April 2000).

³⁷ *Klass v Germany* App no 5029/71 (ECtHR, 6 September 1978), para 59.

would efficiently secure the health and wellbeing of the society.³⁸ Amostra's legislator used its wide MOA for a legitimate interest in ensuring that citizens would not cause harm to each other and public order would be protected.

18. Additionally, restriction passes the 'clear and present danger' test, which was developed by the US Supreme Court in order to determine when inflammatory speech intending to advocate illegal action can be restricted.³⁹ The standard developed determined that speech advocating the use of force or crime could only be proscribed where two conditions were satisfied: (1) the advocacy is '*directed to inciting or producing imminent lawless action,*' and (2) the advocacy is '*likely to incite or produce such action*'.⁴⁰ Amostra restricting extremist or anti-patriotic statements such as 'calling for illegal action' or 'publicly inciting hatred against religious groups', clearly satisfies above mentioned conditions.

19. In the present mater, interference by Amostra's government meets the 'pressing social need' requirement in order to be considered necessary in a democratic society.

³⁸ The Case para 1-3.

³⁹ Murat Tumay LLB. 'The European Convention on Human Rights: Restricting Rights in a Democratic Society with Special Reference to Turkish Political PartyCases' (2013), p. 54.

⁴⁰ *Bradenburg v Ohio* 395 US 444, 447 (1969).

B. Amostra's prosecution of Ballaya under the ESA does not violate international principles, including Articles 19 and 20 of UDHR and 19 and 21 of the ICCPR

20. FOE and FOA are closely linked⁴¹ as FOE is one of the objectives of FOA⁴². Therefore, these rights should be interpreted in light of each other.⁴³ It is well established that both rights are not absolute and may be subject to the reasonable restrictions.⁴⁴
21. The Respondent submits that in the case at hand these rights were legally restricted, since the restrictions (i) are prescribed by law, (ii) pursue a legitimate aim and (ii) are necessary and proportionate.⁴⁵

I. Restrictions of Ballaya's FOE and FOA are prescribed by law

22. Restrictions are considered to be prescribed by law if the law in question meets requirements of accessibility, sufficiently precision and foreseeability.⁴⁶

⁴¹ 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 para 27; *Ezelin v France* App no 11800/85 (ECtHR, 26 April 1991) para 37, 51; *Djavit An v Turkey* App no 20652/92 (ECtHR 20 February 2003), para 39; *Christian Democratic People's Party v Moldova* App no 28793/02 (ECtHR 14 February 2006), para 62; *Öllinger v Austria* App no 76900/01 (ECtHR 29 June 2006), para. 38.

⁴² *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; *Palomo Sánchez and Others v Spain* App no 28955/06, 28957/06, 28959/06 and 28964/06 (ECtHR 12 September 2011) para 52.

⁴³ *Women on Waves and Others v Portugal* App no 31276/05 (ECtHR 3 February 2009) para 28.

⁴⁴ *Worm v Austria* App no 22714/93 (ECtHR, 29 August 1997); UDHR article 29(2); ECHR (adopted 4 November 1950, entered into force 3 September 1953) 213 UNTS 1932 article 10(2); ICCPR article 19(3); ACHR (adopted 22 November 1969, entered into force 18 July 1978) article 13(2); ACHPR (adopted 27 June 1981, entered into force 21 October 1986) (1982) 21 ILM 58 article 9(2); HRC, 'General Comment No 34' in 'Article 19: Freedoms of Opinion and Expression' (2011) UN Doc CCPR/C/GC/34 para 21; Recommendation of the CM to Member States on a Guide to Human Rights for Internet Users CM/Rec(2014)6 (adopted 16 April 2014) para 3; *Tristán Donoso v Panamá* Inter-American Court of Human Rights Series C No184 (27 January 2009); *Kimel v Argentina* Inter-American Court of Human Rights Series C no 177 (2 May 2008).

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) The ESA is accessible

23. Accessibility means that a citizen must be able to have an indication that is adequate in the circumstances of the legal rules applicable to a given case.⁴⁷ The ESA was officially announced by NAE⁴⁸, it has basis in domestic law⁴⁹, therefore it should be considered as set out in accessible manner.⁵⁰

(ii) The ESA is formulated with sufficiently precision and foreseeability

24. Restrictions must be sufficiently precise to allow an individual to foresee the consequences which a given action may entail.⁵¹ The interference in the present situation was based on the ESA which explicitly states the kind of political demonstrations, their incitement and attendance, that are not allowed within general election – ‘*where participants spread an extremist or seditious message or seek to incite hatred, violence, or disrupt the democratic process*’. The case law of the ECtHR

⁴⁶ *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).

⁴⁷ *Sunday Times v United Kingdom* App no 6538/74 (ECtHR, 26 April 1979); CoE Human rights files no 15 by Steven Greer Reader in Law University of Bristol (1997) <[http://www.echr.coe.int/LibraryDocs/DG2/HRFILES/DG2-EN-HRFILES-15\(1997\).pdf](http://www.echr.coe.int/LibraryDocs/DG2/HRFILES/DG2-EN-HRFILES-15(1997).pdf)> accessed 12 November 2016.

⁴⁸ The Case, para 3.

⁴⁹ *Gorzelik and Others v Poland* App no 44158/98 (ECtHR 17 February 2004).

⁵⁰ *Murphy v Ireland* App no 44179/98 (ECtHR, 10 July 2003), para 62.

⁵¹ *Sunday Times v United Kingdom* App no 6538/74 (ECtHR, 26 April 1979) para 49; *Muller v Switzerland*, App no 10737/84 (ECtHR, 24 May 1988), para 29; *S.W. v the United Kingdom* App No 20166/92 (22 November 1995); *Halford v the United Kingdom* 20605/92 (ECtHR 25 June 1997).

confirms that lack of an expressed concept of every definition does not mean that the law is framed insufficiently because excessive rigidity needs to be avoided leaving interpretation to practise.⁵²

25. The applicant used words such as ‘*we trust that our faith will carry us home; we are not afraid to fight we are not afraid to die*’⁵³ inviting to participate in a protest. Such language, considering the past events in Amostra⁵⁴, could have been understood as inciting violent protest⁵⁵ prohibited by the ESA. Ballaya obviously could have foreseen the consequences of her action calling ‘*to fight*’— not only in a peaceful manner, therefore the ESA must be regarded as sufficiently precise.

26. Since the ESA is accessible and formulated with sufficient precision and foreseeability, the restrictions in question were provided by law.

II. Restrictions pursue the legitimate aim of protecting public order

27. Restrictions of FOE and FOA are permissible if they pursue a legitimate aim.⁵⁶ Interference to FOE and FOA can be justified by the demands of public order.⁵⁷ It includes prohibitions on speech which

⁵² *Gorzelik and Others v Poland* App no 44158/98 (ECtHR 17 February 2004); *Rekvényi v Hungary* App no 25390/94 (ECtHR 20 May 1999) para 34; *Refah Partisi (the Welfare Party) and Others v Turkey* App no 41340/98, 41342/98, 41343/98 and 41344/98, (ECtHR 13 February 2003) para 57.

⁵³ The Case, para 21.

⁵⁴ The Case, para 1.

⁵⁵ Memorial Part B(III)(ii), paras 31-32.

⁵⁶ ICCPR (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) article 19(3)(b), article 21; ACHR (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.

⁵⁷ *Driemand and Others v Norway* App no 33678/96 (ECtHR 4 May 2000); ECOSOC, ‘The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights’ (1984) UN Doc E/CN.4/1985/4, cl I(A)(22)-(24);

may incite crime, violence, or mass panic⁵⁸ riots and affrays⁵⁹ where the organisers and participants have violent intentions⁶⁰ and when there is a concrete threat to an important legally-protected interest.⁶¹

28. Case law of the HRC and the ECtHR confirms that the sensitivity of security situation or disturbance between the different groups in a state should be taken into account evaluating the aim of the restrictions.⁶² In the present case, Amostra has been experiencing a tense political situation and increasing social unrest between the two major religious groups.⁶³ Thus, it had to place restrictions in order to prevent public disorder. These restrictions were taken in line with Amostra's international obligations.

III. Restrictions are necessary and proportionate

(i) Restriction is response to a social need

⁵⁸ *Surek v Turkey* (no 1) App no 26682/95 (ECtHR, 8 July 1999); *Dogan v Turkey* (No. 3) App no 4119/02 (ECtHR 10 October 2006); Sarah Joseph and Melissa Castan, *The international Covenant on Civil and Political Rights: cases, materials, and commentary*, p. 618.

⁵⁹ Sarah Joseph and Melissa Castan, *The international Covenant on Civil and Political Rights: cases, materials, and commentary*, p. 646.

⁶⁰ *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.

⁶¹ *Rassemblement jurassien v Switzerland* App no 8191/78 (ECtHR, 10 October 1979) para 9; The German Federal Constitutional Court (27 February 2008) 1 BvR 370/07 and 1 BvR 595/0; ECOSOC, 'The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights' (1984) UN Doc E/CN.4/1985/4, cl I(A)(22)-(24).

⁶² *Kim Jong-Cheol v Republic of Korea*, Communication no 968/2001, UN Doc. CCPR/C/84/D/968/2001 (2005) (HRC); *Zana v Turkey* App no 18954/91 (ECtHR, 25 November 1997).

⁶³ The Case, para 1.

29. Necessity for any restriction must meet a pressing social need.⁶⁴ When the authority is confronted with a foreseeable danger to public safety, it has a broad MOA to impose restrictions.⁶⁵

30. In *Rassemblement jurassien*⁶⁶, the ECtHR stressed that considerable tension in a state allows banning the political demonstrations and this restriction complies with the necessity principle. The situation is the same in the case at hand – Amostra assessed previous violent protests that even resulted in one of the protestor’s death⁶⁷ and imposed the restriction on violent political demonstrations. Therefore the restriction should be considered as a proportionate response to a pressing social need to maintain public safety.

(ii) There was a link between the expression of Ballaya and the violence during the protests on August 1

31. The restriction is only justified if the anticipated danger has proximate and direct nexus with the expression⁶⁸ calling for violence.⁶⁹ Further, such expression must incite or produce imminent lawless action.⁷⁰

⁶⁴ *Observer and Guardian v the United Kingdom* App No 13585/88 (ECtHR, 26 November 1991); *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.

⁶⁵ *Rassemblement jurassien v Switzerland* App no 8191/78 (ECtHR, 10 October 1979) para 9; *Handyside v United Kingdom* App no 5493/72 (ECtHR, 7 December 1976) para 48.

⁶⁶ *Rassemblement jurassien v Switzerland* App no 8191/78 (ECtHR, 10 October 1979) para 9.

⁶⁷ The Case, para 1.

⁶⁸ *Oberschlick v Austria* App no 15974/90, (ECtHR, 23 May 1991); *Sürek v Turkey* (No. 4) App no 24762/94 (ECtHR, 8 July 1999).

⁶⁹ *S. Rangarajan v P.J. Ram* (1989 (2) SCR 204, p. 226. India).

⁷⁰ *Brandenburg v Ohio* 395 US 444, 447 (1969).

32. In *Sürek v Turkey*⁷¹, the ECtHR noted that the expression is considered as inciting to further violence when it communicates a message that recourse to violence is a necessary and justified measure of self-defence in the face of the aggressor.⁷² This was the exact situation as it is in the present case.⁷³ Ballaya used seditious⁷⁴ and provocative⁷⁵ language that incited people to carry knives or other weapons in a protest.⁷⁶ Later that same language was used by the attackers in a violent protest.⁷⁷ Hence, the expression of Ballaya caused public danger and could be directly linked to the violent actions.

(iii) The restriction was proportionate

33. Principle of proportionality requires the restrictions to be the least intrusive instruments to the aim pursued.⁷⁸ In *Rassemblement jurassien*, the ECtHR noted that duration of restrictions must be taken into account when assessing whether a measure of interference is proportionate.⁷⁹ In that case, as in the case at hand, prohibition of political demonstrations was limited in time and ECtHR concluded that it was permissible.

⁷¹ *Sürek v Turkey* (no 3) App no 24735/94 (8 July 1999).

⁷² *Sürek v Turkey* (no 3) App no 24735/94 (8 July 1999); *Dogan v Turkey* (no 3) App no 4119/02 (ECtHR, 10 October 2006).

⁷³ The Case, para 18.

⁷⁴ Memorial Part B(I)(ii), para 31.

⁷⁵ *Surek v Turkey* (No. 1) App no 26682/95 (ECtHR, 8 July 1999); *Bradenburg v Ohio* 395 US 444 (1969); *Hess v Indiana* 414 US 105 (1973); HRC, 'Contribution of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression' (2001) UN Doc A CONF189/PC2/24.

⁷⁶ The Case, para 20.

⁷⁷ The Case, para 21.

⁷⁸ *Handyside v United Kingdom* App no 5493/72 (ECtHR, 7 December 1976); *Goodwin v United Kingdom* App no 28957/95 (ECtHR 11 July 2002); *Observer and Guardian v United Kingdom* App no 13585/88 (ECtHR 26 November 1992); *Lingens v Austria* App no 9815/82 (ECtHR, 8 July 1986) paras 39-40; *R. v Oakes*, The Supreme Court of Canada 1986 1 SCR 103, para 46; HRC, 'General Comment No 34' on 'Article 19: Freedoms of Opinion and Expression' (2011) UN Doc CCPR/C/GC/34, para 34.

⁷⁹ *Rassemblement jurassien v Switzerland* App no 8191/78 (ECtHR, 10 October 1979) para 11.

34. Finally, the principle of proportionality has to be respected also when applying the law⁸⁰ and considering the severity of the penalty.⁸¹ In the cases of incitement to violence, as it is in the present case⁸², the ECtHR considered that even a prison sentence could be justified.⁸³ The fine imposed on Ballaya is significantly less severe and even lower compared to maximum penalty given in Section 3 of the ESA, thus it is not excessive or overbroad and properly applied.

35. Since the restrictions were response in to a pressing social need and Ballaya's expression was linked to later violent actions, the restrictions in question were necessary and proportionate.

36. In conclusion, Ballaya's prosecution under the ESA does not violate international principles, including Articles 19 and 20 of UDHR and 19 and 21 of the ICCPR as restrictions imposed under the ESA are permissible limitations under the three-part test. Firstly, the ESA is prescribed by law. Secondly, it is in pursuit of a legitimate aim of protecting public order of Amostra. Thirdly, the ESA is necessary and proportionate.

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

⁸⁰ HRC, 'General Comment No 34' on 'Article 19: Freedoms of Opinion and Expression' (2011) UN Doc CCPR/C/GC/34, para 34; *Marques v Angola* Communication no 1128/2002 UN Doc CCPR/C/83/D/1128/2002 (2005); *Coleman v Australia* Communication no 1157/2003, UN Doc CCPR/C/87/D/1157/2003 (2006).

⁸¹ *Ceylan v Turkey* App no 23556/94 (ECtHR 1999); *Tammer v Estonia* App no 41205/98 (ECtHR 2001); *Skalka v Poland* App no 43425/98 (ECtHR 27 May 2003).

⁸² Memorial Part B(III)(ii), para 25.

⁸³ *Gündüz v Turkey* App no 59745/00 (ECtHR 13 November 2003).

37. The continuing reinvention and worldwide diffusion of the Internet has made it an increasingly central medium of expression of the 21st century.⁸⁴ Accordingly, it determined the rise of some important jurisdictional issues in Internet-related cases⁸⁵, as traditional principles of personal jurisdiction are not sufficient and eligible in this case.⁸⁶

38. Various newly developed approaches will be invoked to substantiate the proposition that Amostra has jurisdiction to obtain and enforce the civil order against SeeSey.

I. The assertion of jurisdiction against out-of-state defendants

39. Since there is no supranational authority which limits the jurisdiction of a state to persons residing within its territorial confines, each state may establish the content of the law on this subject as it chooses.⁸⁷

40. Similarly, according to the ECtHR, domestic courts should set the circumstances in which national court can exercise jurisdiction over a defendant located or domiciled in a country other than the country in which a complaint has been made.⁸⁸

⁸⁴ UNESCO. *Freedom of connection, freedom of expression. The Changing Legal and Regulatory Ecology Shaping the Internet*. Oxford Internet Institute - University of Oxford, 2011, p. 8.

⁸⁵ ECtHR, Research Division. *Internet: case-law of the European Court of Human Rights*. Updated: June 2015.

⁸⁶ Chris Rojao. *Buy It Now: Establishing Personal Jurisdiction Over Out-of-State Who Conduct Business Through Online Intermediaries*. Seton Hall Law Review, Vol. 43:1075, 5/28/2013, p. 1076; O'Reilly C. *Finding jurisdiction to regulate Google and the Internet*. European Journal of Law and Technology, Vol. 2, No. 1, 2011; Alan M. Trammell & Derek E. Bambauer. *Personal jurisdiction and the "interwebs"*. Cornell Law Review, Vol. 100:1129, 2015.

⁸⁷ *S. S. Lotus (France v Turkey)*, 1927 P.C.I.J. (ser. A) no 10 (Sept. 7) (Permanent Court of International Justice). Also Arthur Lenhoff. *International Law and Rules on International Jurisdiction*. Cornell Law Review, 5 (1964), p. 8.

⁸⁸ *Preminary v Russia* App no 44973/04 (ECtHR, 10 February 2011); ECtHR, Research Division. *Internet: case-law of the European Court of Human Rights*. Updated: June 2015, p. 4.

41. Accordingly, Amostra has discretion in establishing its own jurisdictional rules. Nevertheless, Amostra's position that it should have extraterritorial jurisdiction over SeeSey could be justified by common practice of different countries and the EU, as will be shown below.

II. Inextricable links between SeeSey and Amostra

(i) *Traditional minimum contacts analysis*

42. Due to the fact that US companies are at the forefront of Internet technology, litigation regarding e-commerce in the US is more advanced than anywhere else.⁸⁹ Because of this, the US's approach will be examined first.

43. The US law has two kinds of personal jurisdiction – general and specific.⁹⁰ Under the traditional minimum contacts test, which the Supreme Court firstly clarified in the landmark case *International Shoe Co. v Washington*⁹¹, general jurisdiction is usually premised on 'continuous and systematic' contacts between the defendant and the forum.⁹²

44. In order to invoke the aforementioned test and establish specific jurisdiction, the following conditions have to be met: (i) the defendant must have 'minimum contacts' with the forum state⁹³;

⁸⁹ 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), <<http://www.jiclt.com/index.php/jiclt/article/view/65>> accessed 10 November 2016, p. 237.

⁹⁰ Cindy Chen. *United States and European Union approaches to Internet jurisdiction and their impact on e-commerce*, <<http://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1231&context=jil>> accessed 10 November 2016, p. 423; Gwenn M. Kalow. *From the Internet to Court: Exercising Jurisdiction over World Wide Web Communications*, 65 Fordham L. Rev. 2241 (1997), p. 2249.

⁹¹ Chris Rojao. *Buy It Now: Establishing Personal Jurisdiction Over Out-of-State Defendants Who Conduct Business Through Online Intermediaries*. Seton Hall Law Review, Vol. 43:1075, 5/28/2013, p. 1077.

⁹² *International Shoe Co v Washington*, 326 US (1945) (Supreme Court).

⁹³ *World-Wide Volkswagen Corp. v Woodson*, 444 US (1980); *International Shoe Co v Washington*, 326 US (1945).

(ii) a claim must arise out of or relate to those contacts⁹⁴; (iii) the exercise of personal jurisdiction must be fundamentally fair and reasonable.⁹⁵

45. Also in Canada, a similar test was established – the presence of a ‘real and substance connection’ between the defendant and the forum.⁹⁶

46. In the Case at hand, the nexus between SeeSey and Amostra is, as required, real and substantial, and contacts between them cannot be described as attenuated, random or fortuitous.⁹⁷

47. *Firstly*, SeeSey is fitted for users residing in Amostra, as SeeSey shows content to users based *inter alia* upon their self-selected ‘Home Location’.⁹⁸ It should be observed, that the adaptation of the website to the needs of inhabitants of a particular state, is also taken into consideration in the CJEU case law.⁹⁹

48. *Secondly*, SeeSey even owns a subsidiary company (SeeSALES) in Amostra¹⁰⁰ that has employees¹⁰¹, pays all appropriate taxes¹⁰² and conducts promotional activity there.¹⁰³ All

⁹⁴ *Burger King Corp. v Rudzewicz*, 471 US (1985); *Helicopteros Nacionales De Colombia, S.A. v Hall*, 466 US 408, 414 n.9 (1984).

⁹⁵ *World-Wide Volkswagen Corp. v Woodson*, 444 US (1980); *International Shoe Co v Washington*, 326 US (1945).

⁹⁶ Corey Omer. *Intermediary Liability for Harmful Speech: Lessons from Abroad*. Harvard Journal of Law & Technology. Volume 28, Number 1, fall 2014, p. 296. Also *Club Resorts Ltd. v Van Breda*, (2012) 1 S.C.R. 572 (Can.).

⁹⁷ Chris Rojao. *Buy It Now: Establishing Personal Jurisdiction Over Out-of-State Defendants Who Conduct Business Through Online Intermediaries*. Seton Hall Law Review, Vol. 43:1075, 5/28/2013, p. 1093. Also *Foley v Yacht Mgmt. Grp., Inc.*, no 08-7254, 2009 WL 2020776, at *3–4 (N.D. Ill. July 9, 2009).

⁹⁸ The Case, para 6.

⁹⁹ Judgment of the CJEU (Grand Chamber) of 7 December 2010 in joined cases *Peter Pammer v Reederei Karl Schlüter GmbH & Co. KG* (C-585/08) and *Hotel Alpenhof GesmbH v Oliver Heller* (C-144/09).

¹⁰⁰ The Case, para 9.

¹⁰¹ *Ibid.*

¹⁰² *Ibid.*

aforementioned activities are directly related to the main activity of SeeSay – management of a social media platform.¹⁰⁴ And the civil order issued by the Amostran court against SeeSay is also related to the control of the same social media platform.

49. *Finally*, Amostra should have jurisdiction over SeeSay as it satisfies ‘traditional notions of fair play and substantial justice’.¹⁰⁵ *First*, Amostra is most interested in adjudicating the dispute.¹⁰⁶ *Second*, the Amostran court knows and is most equipped to evaluate all the factors and circumstances related to the issued civil order (i. e. the actual situation in Amostra and the detrimental impact of Ballaya’s column).

50. Thus, in summary, Amostra’s specific jurisdiction over SeeSay is fair and reasonable according to the traditional minimum contacts doctrine.

(i) For purposes of jurisdiction SeeSay could be considered as established in Amostra

51. The EU attaches great importance to the development of the information society.¹⁰⁷ Moreover, the EU law represents common practice of 28 states. Therefore, the legislation of the EU also gives

¹⁰³ *Ibid.*

¹⁰⁴ *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).

¹⁰⁵ *International Shoe Co v Washington*, 326 US 310 (1945); *World-Wide Volkswagen Corp. v Woodson*, 444 US 286, 297 (1980).

¹⁰⁶ *Burger King Corp. v Rudzewicz*, 471 US (1985).

¹⁰⁷ 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.

useful guidelines in order to assess jurisdiction over SeeSey. Also, establishment of jurisdiction over foreign defendants is a common practice of the EU courts.¹⁰⁸

52. Primarily, it should be mentioned that the concept of an ‘establishment’ is of significant importance in the EU law¹⁰⁹ in this respect. Recital 19 in the preamble to Directive 95/46¹¹⁰ states that ‘*establishment ... implies the effective and real exercise of activity through stable arrangements*’.¹¹¹ In addition, newly adopted EU General Data Protection Regulation¹¹² also observes the same approach.

53. This notion of ‘establishment’ is explicated in the case *Google Spain*.¹¹³ According to the aforesaid ruling, when an ISP sets up in a state a branch or subsidiary, which is intended to promote and sell advertising space offered by that undertaking and which orientates its activity towards the inhabitants of that state, an ISP is also established there.¹¹⁴ Application of this concept to the facts of this Case, suggests the conclusion that SeeSey is established in Amostra.

¹⁰⁸ *Google France SARL and Google Inc. v Louis Vuitton Malletier SA* C-236/08 (CJEU, 23 March 2010); *L'Oréal SA and Others v eBay International AG and Others* C-324/09 (CJEU, 12 July 2011); *eDate Advertising GmbH v X* C-509/09 and *Olivier Martinez and Robert Martinez v MGN Limited* C-161/10 (CJEU, 25 October 2011).

¹⁰⁹ *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).

¹¹⁰ 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 (OJ 1995 L 281, p. 31).

¹¹¹ 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 (OJ 1995 L 281, p. 31).

¹¹² Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).

¹¹³ *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).

¹¹⁴ *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), para 55, 56, 60.

54. *Firstly*, as stated above, SeeSey owns a subsidiary company, SeeSALES, which promotes the use of SeeSey by Amostra businesses and engages in this activity through stable arrangements in Amostra.¹¹⁵

55. *Secondly*, the day-to-day activities of SeeSey and those of SeeSALES are inextricably linked, since the activities relating to the advertising renders the management of a social media platform economically profitable.¹¹⁶ Indeed, SeeSALES earned 5 million USD in revenue last year in Amostra.¹¹⁷

56. All these considerations lead to the conclusion that SeeSey is established in Amostra and Amostra has jurisdiction over SeeSey.

III. The nature of the SeeSey's website and purposeful targeting of Amostra's residents

57. In the famous *Zippo* case¹¹⁸ the US court reviewed the traditional principles of personal jurisdiction¹¹⁹ and indicated that jurisdiction over out-of-state defendants, who maintain 'active' websites would be proper, whereas jurisdiction over out-of-state defendants who maintain

¹¹⁵ The Case, para 9; *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), para 44, 55.

¹¹⁶ *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), para 55.

¹¹⁷ The Case, para 9.

¹¹⁸ *Zippo v Zippo Dot Com*, 952 F. Supp. III9 (W.D. Pa. 1997) (Supreme Court).

¹¹⁹ Chris Rojao. *Buy It Now: Establishing Personal Jurisdiction Over Out-of-State Who Conduct Business Through Online Intermediaries*. Seton Hall Law Review, Vol. 43:1075, 5/28/2013, p. 1083; Cindy Chen. *United States and European Union approaches to Internet jurisdiction and their impact on e-commerce*, <<http://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1231&context=jil>> accessed 10 November 2016, p. 433-434.

‘passive’,¹²⁰ websites would not. According to the introduced ‘Zippo sliding-scale’ test, ‘the likelihood that personal jurisdiction can be constitutionally exercised is directly proportionate to the nature and quality of commercial activity that an entity conducts over the Internet’.¹²¹

58. Besides, the US courts further supplemented this yardstick with ‘targeting test’.¹²² Under this test, specific jurisdiction is proper only where the defendant can be said to have targeted the forum¹²³ or, in other words, when there is purposeful availment of that jurisdiction’s benefits.¹²⁴

59. In this case, SeeSey is certainly an ‘active’ website, and purposefully seeks to conduct business with residents of other states, including residents of Amostra.¹²⁵

60. *First*, as mentioned, SeeSey tailors the content of a social platform in accordance with the geolocation of the users.¹²⁶ *Second*, the establishment of SeeSALES in Amostra and active promotional activity towards its businesses also made Amostra’s jurisdiction over SeeSey proper.¹²⁷

¹²⁰ Chris Rojao. *Buy It Now: Establishing Personal Jurisdiction Over Out-of-State Who Conduct Business Through Online Intermediaries*. Seton Hall Law Review, Vol. 43:1075, 5/28/2013, p. 1084.

¹²¹ *Zippo Mfg. Co. v Zippo Dot Com, Inc.*, 952 F. Supp. 1119, 1121 (W.D. Pa. 1997) (Supreme Court).

¹²² Faye Fangfei Wang. *Obstacles and Solutions to Internet Jurisdiction. A Comparative Analysis of the EU and US laws*. Journal of International Commercial Law and Technology, Vol. 3, Issue 4 (2008), <<http://www.jiclt.com/index.php/jiclt/article/view/65>> accessed 10 November 2016, p. 239.

¹²³ *J. McIntyre Machinery, Ltd. v Nicaastro*, no 09-1343 (US June 27, 2011).

¹²⁴ *Compuserve v Patterson*, 89 F.3d 1257 (6th Cir. 1996); *Burger King Corp. v Rudzewicz*, 471 US (1985); *ALS Scan, Inc. v Digital Serv. Consultants, Inc.*, 293 F.3d (4th Cir. 2002).

¹²⁵ The Case, para 9.

¹²⁶ The Case, para 6.

¹²⁷ The Case, para 9.

Third, SeeSALES in Amostra earned 5 million USD in revenue last year.¹²⁸ *Fourth*, SeeSey has many users in Amostra.¹²⁹

IV. Accessibility of Ballaya’s column and negative effects in Amostra

61. Amostra’s jurisdiction over SeeSey also could be justified by another mechanism for establishing personal jurisdiction over out-of-state defendants. It is the ‘effects test’ developed originally by the Supreme Court in the case *Calder v Jones*¹³⁰, where the place of the damage is most significant in establishing the jurisdiction.

62. In this instance, the main harm has occurred (and still occurs) in Amostra, where a non-peaceful protest took place and tensions were enhanced by Ballaya’s column.¹³¹

63. The principles established in the relevant case law of European national courts also confirm the finding that Amostra has jurisdiction over SeeSey.

64. *First*, it should be recalled that Amostra’s inhabitants could view the offensive content replicating or relating to Ballaya’s column¹³² and only SeeSey has technological measures to block individual posts.¹³³ In consideration of these facts and relevant French case law¹³⁴, the deduction that the Amostran court could issue the civil order against SeeSey has to be made.

¹²⁸ The Case, para 9; *Mavrix Photo, Inc. v Brand Technologies Inc.*, 647 F.3d at 1230 (9th Cir. 2011).

¹²⁹ The Case, paras 6, 12, 19; *Herman v Cataphora Inc.*, 730 F.3d 460, 466 (5th Cir. 2013).

¹³⁰ *Calder v Jones*, 465 US 783, 789–90 (1984).

¹³¹ The Case, paras 18-21.

¹³² The Case, paras 5, 17-19.

¹³³ The Case, paras 5, 7.

¹³⁴ *UEJF & LICRA v Yahoo! Inc. & Yahoo! France* (T.G.I. Paris, 22 May 2000).

65. *Second*, also according to the Italian¹³⁵ and German¹³⁶ case law and having in mind that, as mentioned, negative effects of Ballaya’s column were experienced exceptionally in Amostra, this country has jurisdiction over SeeSey.

66. *Third*, the courts of UK consistently recognise that ‘if a publisher publishes in a multiplicity of jurisdictions it should understand, and must accept, that it runs the risk of liability in those jurisdictions in which the publication is not lawful and inflicts damage’.¹³⁷ As repeatedly mentioned, Ballaya’s column is accessible in Amostra and causes damage in this country.

D. The order against SeeSey is consistent with Amostra’s international obligations, including Articles 19 and 29 of UDHR and Article 19 of ICCPR

I. The order against SeeSey restricts SeeSey’s and its’ users FOE, but it is a justified restriction under Articles 19 and 29 of UDHR and Article 19 of ICCPR

67. The Respondent submits that the order restricts SeeSey’s and its’ users FOE.¹³⁸ However, as it will be proved below, the interference with the mentioned right is a justified restriction, since (i) it is prescribed by law, (ii) pursues a legitimate aim and (iii) is necessary in a democratic society.¹³⁹

¹³⁵ *Google vs. Vividown* (the Milan Court of Appeal, 21 December 2012).

¹³⁶ Corey Omer. *Intermediary Liability for Harmful Speech: Lessons from Abroad*. Harvard Journal of Law & Technology. Volume 28, Number 1, fall 2014, p. 297.

¹³⁷ *Metropolitan v Google* (Eady J.) (2009) EWHC 1765 (QB); *Gutnick v Dow Jones* (2002) HCA 56 at (192); *King v Lewis* (2005) EMLR 45, CA; *Berezovsky v Michaels*, (2000) 1 WLR 1004, at 1012, per Lord Steyn.

¹³⁸ ICCPR article 19; UDHR article 19.

¹³⁹ *The Sunday Times v United Kingdom* App no 6538/74 (ECtHR, 26 April 1979), para 42; *Sürek v Turkey* App no 26682/95 (ECtHR, 8 July 1999), para 44; *Kurier Zeitungsverlag und Druckerei GmbH v Austria* App no 1593/06 (ECtHR, 19 June 2012); *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.

(i) The order is prescribed by law

68. The Respondent submits that the order is prescribed by law, because of accessibility, foreseeability and precision.¹⁴⁰

69. *First and foremost*, since the order is based on the SIA – national legal act, it is considered to be prescribed by law.¹⁴¹

70. *Secondly*, the SIA is foreseeable as to its effects.¹⁴² The SIA explains in detail the requirements for the issuance of the order. It describes for whom and by whom the order might be issued, in addition to, what kind of requirements it might establish. Particularly, the order might be issued ‘*for any person distributing, hosting or caching, or acting as a conduit of, material which is illegal under the SIA ...*’.¹⁴³ In addition, the order has to be issued by a court order¹⁴⁴, therefore it is subject to independent judicial review. Finally, the SIA details requirements for the content of such order.¹⁴⁵

Therefore, the order is sufficiently precise for the SeeSey to understand how to comply with it.

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).

¹⁴⁰ *The Sunday Times v United Kingdom* App no 6538/74 (ECtHR, 26 April 1979) para 49; *Lindon, Otchakovsky-Laurens and July v France* App nos 21279/02 and 36448/02, (ECtHR, 22 October 2007) para 41; *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).

¹⁴¹ *Karataş v Turkey* App no 23168/94 72 (ECtHR, 8 July 1999) para 40; *Zana v Turkey* App no 69/1996/688/880 (ECtHR, 25 November 1997); Memorial Part A (I)(i)(ii), paras 2-8.

¹⁴² *VgT Verein gegen Tierfabriken v Switzerland* App no 24699/94 (ECtHR, 28 June 2001); *Rotaru v Romania* App no 28341/95 (ECtHR, 4 May 2000).

¹⁴³ The Case, para 10.

¹⁴⁴ *Ibid.*

¹⁴⁵ The Case, para 10.

71. *Thirdly*, SeeSey as a social media platform¹⁴⁶ and as a professional company should have been familiar with the legislation, and could also have sought legal advice.¹⁴⁷

72. Taking into account the above-mentioned, it must be concluded that the order is prescribed by law, since (i) the order is sufficiently precise and (ii) SeeSey, as a professional entity, should have been familiar with it.

(ii) The order pursues a legitimate aim of the protection of the public order of Amostra

73. As it was stated beforehand, the protection of public order is considered a legitimate aim, which can justify the limitation of FOE and other related rights.¹⁴⁸ Therefore, the Respondent submits that the order against SeeSey pursues such a legitimate aim.

(iii) The order is necessary in a democratic society

74. The order against SeeSey is necessary in a democratic society as it (i) corresponds to a pressing social need and (ii) is proportionate to a legitimate aim.¹⁴⁹

a) The order corresponds to a pressing social need

¹⁴⁶ The Case, para 6.

¹⁴⁷ *Delfi AS v Estonia* App no 64569/09 (ECtHR, 16 June 2015) para 129.

¹⁴⁸ Memorial Part A (II), paras 9-11.

¹⁴⁹ *Delfi AS v Estonia* App no 64569/09 (ECtHR, 16 June 2015); *Pentikäinen v Finland* App no 11882/10 (ECtHR, 20 October 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); *Jersild v Denmark*, App no 15890/89 (ECtHR, 23 September 1994).

75. *Firstly*, the adjective ‘necessary’ implies the existence of a ‘pressing social need’.¹⁵⁰ Pressing social need is considered to occur in a case where there is a direct and immediate connection between the expression and the protected interest.¹⁵¹

76. *Secondly*, the States enjoy a MOA in assessing whether such a need exists.¹⁵² This margin is given to both the domestic legislator and to the bodies, judicial amongst others that are called upon to interpret and apply the laws in force.¹⁵³ The limits of permissible criticism are wider with regard to the government than in relation to a private citizen. However, where such criticism of a politician incite to violence against a public official or a sector of the population, the State authorities enjoy a wider MOA when examining the need for an interference with FOE. Also, while enjoying a wide MOA and evaluating particular situation, the background of the situation must be taken into account.¹⁵⁴

77. In this case, firstly, there is a direct and immediate connection between Ballaya’s column and riots. Despite the fact that Amostra has experienced increased social unrest in the past five years,¹⁵⁵ announcement of general elections, which took place on June 2016, was followed by a period of

¹⁵⁰ *Zana v Turkey* App no 69/1996/688/880 (ECtHR, 25 November 1997), para 51.

¹⁵¹ *Perinçek v Switzerland* App no 27510/08 (ECtHR, 15 October 2015), para 71; *Hak—Chul Shin v Republic of Korea*, Communication no 926/2000, UN Doc. CCPR/C/80/D/926/2000 (HRC); 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.

¹⁵² *Scharsach And News Verlagsgesellschaft GmbH v Austria* App no 39394/98 (ECtHR, 13 November 2003); *Lingens v Austria* App no 9815/82 (ECtHR, 8 July 1986); *Chassagnou and others v France* App nos 25088/94, 28331/95 and 28443/95 (ECtHR, 29 April 1999); *S and Marper v UK* App nos 30562/04 and 30566/04 (ECtHR, 4 December 2008); *Z v Finland* App no 22009/93 (ECtHR, 25 February 1997).

¹⁵³ *Handyside v The United Kingdom* App no 5493/72 (ECtHR, 7 December 1976), para 48.

¹⁵⁴ *Karataş v Turkey* App no 23168/94 72 (ECtHR, 8 July 1999), para 51; *News Verlags GmbH & Co KG v Austria* App no 31457/96 (ECtHR, 11 April 2000).

¹⁵⁵ The Case, para 1.

relative calm in Amostra.¹⁵⁶ However, Ballaya's column, which was published on the most popular source of news and political discussions on July 2016,¹⁵⁷ disrupted relatively calm period by calling anti-government Amostrans for an active Day of Resistance.¹⁵⁸ The mentioned day ended in a fire of a Zasa religious building and attacks against law enforcement, who tried to prevent the arsonists' attack.¹⁵⁹ Ballaya's column contributed to the arson attacks in front of Zasa religious building, since during the riot attackers chanted words of a famous Yona unity song, which was cited in Ballaya's column.¹⁶⁰ Therefore, there were substantial reasons to presume that if the column was not published, the attacks would have not occurred.

78. Secondly, having regard to the fact that the court of Amostra had a wide MOA¹⁶¹, the court assessed the situation not in an isolated manner. It considered (i) the difficult situation in Amostra and (ii) the impact of the situation on public order of Amostra by the Ballaya's column. Therefore, the national court assessed that the encouragement to the attackers was likely to exacerbate an already explosive situation in Amostra.

79. In addition, it is essential to emphasise the fact that SeeSey is the most popular source of news and political discussion¹⁶², insofar as '*... where citizens have access to The Times website and The Times*

¹⁵⁶ The Case, para 2.

¹⁵⁷ The Case, para 12.

¹⁵⁸ The Case, para 18.

¹⁵⁹ The Case, para 21.

¹⁶⁰ *Ibid.*

¹⁶¹ *Scharsach And News Verlagsgesellschaft GmbH v Austria* App no 39394/98 (ECtHR, 13 November 2003); *Lingens v Austria* App no 9815/82 (ECtHR, 8 July 1986); *Chassagnou and others v France* App nos 25088/94, 28331/95 and 28443/95 (ECtHR, 29 April 1999) *S and Marper v UK* App nos 30562/04 and 30566/04 (ECtHR, 4 December 2008); *Z v Finland* App no 22009/93 (ECtHR, 25 February 1997).

¹⁶² The Case, para 12.

in print, the vast majority nevertheless accessed the column via SeeSey'.¹⁶³ Consequently, it has a strong impact on the flow of popular information. Therefore, in order to be effective the order had to be issued particularly against the SeeSey.

80. Having regard to the above-mentioned, the order issued particularly against the SeeSey pursued a pressing social need to take down the illegal material and calm tensions in Amostra.

b) The order was proportionate

81. The Respondent submits that the order is proportionate. The ECtHR held in *Handyside v United Kingdom* that restriction imposed in the sphere of FOE must be proportionate to the legitimate aim pursued.¹⁶⁴ If there are various options to achieve the objective, the one which least restricts the protected right should be selected.¹⁶⁵

82. Firstly, in the present case, it can be held that the government of Amostra chose the least restrictive measure. The government of Amostra has the ability to block Amostra-based Internet users' access to specific Internet services.¹⁶⁶ However, it does not have the technical ability to block specific posts from a specific social media service.¹⁶⁷ If it blocks, it must block the entire service.¹⁶⁸

¹⁶³ The Case, para 19.

¹⁶⁴ *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).

¹⁶⁵ *Ricardo Canese v Paraguay* (IACtHR 2004) Series C no 111, para 96; *Doğan v Turkey* App no 50693/99 (ECtHR, 10 January 2006), paras 150, 152; *Shelton v Tucker* 364 US 479 (1960); *Amnesty International and Others v Sudan* (2000) AHRLR 297 (ACHPR 1999).

¹⁶⁶ The Case, para 5.

¹⁶⁷ *Ibid.*

¹⁶⁸ *Ibid.*

Obviously, blocking the entire service would not be the least restrictive available measure. Secondly, it is necessary to remove the content worldwide, since the SIA requires to ‘*remove the content*’¹⁶⁹, but SeeSey only has the ability to block or, in other words, ‘*make a post invisible*’¹⁷⁰ in individual countries. Therefore, the national court chose the less restrictive measure and ordered the restriction of only certain posts worldwide rather than blocking the entire SeeSey service in Amostra. As a result the order is proportionate to the legitimate aim pursued.

83. Having regard to the (i) connection between Ballaya’s column and riots, (ii) wide MOA which national authorities have in such a case, (iii) SeeSey’s strong contribution and impact on the flow of popular information and to the facts that (iv) only SeeSey has the technical ability to block individual posts in individual countries, and (v) the order does not ask to block the entire service, only specific posts worldwide, the order issued particularly against SeeSey is necessary in a democratic society.

¹⁶⁹ The Case, para 10.

¹⁷⁰ The Case, para 7.

PRAYER

For the foregoing reasons, the Respondent respectfully requests this Honourable Court to adjudge and declare that:

1. Amostra's prosecution of Ballaya under the SIA does not violate international principles, including Articles 19 of UDHR and 19 of the ICCPR.

2. Amostra's prosecution of Ballaya under the ESA does not violate international principles, including Articles 19 and 20 of UDHR and 19 and 21 of the ICCPR.

3. Amostra has jurisdiction to obtain and enforce the civil order against SeeSey in Amostra and Sarranto.

4. Amostra's civil order against SeeSey does not violate international principles, including Article 19 and 29 of UDHR and Article 19 of ICCPR.

On behalf of Amostra

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Agents for the Respondent