



Ad perpetuam rei memoriam V.

ELTE Law School's memorials for
the Monroe E. Price Media Law
Moot Court Competition

Editors:
Gergely Gosztonyi
Anna Zanathy

2022

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ELTE Law School's memorials for the Monroe E. Price Media Law Moot Court Competition

In 2008 the University of Oxford established the Monroe E. Price Media Law Moot Court Competition to foster and cultivate interest in freedom of expression issues and the role of the media and information technologies in societies around the world. The competition challenges students to engage in comparative research of legal standards at the national, regional and international levels and develop their arguments (in written and oral forms) on cutting-edge in media and ICT law questions.¹

ELTE Law School joined the competition in 2015 at the South-East European Regional Round.² Since that time, ELTE Law School has participated every year, and its results are getting better and better.³

With the publication of the written Memorials after each competition, ELTE Law School would like to appreciate the dedicated work of its students and help the future mooters to learn from their efforts.

We hope that our students will actually reach the stars and find their names and scientific achievements in similar publications in the future.

Budapest, 2022.

The Editors

¹ <https://www.law.ox.ac.uk/centres-institutes/bonavero-institute-human-rights/monroe-e-price-media-law-moot-court-competition>

² <https://www.law.ox.ac.uk/content/south-east-europe-2019-2020>

³ <https://majt.elte.hu/mootcourt>

Memorial for Applicants

2020/2021

LILI ANNA, BENYOVSZKI – RÉKA MERCÉDESZ,
HORVÁTH – DANIELLA, HUSZÁR – CSABA, PÁSZTOR –
ESZTER, PRIBULA – PATRIK, SZABÓ

**THE 2020-2021 MONROE E. PRICE
INTERNATIONAL MEDIA LAW MOOT COURT COMPETITION**

Xana and the Social Democratic Workers Union
(Applicants)

v

Ized
(Respondent)

MEMORIAL FOR APPLICANTS

Word Count for Arguments Section: 4,995

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II. LIST OF ABBREVIATIONS

ACHPR	African Charter on Human and Peoples' Rights
ACHR	American Convention on Human Rights
ACommHPR	African Commission on Human and Peoples' Rights
ACtHPR	African Court on Human and Peoples' Rights
CJEU	Court of Justice of the European Union
Clarifications	Price Media Law Moot Court Competition official clarifications of the 2021 International Rounds and the 2020/2021 Regional Rounds in South Asia, Asia Pacific, South-East Europe, North-East Europe, Northern Europe, the Americas, the Middle East, and Africa Regional Rounds
CoE	Council of Europe
Compromis	The 2020/2021 Price Media Law Moot Court Competition Case
Constitution	Ized's Constitution
CPP	Central Public Park

DSP	Democratic Socialist Party
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EU	European Union
FoA	Freedom of Assembly
FoE	Freedom of Expression
Guidelines	The guidelines issued by the Minister of Defence on 16 March 2020
HIV	Human Immunodeficiency Virus
Honourable Court	Chamber of the Universal Court of Human Rights, Universal Freedom of Expression Court
Hospital	Vaai General Hospital
IACommHR	Inter-American Commission on Human Rights
IACtHR	Inter-American Court of Human Rights
ICCPR	International Covenant on Civil and Political Rights

MoD	Minister of Defence
MoA	Margin of Appreciation
NIDV	Novel Immuno-Deficiency Virus
NN	National Network
No(s)	Number(s)
NSA	Ized's National Security Act
NUA	National United Alliance
OSCE	Organisation for Security and Co-operation in Europe
Regulation	The regulation issued by the Minister of Defence on 1 February 2020
Statement	The statement issued by the Minister of Defence on 16 March 2020
The Union	The Social Democratic Workers Union
UDHR	Universal Declaration of Human Rights
UN	United Nations

UN Doc	United Nations Document
UNGA	United Nations General Assembly
UNHRC	United Nations Human Rights Committee
WHO	World Healthcare Organisation
Xana	Jo Xana

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IV. STATEMENT OF RELEVANT FACTS

1. Ized is a land-locked tropical country with a population of 20 million people¹. Ized has diurnal and nocturnal mosquitoes.² The country has two major political parties: the National United Alliance (NUA), and the Democratic Socialist Party (DSP).³ Its leading party used to be the DSP, but after the election, the NUA formed a new government and started several reforms including the privatisation of the healthcare system.⁴ The National United Alliance's plans include free market economic policies and tax breaks. It has also advocated for stronger laws on national security.⁵ The Democratic Socialist Party promotes state-funded education and healthcare, higher taxes, and the relaxation of national security laws.⁶
2. A number of private media institutions disseminate news and opinion to the public in the country.⁷ National Network is a privately-owned media organisation and is by far the largest media service provider in Ized which has a virtual monopoly in the media

¹ Compromis 1.

² Compromis 10.

³ Compromis 1.

⁴ Compromis 13.

⁵ Compromis 1.

⁶ Compromis 1.

⁷ Compromis 2.

sector.⁸ DPS has often accused National Network of supporting the NUA as the NUA's general secretary, Gus Dabyu sits in the board of directors in the National Network.⁹

3. The Net, which has over 4 million users, is a website which features a simple user interface that permits users (referred to as 'Netizens') to post their opinions in 200 characters or less.¹⁰ The Net also permits Netizens to organise 'Net-Assemblies', where several users can gather to share their opinion and raise public issues.¹¹
4. The Social Democratic Workers Union is a trade union with legal personality affiliated with the DSP. Among its members are healthcare workers employed in the state healthcare service.¹²
5. One of the main election issues concerned the spread of a new viral disease that affects the immune system of those infected. The disease, commonly referred to as NIDV ('Novel Immuno-Deficiency Virus') has been compared to HIV, but has been identified as distinct from HIV. Medical experts generally agree that it is not as deadly as HIV. Although the means through which it is transmitted is not fully understood, some experts believe the virus is sexually transmitted, whereas others have argued that it is a vector-borne disease and that it could be transmitted via mosquitoes.¹³ According to official

⁸ Compromis 9.

⁹ Compromis 4.

¹⁰ Compromis 5.

¹¹ Compromis 6.

¹² Compromis 7.

¹³ Compromis 10.

statistics, nearly 30,000 cases of NIDV were recorded since September 2019, and 420 deaths were attributed to the virus.¹⁴

6. On 15 January new information was released on all National Network media channels stating the actual death toll from NIDV was close to 2,000 persons. The information rapidly spread on The Net as well, while the DSP-led government claimed the leaked information was fabricated and untrue.¹⁵
7. On 16 January an independent medical research institute stated that the initial government estimates about deaths caused by NIDV might not have been accurate.¹⁶
8. In the January 2020 elections, the NUA secured a clear majority in parliament and established a new government.¹⁷ Besides the not-perfectly-planned reforms in the healthcare system, the new government enacted the National Security Act to regulate the use of ‘public sites’ and to authorise the state to designate specific ‘public sites’ that may be used to conduct ‘gatherings.’¹⁸
9. The Central Public Park is situated in Vaai, Ized’s capital.¹⁹ It has four access points and as the government says, is regularly fumigated to mitigate exposures from the mosquitoes that spread the NIDV.²⁰ Due to the state of emergency and National Security Act, the gatherings can only be held there as the Minister of Defence issued the

¹⁴ Compromis 10.

¹⁵ Compromis 11.

¹⁶ Compromis 12., Clarifications 24.

¹⁷ Compromis 20.

¹⁸ Compromis 14.

¹⁹ Compromis 16.

²⁰ Compromis 16.

Regulation. However, it is not connected to public matters such as the privatisation of hospitals.

10. The Union is a trade union with a legal personality which is loosely affiliated with the DSP.²¹ Among its members, there are healthcare workers as well, who demonstrated at the hospital against the privatisation of the healthcare sector. The Union publishes a magazine called the 'Unite', which sells on average around 4,000 copies a week. It also has over 1,000 members who are Netizens. They often organise Net-Assemblies to campaign on issues and raise public awareness.²²

11. Jo Xana is the leader of the Union and the organiser of the demonstration at the hospital. She used a loudspeaker to address the crowd but personally was not a part of the actions. Their main goal was to demonstrate against the privatisation of the healthcare system, which resulted in the loss of employment for many families around the country. She claimed that the new government came into power by spreading lies about NIDV and that the death toll is nowhere near the figure that 'fake news outlets' reported. As she was finishing her speech, police vehicles arrived at the venue and brutally began arresting the peaceful demonstrators including Xana.²³ The next day she was charged under the NSA²⁴ and released on bail. The government decided to release all other demonstrators without pressing charges. On 3 March, Xana was convicted in the High

²¹ Compromis 7.

²² Compromis 7.

²³ Compromis 19.

²⁴ Compromis 14.

Court of Ized under the NSA.²⁵ The Court sentenced her to three months imprisonment but suspended the sentence for one year.²⁶

12. The Minister of Defence was authorised to issue guidelines on the publication of any news, opinion, or another form of expression in the interests of public safety, order or health under Section 23 Subsection 1 of the NSA. However, on 16 March the Minister of Defence issued a Statement which discussed the restriction of unauthorised gatherings and said that those who organise unauthorised gatherings on social media platforms will be arrested, which is not exactly what the Minister of Defense was authorised to set out. He also issued a guideline which set out the prohibition of publication of any opinion of any medical expert or another person, with respect to NIDV, without obtaining prior authorisation from the Ministry of Health.²⁷

13. On 20 March, both Xana and the Union decided to file petitions before Ized's Supreme Court complaining that their rights under Articles 10 and 11 of the Constitution had been violated. The relevant Articles are about the right to freedom of expression and the freedom of peaceful assembly. However, the Court upheld her conviction and sentence, violating their fundamental rights.²⁸

14. Xana and the Union have exhausted all domestic remedies.²⁹ They filed applications before the Universal Court of Human Rights alleging violations of Article 19 and Article

²⁵ Compromis 14, 21.

²⁶ Compromis 22.

²⁷ Compromis 27.; Clarifications 9.

²⁸ Compromis 22.

²⁹ Compromis 33.

21 of the ICCPR. The Court decided to hear the applications together and certified the applications on four discrete issues.³⁰

³⁰ Compromis 34.

V. STATEMENT OF JURISDICTION

Xana and the Social Democratic Workers Union (Applicants) have applied to the Universal Freedom of Expression Court, the special Chamber of the Universal Court of Human Rights, hearing issues relating to the violation of rights recognised in the Article 19 and Article 21 of the ICCPR.

Xana and the Social Democratic Workers Union filed petitions before Ized's Supreme Court complaining that their rights under Articles 10 and 11 of Ized's Constitution had been violated. The Supreme Court determined that neither Xana's nor the Union's rights under the Constitution had been violated. Xana and the Social Democratic Workers Union exhausted their domestic appeals.

This Honourable Court has jurisdiction as the final arbiter over all regional courts where parties have exhausted all domestic remedies.

The Applicants request this Honourable Court to issue a judgment in accordance with relevant international law, including the UDHR, the ICCPR, Conventions, jurisprudence developed by relevant courts, and principles of international law.

VI. QUESTIONS PRESENTED

The questions presented, as certified by this Honourable Court, are as follows:

1. Whether Ized's decision to enact Section 22 of the National Security Act, and to designate the Central Public Park as the sole public site to hold public gatherings, violated Xana's and the Social Democratic Workers Union's rights recognised by Articles 19 and 21 of the ICCPR.
2. Whether Ized's decision to convict Xana under Section 22 of the National Security Act violated her rights recognised by Articles 19 and 21 of the ICCPR.
3. Whether Ized's decision to issue the Statement of 16 March violated the Social Democratic Workers Union's rights recognised by Articles 19 and 21 of the ICCPR.
4. Whether Ized's decision to issue guidelines under Section 23 of the National Security Act on 16 March violated the Social Democratic Workers Union's rights recognised by Article 19 of the ICCPR.

VII. SUMMARY OF ARGUMENTS

IZED'S DECISION TO ENACT SECTION 22 OF THE NSA, AND TO DESIGNATE THE CPP AS THE SOLE PUBLIC SITE TO HOLD PUBLIC GATHERINGS, VIOLATED XANA'S AND THE UNION'S RIGHTS RECOGNISED BY ARTICLES 19 AND 21 OF THE ICCPR

Firstly, the interference was not envisaged by law, as the Regulation was enacted not in a parliamentary act but by an executive body. The National Security Act includes vague terms such as 'public emergency that threatens the life of the nation' or the definition of 'public site'. These concepts enable the Minister of Defence to have unfettered discretion to impose restrictions on the right to Freedom of Assembly and the right to Freedom of Expression as they can be interpreted broadly.

Secondly, the interference did not pursue a legitimate aim as it was proven by the independent Institute of Medical Research that the virus was sexually transmitted and there was a consensus among medical experts that Novel Immuno-Deficiency Virus (NIDV) was not as deadly as HIV, a disease all societies currently live with.

Thirdly, the designation of Central Public Park as the sole site to hold gatherings, was not necessary and proportionate as it must be assessed in the light of the right to Freedom of Assembly. The appearance of NIDV was a hypothetical threat, in conclusion, a pressing a social need is not met. As NIDV was sexually transmitted, the regular fumigation of the Central Public Park was not suitable to hinder the spread of the virus. The Regulation did not take the least intrusive measure as other locations could have been fumigated to protect participants from mosquitoes. The public affair, that the demonstrators expressed their views about, was the privatisation of the healthcare system and the future affect about the

employment of more than 12,000 healthcare workers. The Central Public Park did not enable Applicants to express their opinion effectively. The Vaai General Hospital was one of the most frequented hospitals in the capital; it was also among the first ones to be privatised. Therefore, it qualified as a 'symbolic site'. Moreover, the interference was politically motivated as it was issued by the Minister of Defence and welcomed by numerous Netizens supporting National United Alliance who labelled it as an effective way to control protests by socialists.

IZED'S DECISION TO CONVICT XANA UNDER SECTION 22 OF THE NSA VIOLATED HER RIGHTS RECOGNISED BY ARTICLES 19 AND 21 OF THE ICCPR

Firstly, the sentence of Jo Xana was implemented in two judicial decisions, both of which had their legal basis under Section 22 National Security Act. National Security Act did not comply with the concept of envisaged by law, as it referred to vague terms such as 'public emergency that threatens the life of nation' or the definition of 'public site'. These terms enable the MoD to arbitrarily impose heavy restrictions on FoE and FoA. Moreover, the Regulation was issued by the Minister of Defence, therefore it lacked reasoned debate and democratic legitimacy.

Secondly, the list of possible restrictions on the right Freedom of Assembly is exhaustive in ICCPR. The demonstration on 14 February did not present a threat either on public health or on public order. Therefore, the restrictions imposed did not pursue a legitimate aim.

The sentence of Jo Xana and breaking up the demonstration was neither necessary nor proportionate. The Union announced that it was organising a demonstration ten days before the event and appointed the venue of the demonstration on 13 February. Therefore, the

government had reasonable time to secure the Hospital, as spontaneous assemblies were also protected. The Hospital was located in the capital, was a frequented place, and it was also among the first ones to be privatised. Thus, it qualified as a 'symbolic place'.

The demonstration was peaceful; hence the fact that some demonstrators blocked the hospital and began turning people away may not deem the gathering violent, as no physical harm was caused and the functioning of the hospital was not unreasonably hindered. Even if the blocking would qualify as violent conduct, the use of sporadic violence does not automatically turn an otherwise peaceful assembly into violent.

The peaceful manner of the assembly condemns the methods used by the police when dispersing the crowd to be disproportionate. It was the police who first acted violently without any prior notification and used tear gas, water cannons and firing blanks, as a consequence of which protestors sustained substantial injuries.

The arrest and sentence of Xana were unlawful. Even though she was the organiser, she did not directly participate in the alleged conducts and did not incite any violence. Sentencing Xana to three months imprisonment, even if it was suspended for one year, had a chilling effect and was disproportionate, as peaceful demonstration should not be rendered subject to the threat of a criminal sanction. Jo Xana did not have the possibility to defend herself effectively as her first-instance trial was rapidly conducted in only eighteen days. Taking into account that all the other demonstrators were released from detention, the swift and discriminatory conduct also implicates that the trial was a politically motivated process in order to suppress the opinions criticising the government.

IZED'S DECISION TO ISSUE THE STATEMENT OF 16 MARCH VIOLATED THE SOCIAL DEMOCRATIC WORKERS UNION'S RIGHTS RECOGNISED BY ARTICLES 19 AND 21 OF THE ICCPR

Firstly, the issued Statement was not envisaged by law, since the NSA authorised the Minister of Defence to issue regulations, which term does not involve statements. Furthermore, the restriction imposed on public sites did not initially apply to social media platforms; still, the Statement arbitrarily expanded their concept, causing a chilling effect on citizens. Moreover, the Statement was not foreseeable, and it is not formulated with sufficient precision to enable the citizens to regulate their conduct accordingly, since the Statement did not explain what the term 'unauthorised gathering' means.

Secondly, the measure did not pursue the legitimate aim to protect public health and public order, hence the online space is the only secure medium, since the virus cannot infect people virtually. In conclusion this restriction endangers the targeted aims instead of protecting them.

Thirdly, a general ban on organising gatherings on social media platforms was not necessary and proportionate as The Net remained the only suitable place for the Union to hold gatherings as the demonstration was brutally suppressed by police. The Union feared that the CPP was under heavy surveillance by state security forces, which forced them to discontinue any demonstrations at physical public sites. Furthermore, a general ban cannot be justified, since the digital demonstration did not pose a grave risk to public health and public order. The Union only discussed public affairs, ensuring the safe participation for those citizens, who were discriminately based on their residence and therefore were preclude from the enjoyment of the right to Freedom of Assembly. Moreover, the suspension of Net-Assembly was justified by the reason, communicated by the government. The interference amounted a prior restraint and deprived Applicants of FoA and FoE. Even

if the restriction does not originate directly from a non-State actor, the State still has the positive obligation to protect the exercise of the person's rights to Freedom of Expression from interference by others. Consequently, due to the issued restriction on Net, the Union was totally deprived of the opportunity to hold gatherings.

IZED'S DECISION TO ISSUE GUIDELINES UNDER SECTION 23 OF THE NATIONAL SECURITY ACT ON 16 MARCH VIOLATED THE SOCIAL DEMOCRATIC WORKERS UNION'S RIGHTS RECOGNISED BY ARTICLE 19 OF THE ICCPR

Firstly, the issued guidelines were not available and foreseeable to those whom it imposes an obligation on; therefore, they were not envisaged by law. Although the Minister of Defence was authorised to issue guidelines in a public emergency that regulate publication on NIDV, without clarifying requirements. A general prohibition on the dissemination of information based on vague and ambiguous terms are incompatible with international standards for restrictions on Freedom of Expression.

Secondly, this interference did not serve the protection of health. The government action should ensure the publication of medical experts, since their professional obligation is to care for the health of each individual and of the community as a whole.

Thirdly, the measure was not necessary and proportionate as the publication of medical expert opinions on NIDV would be necessary to ensure the protection of public health. As a result of such uncertainties about the virus, it is more crucial than before that medical experts be allowed to provide adequate information to citizens. Keeping the experts in constant fear and issuing guidelines which made publications subject to prior authorisation, prevents acknowledged professionals from discussing their research findings with each

other and informing people about the actions required, cannot be suitable to the aim pursued. Furthermore, the prior authorisation and centralisation of NIDV related information were excessive and unsubstantiated, since a prohibition without time limit cannot be the less intrusive interference, as news is a perishable commodity and to delay its publication may well deprive it of all its value and interest. The restriction is too broad as it covers all forms of media and all kinds of opinion, moreover it could lead to arbitrary decisions, since the Ministry of Health is not obligated to justify the decision. Moreover, the role of the Union as a watchdog and the opportunity to criticize the government's healthcare policies become unfeasible. The Union has an important role in critically examining state healthcare policies and helping healthcare workers to ensure that measures taken due to the virus do not serve as a means of privatizing healthcare and losing 12,000 jobs simply because of capitalism. Consequently, it is vital that not only state actors could share their opinion on NIDV and the crisis-situation, but also medical experts, trade unions and Netizens too, as they act as watchdogs.

VIII. ARGUMENTS

ISSUE A: IZED'S DECISION TO ENACT SECTION 22 OF THE NSA, AND TO DESIGNATE THE CPP AS THE SOLE PUBLIC SITE TO HOLD PUBLIC GATHERINGS, VIOLATED XANA'S AND THE UNION'S RIGHTS RECOGNISED BY ARTICLES 19 AND 21 OF THE ICCPR

1. Since FoE is the cornerstone of any democratic society, it alone makes possible the continuing intellectual controversy, the contest of opinions that forms the lifeblood of free and democratic constitutional order.
2. ¹ FoE includes the right to seek, receive and impart information and ideas of all kinds regardless of frontiers.² Both FoA and FoE can be derived from the right to participation protected under Article 25 of ICCPR or the right to peaceful protest generally safeguarded under international law.³ As a result of the expressive nature of assemblies,

¹ IACHR 'Annual Report 2009; Annual Report of the Office of the Special Rapporteur for Freedom of Expression' (30 December 2009) OEA/Ser.L/V/II. Doc. 51 [8]; IACtHR 'Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism' (13 November 1985) Advisory Opinion OC. 5/85 Series A No. 5 [5]; *Claude-Reyes et al v Chile* Series C No 151 (IACtHR, 19 September 2006) [85]; *Herrera-Ulloa v Costa Rica* Series C No 107 (IACtHR, 2 July 2004) [112]; *Ricardo Canese v Paraguay* Series C No 111 (IACtHR, 31 August 2004) [82]; *Ríos et al v Venezuela* Series C No 194 (IACtHR, 28 January 2009) [105]; *Perozo et al v Venezuela* Series C No 195 (IACtHR, 28 January 2009) [116]; BVerfGE 7, 198 <208>.

² *Autronic AG v Switzerland* App no 12726/87 (ECtHR, 22 May 1990) [45]; International Convention on the Elimination of All Racial Discrimination, (adopted 25 December 1965, entered into force 4 January 1969) 660 UNTS 195 Article 19; Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217A (III) Article 20; American Convention on Human Rights (adopted 22 November 1969, entered into force 18 July 1978); Charter of Fundamental Rights of the European Union [2000] OJ C364/01 Article 11.

³ *Éva Molnár v Hungary* App no 10346/05 (ECtHR, 7 October 2008) [42]; Report of the UN High Commissioner for Human Rights 'Seminar on Effective Measures and Best Practices to Ensure the Promotion and Protection of Human Rights in the Context of Peaceful Protests' (29 January 2014) UN Doc A/HRC/25/32; UNHRC 'General Comment 25: Article 19: The Right to Participate in Public Affairs, Voting Rights and the Right to Equal Access to Public Service' (12 July 1996) CCPR/C/21/Rev.1/Add.7 [8].

FoA is closely associated with FoE.⁴ Therefore restrictions on both FoE and FoA should be interpreted narrowly.⁵

3. Restrictions or bans on assemblies may automatically affect the right of individuals or groups to express their opinion on a given matter.⁶ Thus, both Applicants are right-holders in regard to FoA and FoE.
4. In accordance with international standards, the three-part cumulative test must be applied to establish that the interference was not (a) envisaged by law, (b) in pursuit of a legitimate aim, and (c) necessary and proportionate. These requirements have been endorsed by the UNHRC,⁷ the ECtHR,⁸ the IACtH,⁹ and the ACHPR.¹⁰

⁴ *Ezelin v France* App no 11800/85 (ECtHR, 26 April 1991) [37], [51].

⁵ *Lopes Gomes da Silva v Portugal* App no 37698/97 (ECtHR, 28 September 2000) [33]; *Kosc v Poland* App no 34598/12 (ECtHR, 1 June 2017) [38]; *Prunea v Romania* App no 47881/11 (ECtHR, 8 January 2019) joint dissenting opinion of Judges De Gaetano and Vehabovic [4].

⁶ European Commission for Democracy Through Law ('Venice Commission') OSCE Office for Democratic Institutions and Human Rights ('OSCE/ODIHR') *Guidelines on Freedom of Assembly* (3rd edition, 8 July 2019) CDL-AD(2019)017 [4].

⁷ *Womah Mukong v Cameroon* CCPR/C/51/D/458/1991 (UNHRC, 10 August 1994) [9.7]; *Sohn v Republic of Korea* CCPR/C/54/D/518/1992 (UNHRC, 19 July 1995) [10.4]; *Malcolm Ross v Canada* CCPR/C/70/D/736/1997 (UNHRC, 18 October 2000) [11.2]; *Velichkin v Belarus* CCPR/C/85/D/1022/2001 (UNHRC, 20 October 2005) [7.3]; UNHRC, 'Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression' (16 May 2011) UN Doc A/HRC/17/27 [24]; UNHRC, '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 [15]; UNHRC 'General Comment 34, Article 19, Freedoms of Opinion and Expression' (12 September 2011) UN Doc CCPR/C/GC/34 [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 [29].

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

⁹ *Francisco Martorell v Chile* (IACtHR, 3 May 1996) [55]; *Herrera-Ulloa v Costa Rica* Series C No 107 (IACtHR, 2 July 2004) [120]; IACHR, 'Report of the Special Rapporteur for Freedom of Expression' (2009) OEA/SER L/V/II Doc 51 [231]-[233]; IACHR, 'Freedom of Expression and the Internet' (2013) OEA/SER L/II CIDH/RELE/IN F11/13 [54]-[64].

¹⁰ ACommHPR, 'Resolution on the Adoption of the Declaration of Principles of Freedom of Expression in Africa' (2002) ACHPR/Res 62(XXXII)02 Principle II; *Interights v Mauritania* Comm no 242/2001 (ACommHPR, 2004) [78]-[79]; *Zimbabwe Lawyers for Human Rights & Institute for Human Rights and Development in Africa v Zimbabwe* Comm no 294/04 (ACommHPR, 2009) [80].

a) The interference was not envisaged by law

5. To comply with the concept of envisaged by law, the law must be both adequately accessible and foreseeable.¹¹ Firstly, foreseeability not only requires that the impugned measure should have a legal basis in domestic law¹² but also refers to the quality of the law in question,¹³ it must be formulated with sufficient precision¹⁴ to enable individuals to anticipate the consequences to regulate their conduct accordingly.¹⁵ Secondly,

¹¹ *The Sunday Times v The United Kingdom* (No 1) App no 6538/74 (ECtHR, 26 April 1979) [49]; *Müller v Switzerland* App no 10737/84 (ECtHR, 24 May 1988) [29]; *Ahmet Yıldırım v Turkey* App no 3111/10 (ECtHR, 18 December 2012) [57]; *Tolstoy Miloslauský v The United Kingdom* App no 18139/91 (ECtHR, 13 July 1995) [37]; *Sanoma Uitgevers BV v Netherlands* App no 38224/03 (ECtHR, 14 September 2010) [81], [83]; *Malone v The United Kingdom* App no 8691/79 (ECtHR, 2 August 1984) [66]; *Kafkaris v Cyprus* App no 21906/04 (ECtHR, 12 February 2008) [140]; *Kokkinakis v Greece* App no 14307/88 (ECtHR, 25 May 1993) [40]; *Lindon, Otchakovsky-Laurens and July v France* App nos 21279/02, 36448/02 (ECtHR, 22 October 2007) [41]; *Editorial Board of Pravoye Delo and Shtekel v Ukraine* App no 33014/05 (ECtHR, 5 August 2011) [52]; *RTBF v Belgium* App no 50084/06 (ECtHR, 29 March 2011) [115]; *Altuğ Taner Akçam v Turkey* App no 27520/07 (ECtHR, 25 October 2011) [87]; *Usón Ramírez v Venezuela* Case no 12.554 (IACtHR, 25 July 2008) [55]; *Tomás Eduardo Cirio v Uruguay* Case no 11.500 (IACCommHR, 27 October 2006) [64]; UN Economic and Social Council, UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, ‘Siracusa Principles on the Limitation and Derogation of Provisions in the ICCPR’ (1984) UN Doc E/CN.4/1984/4 principle [17]; Human Rights Committee, UNHRC ‘General Comment 34, Article 19, Freedoms of Opinion and Expression’ (12 September 2011) UN Doc CCPR/C/GC/34 [25]; UNHRC *Leonardus Johannes Maria de Groot v The Netherlands* (14 July 1994) UN Doc CCPR/C/54/D/578/1994.

¹² *Ahmet Yıldırım v Turkey* App no 3111/10 (ECtHR, 18 December 2012) [57]; *The Sunday Times v The United Kingdom* (No 1) App no 6538/74 (ECtHR, 26 April 1979) [47]; *Tolstoy Miloslauský v The United Kingdom* App no 18139/91 (ECtHR, 13 July 1995) [37]; *Sanoma Uitgevers BV v Netherlands* App no 38224/03 (ECtHR, 14 September 2010) [83]; *Leyla Şahin v Turkey* App no 44774/98 (ECtHR, 10 November 2005) [88]; *Malone v The United Kingdom* App no 8691/79 (ECtHR, 2 August 1984) [66].

¹³ *Ahmet Yıldırım v Turkey* App no 3111/10 (ECtHR, 18 December 2012) [57]; *The Sunday Times v The United Kingdom* (No 1) App no 6538/74 (ECtHR, 26 April 1979) [49]; *Sanoma Uitgevers BV v Netherlands* App no 38224/03 (ECtHR, 14 September 2010) [81]; *Kafkaris v Cyprus* App no 21906/04 (ECtHR, 12 February 2008) [140]; *Kruslin v France* App no 11801/85, (ECtHR, 24 April 1990) [27].

¹⁴ *Müller v Switzerland* App no 10737/84 (ECtHR, 24 May 1988) [29]; *Kokkinakis v Greece* App no 14307/88 (ECtHR, 25 May 1993) [40]; *Wingrove v The United Kingdom* App no 17419/90 (ECtHR, 25 November 1996) [40]; *Lindon, Otchakovsky-Laurens and July v France* App nos 21279/02 and 36448/02 (ECtHR, 22 October 2007) [41]; *Editorial Board of Pravoye Delo and Shtekel v Ukraine* App no 33014/05 (ECtHR, 5 August 2011) [52]; UN Economic and Social Council, UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, ‘Siracusa Principles on the Limitation and Derogation of Provisions in the ICCPR’ (1984) UN Doc E/CN.4/1984/4 [17]; UNHRC, ‘General Comment 16, Article 17 (Right to Privacy), The Right to Respect of Privacy, Family, Home and Correspondence, and Protection of Honour and Reputation’ (1988) UN Doc HRI/GEN/1/Rev.1 at 21 (1994) [3]; UNHRC ‘General Comment 34, Article 19, Freedoms of Opinion and Expression’ (12 September 2011) UN Doc CCPR/C/GC/34 [24]-[25].

¹⁵ *The Sunday Times v The United Kingdom* (No 1) App no 6538/74 (ECtHR, 26 April 1979) [49]; *RTBF v Belgium* App no 50084/06 (ECtHR, 29 March 2011) [115]; *Ahmet Yıldırım v Turkey* App no 3111/10 (ECtHR, 18 December 2012) [57]; *Altuğ Taner Akçam v Turkey* App no 27520/07 (ECtHR, 25 October 2011) [87]; *Wingrove v The United Kingdom* App no 17419/90 (ECtHR, 25 November 1996) [40]; *Larissis and Others v Greece* App no 23372/94

accessibility means that the law is published, and is sufficiently precise to enable individuals to regulate their conduct, with the foresight of the consequences that an action may entail.¹⁶ The Regulation issued by the MoD does not comply with neither of the requirements.

6. Even though the Regulation was issued by MoD¹⁷ under the NSA,¹⁸ it was not a parliamentary law but an act of the executive power, lacking democratic legitimacy¹⁹ and not complying with the approach that fundamental rights can only be restricted in law.²⁰ The Regulation was not foreseeable. Even though absolute precision cannot be achieved,²¹ the NSA²² refers to vague terms such as ‘public emergency that threatens the life of nation’ or the definition of ‘public site’.²³ As a result of their vague wording, the MoD could arbitrarily interpret the notion and declare state of emergency and impose heavy restrictions on FoE and FoA.

(ECtHR, 24 February 1998) [40]; *Sanoma Uitgevers BV v The Netherlands* App no 38224/03 (ECtHR, 14 September 2010) [81].

¹⁶ *Margareta and Roger Andersson v Sweden* App no 12963/87 (ECtHR, 25 February 1992) [75].

¹⁷ Compromis 14, 16.

¹⁸ Compromis 14.

¹⁹ Dominika Bychawska-Siniarska, ‘Protecting the Right to Freedom of Expression under the European Convention on Human Rights’ (*Council of Europe*, July 2017) 39; *Groppera Radio AG and Others v Switzerland* 10890/84 (ECtHR, 28 March 1990) [57]; *Autronic AG v Switzerland* App no 12726/87 (ECtHR, 22 May 1990) [45].

²⁰ European Commission for Democracy Through Law (‘Venice Commission’) OSCE Office for Democratic Institutions and Human Rights (‘OSCE/ODIHR’) *Bulletin* (September 2006).

²¹ *The Sunday Times v The United Kingdom* (No 1) App no 6538/74 (ECtHR, 26 April 1979) [49]; *Hertel v Switzerland* App no 25181/94 (ECtHR, 25 August 1998) [35]; *Usón Ramírez v Venezuela* Series C No 207 (IACtHR, 20 November 2009) [55].

²² Compromis 14.

²³ *ibid.*

b) The interference did not pursue a legitimate aim

7. The independent and prestigious Institute of Medical Research confirmed²⁴ that the means through which NIDV is transmitted is unknown.²⁵ The state of emergency was based on the NIDV crisis,²⁶ however the mortality rate of the disease (1,4%) was even lower than that of HIV,²⁷ a virus all societies live together with.²⁸ Furthermore, the designation of the CPP could not protect from mosquitoes present all around Ized due to its tropical nature²⁹ and it could not prevent the sexual transmission either.³⁰

c) The interference was not necessary and proportionate

8. FoA is closely associated with FoE.³¹ Restrictions on assemblies affect the right to FoE.³² The distinctive criteria, whether a certain matter falls under FoA or FoE is that the participants would not only seek to express their opinion, but to do so together.³³ The NSA imposed heavy restrictions on FoA as it prohibited social convocations of

²⁴ Clarifications 24.

²⁵ Compromis 12.

²⁶ Compromis 16.

²⁷ Compromis 10.

²⁸ *ibid.*

²⁹ *ibid.*

³⁰ Compromis 10, 17, 25, 26.

³¹ *Ezelin v France* App No 11800/85 (ECtHR, 26 April 1991) [37], [51].

³² *Éva Molnár v. Hungary* App No 10346/05 (ECtHR, 7 October 2008) [42]; Report of the UN High Commissioner for Human Rights 'Seminar on Effective Measures and Best Practices to Ensure the Promotion and Protection of Human Rights in the Context of Peaceful Protests' (29 January 2014) A/HRC/25/32

³³ *Primov and Others v Russia* App no 17391/06 (ECtHR, 12 June 2014) [91].

more than two people,³⁴ tantamount to an interference with FoA.³⁵ Therefore the present case falls under the scope of FoA applying as *lex specialis*.³⁶

9. For an interference to be necessary in a democratic society, it must correspond to a pressing social need, be suitable to pursue its legitimate aim and it should take the least intrusive measure proportionate to the right sacrificed on the basis of the restriction.³⁷

Consequently, the restriction on FoA was not necessary or proportionate. It will be presented below that (i) the government's position was unsubstantiated and excessive, (ii) other locations could have been fumigated such as the Hospital which was a symbolic place and (iii) the Regulation was politically motivated.

i. The government's position was unsubstantiated and excessive

10. Historically, political leaders have used real or manufactured crises to justify human rights violations, undermine the rule of law.³⁸ The government insisted, that NIDV was spread by mosquitoes.³⁹ Thus, it designated the CPP in order to mitigate the exposure to mosquitoes.⁴⁰ However, several medical experts had confidentially confirmed that

³⁴ Compromis 14.; Clarifications 1.; *Lashmankin and Others v Russia* App nos 57818/09, 51169/10, 4618/11, 19700/11, 31040/11, 47609/11, 55306/11, 59410/11, 7189/12, 16128/12, 16134/12, 20273/12, 51540/12, 64243/12 and 37038/13 (ECtHR, 7 February 2017) [364]; *Stankov and the United Macedonian Organisation Ilinden v Bulgaria* App nos 29221/95 and 29225/95 (ECtHR, 2 October 2001) [85]; *Primov and Others v Russia* App no 17391/06 (ECtHR, 12 June 2014) [92].

³⁵ *Stankov and the United Macedonian Organisation Ilinden v Bulgaria* App nos 29221/95 and 29225/95 (ECtHR, 2 October 2001) [85]; *Primov and Others v Russia* App no 17391/06 (ECtHR, 12 June 2014) [92].

³⁶ *Lashmankin and Others v Russia* App nos 57818/09, 51169/10, 4618/11, 19700/11, 31040/11, 47609/11, 55306/11, 59410/11, 7189/12, 16128/12, 16134/12, 20273/12, 51540/12, 64243/12 and 37038/13 (ECtHR, 7 February 2017) [363]; UNHRC *Kivenmaa v Finland* (1994) CCPR/C/50/D/412/1990 .

³⁷ *Handyside v The United Kingdom* App no 5393/72 (ECtHR, 7 December 1976) [49].

³⁸ Steven Levitsky and Daniel Ziblatt, 'How Democracies Die' (*New York: Crown Publishing*, 2018) 92-96.

³⁹ Compromis 27.

⁴⁰ Compromis 16.

NIDV was sexually transmitted.⁴¹ Therefore, the interference was not suitable to pursue its legitimate aim to protect public health.

11. Alternatively, if the Honourable Court adjudges, it is a reasonable fear that mosquitoes spread NIDV, the intervention was excessive and did not meet a pressing social need. Medical experts agreed that NIDV was not as deadly as HIV.⁴²

ii. *Other locations could have been fumigated such as the Hospital which was a symbolic place*

12. Assemblies should take place within ‘sight and sound’ of the target audience.⁴³ Prohibitions on all assemblies in any public location except for a single specified place, either in a city⁴⁴ or outside the city centre,⁴⁵ may not be imposed.

13. On 4 February 2020, The MoD issued a Regulation under the NSA that declared a state of emergency and designating CPP as the sole site where gathering may be held.⁴⁶ Even though CPP is located in the capital, has four access point, ample space, is frequently visited and can be regularly fumigated to mitigate the exposure to mosquitoes,⁴⁷ it is not a location where Applicants could have the most effectively held their assembly.

⁴¹ Compromis 26.

⁴² Compromis 11.

⁴³ *Turchenyak v Belarus* Views on the merits (10 September 2013) CCPR/C/108/D/1948/2010 [7.4]; *Lashmankin and Others v Russia* App nos 57818/09, 51169/10, 4618/11, 19700/11, 31040/11, 47609/11, 55306/11, 59410/11, 7189/12, 16128/12, 16134/12, 20273/12, 51540/12, 64243/12, 37038/13 (ECtHR, 7 February 2017) [364].

⁴⁴ *Turchenyak v Belarus* Views on the merits CCPR/C/108/D/1948/2010 (10 September 2013) [7.5].

⁴⁵ *Sudalenko v Belarus* CCPR/C/113/D/1992/2010 (UNHRC, 28 December 2015) [8.5].

⁴⁶ Compromis 16.

⁴⁷ *ibid.*

14. The Union has members that are healthcare workers,⁴⁸ harshly affected by the reforms and openly blamed for the spread of NIDV.⁴⁹ At the time of the issue of the Regulation the most intensively debated public affairs were the privatisation of healthcare services.⁵⁰ Thus, the target audience of the assembly was not only Ized's citizens in general but especially healthcare workers. Consequently, CPP did not enable Applicants to convey their message the most effectively, as the Hospital was not only one of the most frequented hospitals of Ized's capital, it is also among the first ones to be privatised.⁵¹ Therefore it qualified as a 'symbolic place'.⁵² The prohibition was not the least intrusive measure taken.⁵³ The government was not obstructed to fumigate other locations to protect participants from mosquitoes.⁵⁴

iii. *The Regulation was politically motivated*

15. The categorical exclusion of places suitable as sites for peaceful assemblies was disproportionate,⁵⁵ especially in the present case where FoA overlaps Foe, as the

⁴⁸ Compromis 7.

⁴⁹ Compromis 13.

⁵⁰ Compromis 17.

⁵¹ Compromis 18.

⁵² *Yilmaz Yildiz and others v Turkey*, App no 4524/06, (ECtHR, 14 October 2014) [43]; *Disk and Kesk v Turkey* App no 38676/08 (ECtHR, 27 November 2012) [29].

⁵³ *Handyside v The United Kingdom* App no 5393/72 (ECtHR, 7 December 1976) [48]; *Fontevicchia and D'Amico v Argentina* Series C No 238 (IACtHR, 29 November 2011) [54].

⁵⁴ *Associated Society of Locomotive Engineers and Firemen (ASLEF) v the United Kingdom* App no 11002/05 (ECtHR, 27 February 2007) [37]; *Nemtsov v Russia* App no 1774/11 (ECtHR, 31 July 2014) [72]; *The United Macedonian Organisation Ilinden and Ivanov v Bulgaria* App no 44079/98 (ECtHR, 18 October 2005) [115]; *Oya Ataman v Turkey* App no 74552/01 (ECtHR, 5 December 2006) [17].

⁵⁵ UNHRC, 'Report of the UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association' (21 May 2012) A/HRC/20/27 [39]-[41]; *United States v Grace* 461 US 171, 103 (1983); *Disk and*

freedom to choose the location is the core of FoA.⁵⁶ The restriction was politically motivated, as the Regulation was issued by MoD⁵⁷ and was welcomed by supporters of NUA addressing that it was an effective way to control protest by socialists⁵⁸ who accused the government with spreading lies and heavily criticised its reforms.⁵⁹

Kesk v Turkey App no 38676/08 (ECtHR, 27 November 2012) [29]; *New York Times v United States* 403 US 713 (1971); *Organization for a Better Austin v Keefe* 402 US 415 (1971).

⁵⁶ *Sáska v Hungary* App no 58050/08 (ECtHR, 27 November 2012) [21]-[23].

⁵⁷ Compromis 16.

⁵⁸ *ibid.*

⁵⁹ Compromis 17, 19.

ISSUE B: IZED’S DECISION TO CONVICT XANA UNDER SECTION 22 OF THE NSA VIOLATED HER RIGHTS RECOGNISED BY ARTICLES 19 AND 21 OF THE ICCPR

16. The unlawfulness of Ized’s decision to convict Xana under Section 22 of the NSA⁶⁰ involves the three-part cumulative test introduced earlier.⁶¹ The gathering held on 14 February legally amounted to an assembly. Therefore, the lawfulness of the interference must be assessed in the light of FoA applying the *lex specialis* as it will be presented below.

a) The interference was not envisaged by law

17. For a restriction to be envisaged by law, a statute must be sufficiently precise⁶² as to the rule’s constraints, limitations, and penalties.⁶³ Even though the decisions made by the

⁶⁰ Compromis 21, 22.

⁶¹ Arguments 3.

⁶² *The Sunday Times v The United Kingdom* (No 1) App no 6538/74 (ECtHR, 26 April 1979) [49]; *Müller v Switzerland* App no 10737/84 (ECtHR, 24 May 1988) [29]; *Ahmet Yıldırım v Turkey* App no 3111/10 (ECtHR, 18 December 2012) [57]; *Tolstoy Miloslauský v The United Kingdom* App no 18139/91 (ECtHR, 13 July 1995) [37]; *Sanoma Uitgevers BV v Netherlands* App no 38224/03 (ECtHR, 14 September 2010) [81], [83]; *Malone v The United Kingdom* App no 8691/79 (ECtHR, 2 August 1984) [66]; *Kafkaris v Cyprus* App no 21906/04 (ECtHR, 12 February 2008) [140]; *Kokkinakis v Greece* App no 14307/88 (ECtHR, 25 May 1993) [40]; *Lindon, Otchakovsky-Laurens and July v France* App nos 21279/02, 36448/02 (ECtHR, 22 October 2007) [41]; *Editorial Board of Pravoye Delo and Shtekel v Ukraine* App no 33014/05 (ECtHR, 5 August 2011) [52]; *RTBF v Belgium* App no 50084/06 (ECtHR, 29 March 2011) [115]; *Altuğ Taner Akçam v Turkey* App no 27520/07 (ECtHR, 25 October 2011) [87]; Usón Ramírez v Venezuela Case no 12.554 (IACtHR, 25 July 2008) [55]; Tomás Eduardo Cirio v Uruguay Case no 11.500 (IACommHR, 27 October 2006) [64]; UN Economic and Social Council, UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, ‘Siracusa Principles on the Limitation and Derogation of Provisions in the ICCPR’ (1984) UN Doc E/CN.4/1984/4 principle [17]; Human Rights Committee, UNHRC ‘General Comment 34, Article 19, Freedoms of Opinion and Expression’ (12 September 2011) UN Doc CCPR/C/GC/34 [25]; UNHRC *Leonardus Johannes Maria de Groot v The Netherlands* (14 July 1994) UN Doc CCPR/C/54/D/578/1994.

⁶³ UNHRC *Leonardus Johannes Maria de Groot v The Netherlands* (14 July 1994) UN Doc CCPR/C/54/D/578/1994; UNHRC ‘General Comment No. 34: Article 19: Freedoms of Opinion and Expression’ (12 September 2011) UN Doc CCPR/C/GC/34 [25].

High Court of Ized⁶⁴ and by the Supreme Court of Ized did not violate the principle of *nullum crimen sine lege*,⁶⁵ the interference was not envisaged by law⁶⁶ as the NSA was its legal basis.⁶⁷ As stated in Issue A,⁶⁸ NSA failed to comply with the concept envisaged by law.⁶⁹

18. Insofar as a judicial decision is based on the NSA on act not compliant with the concept of envisaged by law, the interference cannot be prescribed by law either.

⁶⁴ Compromis 22.

⁶⁵ *Del Rio Prada v Spain* [GC] App no 42750/09 (ECtHR, 21 October 2013) [116]; *Kokkinakis v Greece* App no 14307/88 (ECtHR, 25 May 1995); Case 117/83 *Könecke v Balm* [1984] ECR 04587.

⁶⁶ *The Sunday Times v The United Kingdom* (No 1) App no 6538/74 (ECtHR, 26 April 1979) [49]; *Müller v Switzerland* App no 10737/84 (ECtHR, 24 May 1988) [29]; *Ahmet Yıldırım v Turkey* App no 3111/10 (ECtHR, 18 December 2012) [57]; *Tolstoy Miloslauský v The United Kingdom* App no 18139/91 (ECtHR, 13 July 1995) [37]; *Sanoma Uitgevers BV v Netherlands* App no 38224/03 (ECtHR, 14 September 2010) [81], [83]; *Malone v The United Kingdom* App no 8691/79 (ECtHR, 2 August 1984) [66]; *Kafkaris v Cyprus* App no 21906/04 (ECtHR, 12 February 2008) [140]; *Kokkinakis v Greece* App no 14307/88 (ECtHR, 25 May 1993) [40]; *Lindon, Otchakovsky-Laurens and July v France* App nos 21279/02, 36448/02 (ECtHR, 22 October 2007) [41]; *Editorial Board of Pravoye Delo and Shtekel v Ukraine* App no 33014/05 (ECtHR, 5 August 2011) [52]; *RTBF v Belgium* App no 50084/06 (ECtHR, 29 March 2011) [115]; *Altuğ Taner Akçam v Turkey* App no 27520/07 (ECtHR, 25 October 2011) [87]; *Usón Ramírez v Venezuela* Case no 12.554 (IACtHR, 25 July 2008) [55]; *Tomás Eduardo Cirio v Uruguay* Case no 11.500 (IACommHR, 27 October 2006) [64]; UN Economic and Social Council, UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, ‘Siracusa Principles on the Limitation and Derogation of Provisions in the ICCPR’ (1984) UN Doc E/CN.4/1984/4 principle [17]; Human Rights Committee, UNHRC ‘General Comment 34, Article 19, Freedoms of Opinion and Expression’ (12 September 2011) UN Doc CCPR/C/GC/34 [25]; UNHRC *Leonardus Johannes Maria de Groot v The Netherlands* (14 July 1994) UN Doc CCPR/C/54/D/578/1994.

⁶⁷ Compromis 15.

⁶⁸ Arguments 4., Compromis 14.

⁶⁹ UNHRC *Leonardus Johannes Maria de Groot v The Netherlands* (14 July 1994) UN Doc CCPR/C/54/D/578/1994; UNHRC ‘General Comment No. 34: Article 19: Freedoms of Opinion and Expression’ (12 September 2011) UN Doc CCPR/C/GC/34 [25].

b) The interference did not pursue a legitimate aim

19. The sole permissible restrictions under the ICCPR are to protect national security, public order, public health or morals, and to respect the rights and reputation of others.⁷⁰ Any demonstration in a public place inevitably causes a certain level of disruption to ordinary life. It is important that the authorities show a certain degree of tolerance towards peaceful gatherings.⁷¹
20. The demonstration⁷² did not present a grave risk to either public health or public order, therefore did not pursue a legitimate aim.

c) The interference was not necessary and proportionate

21. For an interference to be necessary in a democratic society, it must correspond to a pressing social need, be suitable to pursue its legitimate aim and should take the least intrusive measure proportionate to the right sacrificed on the basis of the restriction.⁷³ The conviction of Xana did not comply with the aforementioned requirements as (i) the site of the gathering was announced on time and was symbolic, (ii) the demonstration was peaceful, (iii) the intervention by the police was immediate, severe and overreacting and (iv) the sentence of Xana was arbitrary and had a chilling effect.

⁷⁰ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171. Article 10 (2).

⁷¹ *Yilmaz Yildiz and others v Turkey*, App no 4524/06, (ECtHR, 14 October 2014) [45]; see *Bukta and others v Hungary* App no 25691/04 (ECtHR, 17 July 2007) [37].

⁷² Compromis 19, 20.

⁷³ *Handyside v The United Kingdom* App no 5393/72 (ECtHR, 7 December 1976) [49].

i. *The present case falls under the scope of FoA*

22. An assembly is an intentional gathering of a number of individuals in a publicly accessible place for a common expressive purpose.⁷⁴ On 14 February Xana and approximately 400 persons joined the demonstration outside the Hospital,⁷⁵ a publicly accessible place, in order to express their opinion on a true matter of public: the latest reforms of the government.⁷⁶ Thus, the gathering led by Xana must be given maximum protection, as it is associated with FoE and qualifies as an assembly falling under the scope of FoA.⁷⁷

ii. *The site of the gathering was announced on time and was symbolic*

23. States are obliged safeguard fundamental rights and secure their effective enjoyment.⁷⁸

This positive obligation includes facilitating assemblies at the organiser's preferred

⁷⁴ European Commission for Democracy Through Law ('Venice Commission') OSCE Office for Democratic Institutions and Human Rights ('OSCE/ODIHR') *Guidelines on Freedom of Assembly* (3rd edition, 8 July 2019) CDL-AD(2019)017 [27].

⁷⁵ Compromis 19.

⁷⁶ Compromis 18, 19.

⁷⁷ *Kenneth Good v Botswana* (2010) AHRLR 43 (ACHPR 106, 26 May 2010) [198]; ACHPR Declaration of Principles on Freedom of Expression in Africa (adopted 17-23 October 2002) Article 13; *Konate v Burkina Faso* App No 004/2013 (ACtHPR, 5 December 2014); Organisation for Security and Cooperation in Europe, Joint Declarations of the representatives of intergovernmental bodies to protect free media and expression (2013).

⁷⁸ *Djavit An v Turkey* App no 20652/92 (ECtHR, 20 February 2003) [57]; *Oya Ataman v Turkey* App no 74552/01 (ECtHR, 5 December 2006) [36]; *Gün and Others v Turkey* App no 8029/07 (ECtHR, 18 June 2013) [49].

location,⁷⁹ as it enables participants to communicate their message within the sight and sound of the target audience.⁸⁰

24. The Union announced, ten days earlier that it was organising a demonstration.⁸¹ The planned venue was announced on 13 February, exactly a day before the demonstration.⁸² Therefore, the government had a reasonable time to secure the planned venue by its fumigation, as spontaneous assemblies are also protected under FoA.⁸³

25. The Hospital was closely connected to the message the protesters communicated, as they expressed their concerns on the new healthcare reforms.⁸⁴ The Hospital is one of the most frequented hospitals of Ized, it is also among the first ones to be privatised.⁸⁵ Therefore the venue was a 'symbolic place' enjoying a higher protection under FoE.⁸⁶ The demonstration was not merely held by state employees, so it does not fall under the stricter scrutiny of the Constitution.⁸⁷

⁷⁹ *Öllinger v Austria* App no 76900/01 (ECtHR, 29 June 2006) [35]; *Kenneth Good v Botswana* Comm No 313 [2010] (ACHPR 106, 26 May 2010) [198]; ACHPR Declaration of Principles on Freedom of Expression in Africa (adopted 17-23 October 2002) Article 13; *Konate v Burkina Faso* App No 004/2013 (ACtHPR, 5 December 2014); Joint Declarations of the representatives of intergovernmental bodies to protect free media and expression (*Organisation for Security and Cooperation in Europe*, 13 February 2013); European Commission for Democracy Through Law ('Venice Commission') OSCE Office for Democratic Institutions and Human Rights ('OSCE/ODIHR') *Guidelines on Freedom of Assembly* (3rd edition, 8 July 2019) CDL-AD(2019)017.

⁸⁰ European Commission for Democracy Through Law ('Venice Commission') OSCE Office for Democratic Institutions and Human Rights ('OSCE/ODIHR') *Guidelines on Freedom of Assembly* (3rd edition, 8 July 2019) CDL-AD(2019)017.

⁸¹ Compromis 17.

⁸² Compromis 18.

⁸³ *Éva Molnár v Hungary* App no 10346/05 (ECtHR, 7 October 2008) [38].

⁸⁴ Compromis 19.

⁸⁵ Compromis 18.

⁸⁶ *Yilmaz Yildiz and others v Turkey* App no 4524/06 (ECtHR, 14 October 2014) [43]; *Disk and Kesik v Turkey* App no 38676/08 (ECtHR, 27 November 2012) [29].

⁸⁷ Compromis 29.

iii. *The demonstration was peaceful*

26. The peaceful manner of assemblies is presumed, regarding which the onus probandi lies on the state.⁸⁸ An assembly can be entirely ‘peaceful’ even if it is ‘unlawful’ under domestic law.⁸⁹ A demonstration in a public place might disrupt ordinary life on a certain level.⁹⁰ Even though, the demonstrators were blocking the entrance of the hospital and turning people away, this conduct caused no physical. Therefore, it did not bother the functioning of the Hospital disproportionately, as the separate emergency entrance was not blocked.⁹¹

27. Even if blocking the hospital would qualify as sporadic violent conduct, the use of violence by a small number of participants in an assembly does not automatically turn an otherwise peaceful assembly into a non-peaceful one.⁹² An individual does not cease to enjoy FoA as a result of violence committed by others.⁹³ Pursuant to the fact that only

⁸⁸ *Gryb v Belarus* Communication no 1316/2004 (8 December 2011) CCPR/C/108/D/1316/2004 [13.4].

⁸⁹ *Taranenko v Russia* App no 19554/05 (ECtHR, 15 May 2014) [91]-[93]; *Navalnyy v Russia* App nos 29580/12, 36847/12, 11252/13, 12317/13 and 43746/14 (ECtHR, 15 November 2018); *Gryb v Belarus* Communication no 1316/2004 (8 December 2011) CCPR/C/108/D/1316/2004 [13.4]; *Steel and Others v the United Kingdom* App no 24838/94 (ECtHR, 23 September 1998); *Barraco v France* App no 31684/05 (ECtHR, 5 March 2009) [24].

⁹⁰ *Nurettin Aldemir and Others v Turkey* App nos 32124/02, 32126/02, 32129/02, 32132/02, 32133/02, 32137/02 and 32138/02 (ECtHR, 18 December 2007) [43]; *Körtvélyessy v Hungary* App no 7871/10 (ECtHR, 5 April 2016) [28].

⁹¹ Clarifications 20.

⁹² *Christians against Racism and Fascism v the United Kingdom* App no 8440/78 (ECtHR, 17 July 1980); *Ezelin v France* App no 11800/85 (ECtHR, 26 April 1991) [41].

⁹³ *Ziliberberg v Moldova* App no 61821/00 (ECtHR, 4 May 2004); *Ezelin v France* App no 11800/85 (ECtHR, 26 April 1991) [53].

a minority, 40 out of 400 participants, approximately 10% blocked the hospital,⁹⁴ the whole demonstration should not have been deemed violent by the authorities.

iv. The intervention by the police was immediate, severe and overreacting

28. The state is obliged to show tolerance towards peaceful assemblies.⁹⁵ The method used by the police dispersing the demonstration is also an important factor in assessing the proportionality of the interference.⁹⁶ The police used violence first, and rapidly dispersed the gathering through the cruellest means, such as by using water cannons, tear gas, and firing blanks.⁹⁷ Participants sustained injuries,⁹⁸ which might have later upcoming consequences such as physical harm and unpleasantness.⁹⁹ The excessive use of tear gas, water cannons and firing blanks against Xana was unnecessary as the assembly remained non-violent.¹⁰⁰

29. The restrictions imposed on the exercise of FoE of state employees in Ized's Constitution do not provide grounds for breaking up the demonstration in a violent way, since not everyone was an employee of the state.¹⁰¹

⁹⁴ Compromis 19.

⁹⁵ *Navalnyy v Russia* App nos 29580/12, 36847/12, 11252/13, 12317/13 and 43746/14 (ECtHR, 15 November 2018).

⁹⁶ *Primov and Others v Russia* App no 17391/06 (ECtHR, 12 June 2014) [119].

⁹⁷ *Oya Ataman v Turkey* App no 74552/01 (ECtHR, 5 December 2006) [17].

⁹⁸ Compromis 20.

⁹⁹ *ACommHPR v. Great Socialist People's Libyan Arab Jamahiriya* 004/2011 (ACommHPR, 25 March 2011); Compromis 20.

¹⁰⁰ *İzci v Turkey* App no 42606/05 (ECtHR, 23 July 2013); *Abdullah Yaşa and Others v Turkey* App no 44827/08 (ECtHR, 16 July 2013) [43]; *Oya Ataman v Turkey* App no 74552/01 (ECtHR, 5 December 2006) [17].

¹⁰¹ Compromis 29.; Clarifications 8.

30. The least intrusive measure would have been to make exclusively those participants liable who blocked the hospital but not to deprive other from their fundamental rights by dispersing the whole gathering. Therefore, the methods used by the police were disproportionate as the gathering was peaceful.

v. *The sentence of Xana was arbitrary and had a chilling effect*

31. The arrest of Xana was unnecessary as she did not directly participate in the alleged conducts and did not promote any violent actions that may be deemed violent.¹⁰² Temporarily hindering people from entering the hospital does not make the protest violent.¹⁰³

32. Xana was convicted under the NSA and sentenced to three months imprisonment, but the sentence was suspended for one year.¹⁰⁴ A peaceful demonstration should not be threatened with criminal sanction¹⁰⁵ or deprivation of liberty.¹⁰⁶ Such an interference requires particular justification.

¹⁰² Case No 1865 (Republic of Korea) Complaint date 14-DEC-95 [773]; ‘Cambodia: Free Prominent Trade Union Leader’ Human Human Rights Watch (4 August 2020) < <https://www.hrw.org/news/2020/08/04/cambodia-free-prominent-trade-union-leader> > accessed 4 November 2020; Compromis 19.

¹⁰³ European Commission for Democracy Through Law (‘Venice Commission’) OSCE Office for Democratic Institutions and Human Rights (‘OSCE/ODIHR’) *Guidelines on Freedom of Assembly* (3rd edition, 8 July 2019) CDL-AD(2019)017 [48]; *Nurettin Aldemir and Others v Turkey* App nos 32124/02, 32126/02, 32129/02, 32132/02, 32133/02, 32137/02 and 32138/02 (ECtHR, 18 December 2007) [43]; *Körtvélyessy v Hungary* App no 7871/10 (ECtHR, 5 April 2016) [28]; *Annenkov and Others v Russia* App no 31475/10 (ECtHR, 25 July 2017) [124]-[126].

¹⁰⁴ Compromis 22.

¹⁰⁵ *Akgöl and Göl v Turkey* App nos 28495/06 and 28516/06 (ECtHR, 17 May 2011) [43].

¹⁰⁶ *Gün and Others v Turkey* App no 8029/07 (ECtHR, 18 June 2013) [83].

33. The sentence was discriminatory as all arrested demonstrators were released from detention except for Xana.¹⁰⁷ Her conviction had a chilling effect¹⁰⁸ on other citizens and indirectly resulted in the restriction of FoA. It must be noted that her trial lasted only 18 days.¹⁰⁹ This short period of time did not enable Xana to effectively defend herself,¹¹⁰ therefore violated her right to fair trial.¹¹¹ The judicial decisions made by the High Court of Ized and the Supreme Court were not compatible with the ECHR. The sole relevant issue examined by the Courts was the lawfulness of the gathering under Section 22 of the NSA and no account was taken on necessity and proportionality.¹¹² The rapid and discriminatory conduct also implicates that the trial was not a legal but a politically motivated process in order to suppress the opposition.¹¹³

¹⁰⁷ Compromis 21.

¹⁰⁸ *Belpietro v Italy* App no 43612/10 (ECtHR, 24 September 2013) [61]; *Fatullayev v Azerbaijan* App no 40984/07 (ECtHR, 22 April 2010) [100]-[103]; *Khadija Ismayilova v Azerbaijan* App no 30778/15 (ECtHR, 27 February 2020) [83].

¹⁰⁹ Compromis 21, 22.

¹¹⁰ *Ibrahim and others v The United Kingdom* App nos 50541/08, 50571/08, 50573/08 and 40351/09 (ECtHR, 13 September 2016) [7]; *Murtazaliyeva v Russia* App no 36658/05 (ECtHR, 18 December 2018) [91].

¹¹¹ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 Article 14; European Convention on Human Rights (adopted 4 November 1950, entered into force 3 September 1953) Article 6; African Commission on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) (1982) 21 ILM 58 Article 7; American Convention on Human Rights (adopted 22 November 1969, entered into force 18 July 1978) Article 8; Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217A (III) Article 10; Charter of Fundamental Rights of the European Union Article 47; *Lambin v Russia* App no 12668/08 (ECtHR, 21 November 2017) [43]-[48].

¹¹² *Kablis v Russia* App nos 48310/16 and 59663/17 (ECtHR, 30 April 2019) [69]; Dirk Voorhoof and Ronan Ó. Fathaigh, 'Kablis v. Russia: prior restraint of online campaigning for a peaceful, but unauthorised demonstration violated Article 10 ECHR' (Strasbourg Observers, 17 May 2019) <<https://strasbourgobservers.com/2019/05/17/kablis-v-russia-prior-restraint-of-online-campaigning-for-a-peaceful-but-unauthorised-demonstration-violated-article-10-echr/#more-4349>> access on 4 November 2020.

¹¹³ Compromis 24, 25.

ISSUE C: IZED’S DECISION TO ISSUE THE STATEMENT OF 16 MARCH VIOLATED THE SOCIAL DEMOCRATIC WORKERS UNION’S RIGHTS RECOGNISED BY ARTICLES 19 AND 21 OF THE ICCPR

34. The Internet and social media has become one of the principal means by which people engage in activities and discussions concerning public affairs,¹¹⁴ which enjoy a high level of protection of FoE.¹¹⁵ During a public emergency, it is essential for citizens to receive information quickly from various sources.¹¹⁶ Therefore it is crucial to ensure the pluralism of media including online platforms.¹¹⁷

a) The interference was not envisaged by law

35. Everyone has the right to FoE¹¹⁸ and to FoA,¹¹⁹ thus restrictions may be placed on the exercise of these rights in conformity with the law and which are necessary in a

¹¹⁴ *Cengiz and Others v Turkey* App nos 48226/10 and 14027/11 (ECtHR, 1 December 2015) [49], [52].

¹¹⁵ *Axel Springer AG v Germany* [GC] App no 39954/08 (ECtHR, 7 February 2012) [90]; *Morice v France* [GC] App no 29369/10 (ECtHR, 23 April 2015) [125].

¹¹⁶ *Autronic AG v Switzerland* App no 12726/87 (ECtHR, 22 May 1990) [47]; *Ahmet Yildirim v Turkey* App no 3111/10 (ECtHR, 18 December 2012) [50]; *Times Newspapers Ltd v the United Kingdom (nos. 1 and 2)* App nos 3002/03 and 23676/03 (ECtHR, 10 March 2009) [27].

¹¹⁷ *Centro Europa 7 S.r.l. and Di Stefano v Italy* App no 38433/09 (ECtHR, 7 June 2012) [129]; *Animal Defenders International v The United Kingdom* App no 48876/08 (ECtHR, 22 April 2013) [101]; *United Communist Party of Turkey and Others v Turkey* App no 133/1996/752/951 (ECtHR, 30 January 1998) [43]; *Socialist Party and Others v Turkey* App no 20/1997/804/1007 (ECtHR, 25 May 1998) [41]; *Manole and Others v. Moldova* App no 13936/02 (ECtHR, 17 September 2009) [95].

¹¹⁸ European Convention on Human Rights (adopted 4 November 1950, entered into force 3 September 1953) Article 10.

¹¹⁹ European Convention on Human Rights (adopted 4 November 1950, entered into force 3 September 1953) Article 11.

democratic society¹²⁰ in the interests of a legitimated aim.¹²¹ The Statement issued by the MoD does not comply with the requirement to be envisaged by law,¹²² since the Statement is not a normative legal act, as a norm cannot be regarded as a ‘law’ unless it is formulated with sufficient precision to enable the citizens to regulate their conduct.¹²³ People must be able to foresee the consequences which a given action may entail.¹²⁴ However, the NSA¹²⁵ authorised the MoD to issue regulations,¹²⁶ which alone does not involve issuing statements. This measure was also not announced directly to the citizens,¹²⁷ thus it cannot impose restrictions on either FoE or FoA.

¹²⁰ Written Submission of OSCE Office for Democratic Institutions and Human Rights to the Human Rights Committee: Drafting of the General Comment on Article 21 (Right to Peaceful Assembly) of the International Covenant on Civil and Political Rights (18 March 2019) [93]; UNHRC ‘General Comment 34, Article 19, Freedoms of Opinion and Expression’ (12 September 2011) UN Doc CCPR/C/GC/34 [34].

¹²¹ International Covenant on Civil and Political Rights (ICCPR) (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 Article 21.

¹²² *The Sunday Times v The United Kingdom* (No 1) App no 6538/74 (ECtHR, 26 April 1979) [49]; *Müller v Switzerland* App no 10737/84 (ECtHR, 24 May 1988) [29]; *Ahmet Yıldırım v Turkey* App no 3111/10 (ECtHR, 18 December 2012) [57]; *Tolstoy Miloslauský v The United Kingdom* App no 18139/91 (ECtHR, 13 July 1995) [37]; *Sanoma Uitgevers BV v Netherlands* App no 38224/03 (ECtHR, 14 September 2010) [81], [83]; *Malone v The United Kingdom* App no 8691/79 (ECtHR, 2 August 1984) [66]; *Kafkaris v Cyprus* App no 21906/04 (ECtHR, 12 February 2008) [140]; *Kokkinakis v Greece* App no 14307/88 (ECtHR, 25 May 1993) [40]; *Lindon, Otchakovsky-Laurens and July v France* App nos 21279/02, 36448/02 (ECtHR, 22 October 2007) [41]; *Editorial Board of Pravoye Delo and Shtekel v Ukraine* App no 33014/05 (ECtHR, 5 August 2011) [52]; *RTBF v Belgium* App no 50084/06 (ECtHR, 29 March 2011) [115]; *Altuğ Taner Akçam v Turkey* App no 27520/07 (ECtHR, 25 October 2011) [87]; *Usón Ramírez v Venezuela* Case no 12.554 (IACtHR, 25 July 2008) [55]; *Tomás Eduardo Cirio v Uruguay* Case no 11.500 (IACommHR, 27 October 2006) [64]; UN Economic and Social Council, UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, ‘Siracusa Principles on the Limitation and Derogation of Provisions in the ICCPR’ (1984) UN Doc E/CN.4/1984/4 principle [17]; Human Rights Committee, UNHRC ‘General Comment 34, Article 19, Freedoms of Opinion and Expression’ (12 September 2011) UN Doc CCPR/C/GC/34 [25]; UNHRC *Leonardus Johannes Maria de Groot v The Netherlands* (14 July 1994) UN Doc CCPR/C/54/D/578/1994.

¹²³ *The Sunday Times v The United Kingdom* (No 1) App no 6538/74 (ECtHR, 26 April 1979) [49].

¹²⁴ *Karácsony and Others v Hungary* App no 42461/13 (ECtHR, 16 September 2014) [124]; *Delfi AS v Estonia* App no 64569/09 (ECtHR, 16 June 2015) [110]; *Medžlis Islamske Zajednice Brčko and Others v Bosnia and Herzegovina* [GC] App no 17224/11 (ECtHR, 27 June 2017).

¹²⁵ Compromis 14.

¹²⁶ *ibid.*

¹²⁷ Compromis 27.

36. However, the restriction imposed on public sites¹²⁸ did not initially apply to social media platforms, the Statement arbitrarily expanded their concept,¹²⁹ causing a chilling effect on citizens.¹³⁰ Furthermore, the Statement did not contain precisely what the term ‘unauthorised gathering’ means, consequently, the Statement was unlawful and arbitrary as it did not comply with the criteria.

b) The interference did not pursue a legitimate aim

37. As stated in Issue B,¹³¹ the list of permissible restrictions on fundamental rights is exhaustive.¹³² The Statement issued with the purpose to stop the spread of disinformation on social media platforms and to protect the public health and public order did not pursue a legitimate aim. Hence, the online space is the only secure medium, since the virus cannot infect people virtually, in conclusion this restriction endangers the public health and order instead of protecting them.

¹²⁸ Compromis 27.

¹²⁹ *ibid.*

¹³⁰ *ibid.*

¹³¹ Arguments 18.

¹³² Agnes Callamard, ‘Expert meeting on the links between articles 19 and 20 of the ICCPR: Freedom of expression and advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence’ (*OHCHR Experts Papers*, Geneva, 2-3 October 2008); Manfred Nowak *U.N. Covenant on Civil and Political Rights* (2nd revised edition, N.P. Engel Publisher 2005) 468-480; Marc J Bossuyt, *Guide To The “Travaux Préparatoires” of the International Covenant on Civil and Political Rights* (Martinus Nijhoff Publishers, 1987) 375.

c) The interference was not necessary and proportionate

38. The general ban on organising gatherings¹³³ on social media platforms was not necessary and proportionate as (i) The Net remained the only suitable place for the Union to hold gatherings (ii) the digital demonstration did not pose grave risk to public health and public order and (iii) due to the restriction on Net, deprives the Union's right to hold gatherings at issue of its essence.¹³⁴

i. The Net remained the only suitable place for the Union to hold gatherings

39. Although the CPP was de iure available for holding gatherings, the Union was de facto deprived to exercise the right to FoA¹³⁵ at physical public sites for. The CPP was not suitable for holding demonstrations, since the Hospital served as a 'symbolic space'.¹³⁶ Furthermore, The Net remained the only suitable place as the demonstration was brutally suppressed by police,¹³⁷ and the Union feared that the CPP was under heavy surveillance by state security forces,¹³⁸ which forced them to discontinue any demonstrations at physical public sites.¹³⁹

¹³³ Compromis 27.

¹³⁴ European Data Protection Supervisor, 'Guidance on Article 25 of the Regulation (2018/1725) and internal rules' (24 June 2020); *The National Union of Rail, Maritime and Transport Workers v The United Kingdom* App no 31045/10 (ECtHR, 8 April 2014).

¹³⁵ Compromis 30.

¹³⁶ *Lashmankin and Others v Russia* App nos 57818/09, 51169/10, 4618/11, 19700/11, 31040/11, 47609/11, 55306/11, 59410/11, 7189/12, 16128/12, 16134/12, 20273/12, 51540/12, 64243/12 and 37038/13 (ECtHR, 7 February 2017) [6].

¹³⁷ Compromis 20.

¹³⁸ Compromis 23.

¹³⁹ *ibid.*

ii. *The digital demonstration did not pose a grave risk to public health and public order*

40. As a result of the events mentioned just above¹⁴⁰, the Union decided to launch digital demonstrations on The Net,¹⁴¹ so they could also ensure the safe participation on the discuss of public issues for those citizens, who were discriminated by reside¹⁴² precludes from the enjoyment of the right to FoA. Thus, the two Net-Assemblies reached more than 80,000 endorsements, nearly forty times the number of Netizens who were formal members of the Union.¹⁴³

41. The general ban on gatherings held on social media, based on the assumption that it risks the public health and order.¹⁴⁴ However, it can only be justified if there is a real danger to disorder,¹⁴⁵ the government should not use the health crisis to excessively

¹⁴⁰ Arguments 37.

¹⁴¹ Compromis 24.

¹⁴² *Carson and Others v the United Kingdom* App no 42184/05 (ECtHR, 16 March 2010) [70]; *Aleksandr Aleksandrov v Russia* App no 14431/06 (ECtHR, 27 March 2018) [25]; *Baralija v Bosnia and Herzegovina* App no 30100/18 (ECtHR, 29 October 2019) [52]; Written Submission of OSCE Office for Democratic Institutions and Human Rights to the Human Rights Committee: Drafting of the General Comment on Article 21 (Right to Peaceful Assembly) of the ICCPR (18 March 2019) [6].

¹⁴³ Compromis 24.

¹⁴⁴ Compromis 27.

¹⁴⁵ *Christians against Racism and Fascism v the United Kingdom* App no 8440/78 (ECtHR, 16 July 1980); *Lashmankin and Others v Russia* App nos 57818/09, 51169/10, 4618/11, 19700/11, 31040/11, 47609/11, 55306/11, 59410/11, 7189/12, 16128/12, 16134/12, 20273/12, 51540/12, 64243/12 and 37038/13 (ECtHR, 7 February 2017) [434]; *Kablis v Russia* App nos 48310/16 and 59663/17 (ECtHR, 30 April 2019) [54]; Dirk Voorhoof and Ronan Ó. Fathaigh, 'Kablis v. Russia: prior restraint of online campaigning for a peaceful, but unauthorised demonstration violated Article 10 ECHR' (Strasbourg Observers, 17 May 2019) <<https://strasbourgobservers.com/2019/05/17/kablis-v-russia-prior-restraint-of-online-campaigning-for-a-peaceful-but-unauthorised-demonstration-violated-article-10-echr/#more-4349>> access on 4 November 2020.

restrict FoE and FoA¹⁴⁶ – intersecting in the area of online gatherings.¹⁴⁷ Due to the spread of the virus the slogans used by the Union amounted to political opinion necessary linked to the discussion of state virus related healthcare measures as well.¹⁴⁸ The general ban on digital demonstration cannot be introduced for the reason that the Union only discussed public affairs, since it did not pose a grave risk to public health and order.¹⁴⁹ Although there was a Netizen who encouraged users to boycott healthcare services by using the same Net Tags as the Union,¹⁵⁰ but no formal ties exist between the Union and the Netizen.¹⁵¹

42. International law protects FoA, whether it is exercised in person, or through technologies.¹⁵² However, citizens who are using other social media platforms than The

¹⁴⁶ Glanz v Oldenburg App no 3 A 3012/16 (Verwaltungsgericht Oldenburg, 27 September 2018); Michael A Weber et al, 'Global Democracy and Human Rights Impacts of COVID-19: In Brief' (Congressional Research Service, 26 June 2020); Human Rights Watch, 'Human Rights Dimensions of COVID-19 Response' (19 March 2020) <<https://www.hrw.org/news/2020/03/19/human-rights-dimensions-covid-19-response>> accessed 3 November 2020; UNGA 'Disease pandemics and the freedom of opinion and expression. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression' (23 April 2020) A/HRC/44/49 [63/f].

¹⁴⁷ Written Submission of OSCE Office for Democratic Institutions and Human Rights to the Human Rights Committee: Drafting of the General Comment on Article 21 (Right to Peaceful Assembly) of the International Covenant on Civil and Political Rights (18 March 2019) [25]; Guidelines of the United Nations Educational, Scientific and Cultural Organization, 'COVID-19. The role of judicial operators in the protection and promotion of the right to freedom of expression' (2020) CI-2020/FEJ/ME [1,4].

¹⁴⁸ Compromis 24.

¹⁴⁹ *Lopes Gomes da Silva v Portugal* App no 37698/97 (ECtHR, 28 September 2000) [33]; *Kosc v Poland* App no 34598/12 (ECtHR, 1 June 2017) [38]; *Prunea v Romania* App no 47881/11 (ECtHR, 8 January 2019) joint dissenting opinion of Judges De Gaetano and Vehabovic [4].

¹⁵⁰ Compromis 25.

¹⁵¹ *ibid.*

¹⁵² UNHRC Report of the Special Rapporteur on the rights to freedom of peaceful assembly and association (17 May 2019) A/HRC/41/41; UNGA, 'Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies' (4 February 2016) UN Doc A/HRC/31/66 [10]; Guidelines on Freedom of Association and Assembly in Africa (ACommHPR, May 2017) [3]; Written Submission of OSCE Office for Democratic Institutions and Human Rights to the Human Rights Committee: Drafting of the General Comment on Article 21 (Right to Peaceful Assembly) of the International Covenant on Civil and Political Rights (18 March 2019) [6].

Net, may fear, whether their online gathering would be considered unauthorised. In consequence of the vague terms of the statement, the organisers may be sentenced for imprisonment.¹⁵³ The national authorities are required to choose the least possible prejudice to restrict the fundamental rights of private individuals or legal entities,¹⁵⁴ and show a certain degree of tolerance towards peaceful online gatherings.¹⁵⁵ Moreover, if the state enforces a measure that creates unnecessary fear in people by causing a deterring and chilling effect¹⁵⁶ on them, the state fails in the execution of its duty to protect the citizens. Consequently, the interference cannot be proportionate to pursue the targeted legitimate aim.

iii. Due to the restriction on Net, deprives the Union's right to hold gatherings at issue of its essence

43. The board of NN decided to discontinue the Net-Assembly feature.¹⁵⁷ The decision was made under political influence, as Gus Dabyu, the NUA's general secretary sits among the directors of NN.¹⁵⁸ The suspension of Net-Assembly was justified by the reason, communicated by the government.¹⁵⁹

¹⁵³ Compromis 27.

¹⁵⁴ *Mouvement raëlien Suisse v Switzerland* [GC] App no 16354/06 (ECtHR, 13 July 2012) [75]; *Galina Kostova v Bulgaria* App no 36181/05 (ECtHR, 12 November 2013) [35].

¹⁵⁵ *Kudrevičius and Others v Lithuania* [GC] App no 37553/05 (ECtHR, 15 October 2015) [150]; *Obote v Russia* App no 58954/09 (ECtHR, 19 November 2019) [41].

¹⁵⁶ *Fatullayev v Azerbaijan* App no 40984/07 (ECtHR, 22 April 2010) [100]-[103]; *Baka v Hungary* [GC] App no 20261/12 ECtHR, 23 June 2016) [160]; *Belpietro v Italy* App no 43612/10 (ECtHR, 24 September 2013) [61].

¹⁵⁷ Compromis 28.

¹⁵⁸ Compormis 4.

¹⁵⁹ Compromis 27. 28.

44. A measure of that nature, blocking access regardless of the content of the information for an indeterminate period, is a prior restraint¹⁶⁰ as it prevents Internet users from accessing information from The Net, which has virtual monopoly¹⁶¹ in the media sector. Furthermore, even if the restriction does not originate directly from a non-State actor, the State has a positive obligation to protect the exercise of the person's rights to FoE from interference by others.¹⁶²
45. The decision to issue a Statement which provided arrest sanctions¹⁶³ is not necessary and proportionate to achieve the targeted aim.

¹⁶⁰ *Ahmet Yildirim v Turkey* App no 3111/10 (ECtHR, 18 December 2012) [43].

¹⁶¹ Compromis 3.

¹⁶² *Khurshid Mustafa and Tarzibachi v Sweden* App no 23883/06 (ECtHR, 16 December 2008) [44]-[50]; *Appleby and Others v The United Kingdom* App no 44306/98 (ECtHR, 6 May 2003) [41] - [49].

¹⁶³ Compromis 27.

ISSUE D: IZED’S DECISION TO ISSUE GUIDELINES UNDER SECTION 23 OF THE NATIONAL SECURITY ACT ON 16 MARCH VIOLATED THE SOCIAL DEMOCRATIC WORKERS UNION’S RIGHTS RECOGNISED BY ARTICLE 19 OF THE ICCPR

46. FoE is essential to a healthy and vibrant society and is considered fundamental to an individual's moral and intellectual development.¹⁶⁴ Nonetheless, it is generally accepted in democratic societies that the exercising of the said right carries with it duties and responsibilities to ensure that co-existing rights are not impugned.¹⁶⁵ Individuals and their communities cannot protect themselves against the disease if information is not fully accessible to them, when they have diminished trust in sources of information, and when propaganda and disinformation dominate the statements of public authorities.¹⁶⁶

¹⁶⁴ European Convention on Human Rights (adopted 4 November 1950, entered into force 3 September 1953) Article 10; International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171. Article 19(2); ACHPR (adopted 27 June 1981, entered into force 21 October 1986) (1982) 21 ILM 58 Article 9(2); Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217A (III) Article 19; ACHR (adopted 22 November 1969, entered into force 18 July 1978) Article 13.

¹⁶⁵ European Convention on Human Rights (adopted 4 November 1950, entered into force 3 September 1953) Article 10(2); International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171. Article 19(3); ACHPR (adopted 27 June 1981, entered into force 21 October 1986) (1982) 21 ILM 58 arts 9(2) and 10(2); ACHR (adopted 22 November 1969, entered into force 18 July 1978) Article 13(2); *Shchetko v Belarus* UN Doc CCPR/C/87/D/1009/2001 (HRC, 8 August 2006) [7.3]; UNHRC, ‘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 [15]; UNHRC, ‘Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression’ (11 May 2016) UN Doc A/HRC/32/38 [7].

¹⁶⁶ UNHRC Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression (23 April 2020) A/HRC/44/49 [5].

a) The interference was not envisaged by law

47. An interference with FoE may only be justified if it is envisaged by law,¹⁶⁷ pursues a legitimate aim, and is necessary in a democratic society.¹⁶⁸ These three requirements have been applied by the UNHRC,¹⁶⁹ IACtHR,¹⁷⁰ ECtHR¹⁷¹ and ACommHPR.¹⁷²

¹⁶⁷ *The Sunday Times v The United Kingdom* (No 1) App no 6538/74 (ECtHR, 26 April 1979) [49]; *Müller v Switzerland* App no 10737/84 (ECtHR, 24 May 1988) [29]; *Ahmet Yildirim v Turkey* App no 3111/10 (ECtHR, 18 December 2012) [57]; *Tolstoy Miloslauský v The United Kingdom* App no 18139/91 (ECtHR, 13 July 1995) [37]; *Sanoma Uitgevers BV v Netherlands* App no 38224/03 (ECtHR, 14 September 2010) [81], [83]; *Malone v The United Kingdom* App no 8691/79 (ECtHR, 2 August 1984) [66]; *Kafkaris v Cyprus* App no 21906/04 (ECtHR, 12 February 2008) [140]; *Kokkinakis v Greece* App no 14307/88 (ECtHR, 25 May 1993) [40]; *Lindon, Otchakovskyy-Laurens and July v France* App nos 21279/02, 36448/02 (ECtHR, 22 October 2007) [41]; *Editorial Board of Pravoye Delo and Shtetel v Ukraine* App no 33014/05 (ECtHR, 5 August 2011) [52]; *RTBF v Belgium* App no 50084/06 (ECtHR, 29 March 2011) [115]; *Altuğ Taner Akçam v Turkey* App no 27520/07 (ECtHR, 25 October 2011) [87]; *Usón Ramírez v Venezuela* Case no 12.554 (IACtHR, 25 July 2008) [55]; *Tomás Eduardo Cirio v Uruguay* Case no 11.500 (IACtHR, 27 October 2006) [64]; UN Economic and Social Council, UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, ‘Siracusa Principles on the Limitation and Derogation of Provisions in the ICCPR’ (1984) UN Doc E/CN.4/1984/4 principle [17]; Human Rights Committee, UNHRC ‘General Comment 34, Article 19, Freedoms of Opinion and Expression’ (12 September 2011) UN Doc CCPR/C/GC/34 [25]; UNHRC *Leonardus Johannes Maria de Groot v The Netherlands* (14 July 1994) UN Doc CCPR/C/54/D/578/1994.

¹⁶⁸ European Convention on Human Rights (adopted 4 November 1950, entered into force 3 September 1953) Article 10(2); International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171. Article 19(3); UNHRC ‘Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression’ UN Doc A/HRC/23/40 (17 April 2013) [28], [29].

¹⁶⁹ *Womah Mukong v Cameroon* UN Doc CCPR/C/51/D/458/1991 (HRC, 10 August 1994) [9.7]; *Sohn v Republic of Korea* UN Doc CCPR/C/54/D/518/1992 (HRC, 19 July 1995) [10.4]; *Malcolm Ross v Canada* UN Doc CCPR/C/70/D/736/1997 (HRC, 18 October 2000) [11.2]; *Velichkin v Belarus* UN Doc CCPR/C/85/D/1022/2001 (HRC, 20 October 2005) [7.3]; UNHRC ‘Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression’ (16 May 2011) UN Doc A/HRC/17/27 [24]; UNHRC, ‘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 [15]; UNHRC ‘General Comment No. 34, Article 19, Freedoms of Opinion and Expression’ (12 September 2011) UN Doc CCPR/C/GC/34 [33]-[35].

¹⁷⁰ *Francisco Martorell v Chile* IACtHR Informe No 11/96 (3 May 1996) [55]; *Herrera-Ulloa v Costa Rica* IACtHR Serie C No 107 (2 July 2004) [120]; IACHR, ‘Report of the Special Rapporteur for Freedom of Expression’ (2009) OEA/SER L/V/II Doc 51 [68]; IACHR, ‘Freedom of Expression and the Internet’ (2013) OEA/SER L/II CIDH/RELE/IN F11/13 [55].

¹⁷¹ *Handyside v The United Kingdom* App no 5493/72 (ECtHR, 7 December 1976) [49]; *The Sunday Times v the United Kingdom (no 1)* App no 6538/74 (ECtHR, 26 April 1979) [45]; *Ceylan v Turkey* App no 23556/94 (ECtHR, 8 July 1999) [24]; *Murat Vural v Turkey* App no 9540/07 (ECtHR, 21 October 2014) [59]; *Perinçek v Switzerland* App no 27510/08 (ECtHR, 15 October 2015) [124].

¹⁷² ACommHPR, ‘Resolution on the Adoption of the Declaration of Principles of Freedom of Expression in Africa’ (2002) ACHPR/Res 62(XXXII)02 Principle II; *Interights v Mauritania* Comm no 242/2001 (ACommHPR, 2004) [78]-[79].

48. To comply with the concept of envisaged by law,¹⁷³ the interference must comply with the requirements of accessibility and foreseeability as stated in Issue A.¹⁷⁴
49. The guidelines issued by the MoD were not available and foreseeable to those whom it imposes an obligation on, therefore, they were not envisaged by law. Although the MoD was authorised to issue guidelines in a public emergency that regulate publication on NIDV, it does not mean that the MoD was permitted to issue a restriction, which did not clarify any requirements.
50. The standard of precision depends on the content of the law, the field, and the number and status of persons under its scope.¹⁷⁵ The definition of the term ‘opinion’ is not clear and accurate enough in the guidelines.¹⁷⁶ Even accepting that many laws are inevitably couched in vague terms,¹⁷⁷ general prohibitions on the dissemination of information

¹⁷³ *The Sunday Times v The United Kingdom* (No 1) App no 6538/74 (ECtHR, 26 April 1979) [49]; *Müller v Switzerland* App no 10737/84 (ECtHR, 24 May 1988) [29]; *Ahmet Yıldırım v Turkey* App no 3111/10 (ECtHR, 18 December 2012) [57]; *Tolstoy Miloslauský v The United Kingdom* App no 18139/91 (ECtHR, 13 July 1995) [37]; *Sanoma Uitgevers BV v Netherlands* App no 38224/03 (ECtHR, 14 September 2010) [81], [83]; *Malone v The United Kingdom* App no 8691/79 (ECtHR, 2 August 1984) [66]; *Kafkaris v Cyprus* App no 21906/04 (ECtHR, 12 February 2008) [140]; *Kokkinakis v Greece* App no 14307/88 (ECtHR, 25 May 1993) [40]; *Lindon, Otchakovsky-Laurens and July v France* App nos 21279/02, 36448/02 (ECtHR, 22 October 2007) [41]; *Editorial Board of Pravoye Delo and Shtekel v Ukraine* App no 33014/05 (ECtHR, 5 August 2011) [52]; *RTBF v Belgium* App no 50084/06 (ECtHR, 29 March 2011) [115]; *Altuğ Taner Akçam v Turkey* App no 27520/07 (ECtHR, 25 October 2011) [87]; *Usón Ramírez v Venezuela* Case no 12.554 (IACtHR, 25 July 2008) [55]; *Tomás Eduardo Cirio v Uruguay* Case no 11.500 (IACommHR, 27 October 2006) [64]; UN Economic and Social Council, UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, ‘Siracusa Principles on the Limitation and Derogation of Provisions in the ICCPR’ (1984) UN Doc E/CN.4/1984/4 principle [17]; Human Rights Committee, UNHRC ‘General Comment 34, Article 19, Freedoms of Opinion and Expression’ (12 September 2011) UN Doc CCPR/C/GC/34 [25]; UNHRC *Leonardus Johannes Maria de Groot v The Netherlands* (14 July 1994) UN Doc CCPR/C/54/D/578/1994.

¹⁷⁴ Arguments 4.

¹⁷⁵ *Silver and Others v the United Kingdom* App nos 5947/72, 6205/73, 7052/75, 7061/75, 7107/75, 7113/75 and 7136/75 (ECtHR, 25 March 1983) [88]; *Chorherr v Austria* App no 13308/87 (ECtHR, 25 August 1993) [25]; *Cantoni v France* App no 17862/91 (ECtHR, 11 November 1996) [35]; *Chauvy and Others v France* App no 64915/01 (ECtHR, 29 June 2004) [44].

¹⁷⁶ Compromis 27.

¹⁷⁷ *Hertel v Switzerland* App no 25181/94 (ECtHR, 25 August 1998) [35]; *Müller v Switzerland* App no 10737/84 (ECtHR, 24 May 1988) [29]; *Olsson v Sweden* (No 1) App no 10465/83 (ECtHR, 24 March 1988) [61]; *Kokkinakis v Greece* App no 14307/88 (ECtHR, 25 May 1993) [40]; *The Sunday Times v The United Kingdom* (No 1) App no 6538/74 (ECtHR, 26 April 1979) [49]; *Lindon, Otchakovsky-Laurens and July v France* App nos 21279/02,

based on vague and ambiguous ideas are incompatible with international standards for restrictions on FoA and FoE.¹⁷⁸ It is not known, whether it concerns only subjective or professional opinions too, not to mention the risk of prohibiting the discourse of medical experts in a situation where the threat of a health epidemic necessitated the declaration of the state of public emergency.¹⁷⁹

b) The interference did not pursue a legitimate aim

51. As stated just above,¹⁸⁰ the decision to issue guidelines did not serve the protection of health. In a matter where the state does not have reliable information either, it is essential to enable free discourse and media pluralism. The government action should ensure the publication of medical experts, since their professional obligation is to ‘care for the health of each individual and of the community as a whole’.¹⁸¹ For the reasons discussed above, the guideline did not pursue a legitimate aim.

36448/02 (ECtHR, 22 October 2007) [41]; *Centro Europa 7 S.r.l. and Di Stefano v Italy* App no 38433/09 (ECtHR, 7 June 2012) [141].

¹⁷⁸ Joint Declaration on Freedom of Expression and Countering Violent Extremism (The UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media, the OAS Special Rapporteur on Freedom of Expression and ACHPR Special Rapporteur on Freedom of Expression and Access to Information (3 May 2016) [2 a].

¹⁷⁹ *Stambuk v Germany* App no 37928/97 (ECtHR, 17 October 2002) [41]; CESCR Statement on the Coronavirus Disease (COVID-19) Pandemic and Economic, Social and Cultural Rights (11 April 2020) Article 18.

¹⁸⁰ Arguments 48.; Agnes Callamard ‘Expert meeting on the links between articles 19 and 20 of the ICCPR: Freedom of expression and advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence’ (*OHCHR Experts Papers*, Geneva, 2-3 October 2008); Manfred Nowak, *U.N. Covenant on Civil and Political Rights* (2nd revised edition, N.P. Engel Publisher 2005) 468-480; Marc J Bossuyt, *Guide To The “Travaux Préparatoires” of the International Covenant on Civil and Political Rights* (Martinus Nijhoff Publishers, 1987) 375.

¹⁸¹ *Stambuk v Germany* App no 37928/97 (ECtHR, 17 October 2002) [41].

c) The interference was not necessary and proportionate

52. The measure issued by guidelines was not necessary and proportionate as (i) the publication of medical expert or other person opinions on NIDV would be vital to ensure the protection of public health, (ii) the prior authorisation and centralisation of NIDV related information were excessive and unsubstantiated and (iii) the role of the Union as a watchdog and the opportunity to criticise the government's healthcare policies become infeasible.

i. The publication of medical expert or other person opinions on NIDV would be vital to ensure the protection of public health

53. As stated above in Issue A,¹⁸² even though, the means through which the NIDV is transmitted is not fully understood, since some experts believe the virus is sexually transmitted, whereas others, particularly the new government have argued that it could be transmitted through mosquitoes.¹⁸³ The credible professionals of the independent Institute of Medical Research¹⁸⁴ even assumed that estimates on the actual number of deaths caused by the virus were not accurate.¹⁸⁵ As a result of such uncertainties about NIDV, restriction on personal opinion was incomprehensible while it was more crucial than before that medical experts be allowed to provide adequate information to citizens, free from undue influence. The proper protection of them against an unknown disease requires therefore, not only to keep the public educated about the pandemic, but also

¹⁸² Arguments 6.

¹⁸³ Compromis 10.

¹⁸⁴ Clarifications 24.

¹⁸⁵ Compromis 12.

ensuring that the healthcare professionals have access to global information about the disease and the steps to address it.¹⁸⁶

54. Although several medical experts working for the state healthcare services confidentially confirmed in an article that NIDV could only be transmitted sexually, they were unwilling to come forward and publish their findings because they were under pressure to maintain the narrative of the government.¹⁸⁷ Some of the experts even feared that they would lose their employment if they publicly disclosed their opinion. Keeping the experts in fear and issuing guidelines which made publications subject to prior authorisation,¹⁸⁸ prevents acknowledged professionals from discussing their research findings with each other and informing people about the actions required,¹⁸⁹ cannot be suitable to the aim pursued.

ii. The prior authorisation and centralisation of NIDV related information were excessive and unsubstantiated

55. One of the principal characteristics of democracy is the possibility it offers of resolving a country's problems through dialogue, without recourse to violence.¹⁹⁰ The guidelines

¹⁸⁶ Guidelines of the United Nations Educational, Scientific and Cultural Organization 'COVID-19: The role of judicial operators in the protection and promotion of the right to freedom of expression' (2020) CI-2020/FEJ/ME-1 [5]; Statement of the International Conference of Information Commissioners (14 April 2020) <<https://www.informationcommissioners.org/covid-19>> accessed on 3 November 2020.

¹⁸⁷ Compromis 26.

¹⁸⁸ Compromis 27.

¹⁸⁹ Guidelines of the United Nations Educational, Scientific and Cultural Organization 'COVID-19: The role of judicial operators in the protection and promotion of the right to freedom of expression' CI-2020/FEJ/ME-1 (2020) [5]; Statement of the International Conference of Information Commissioners (online version, 14 April 2020) <<https://www.informationcommissioners.org/covid-19>> accessed on 3 November 2020.

¹⁹⁰ *Manole and Others v Moldova* App no 13936/02 (ECtHR, 17 September 2009) [95].

– which were issued due to disinformation¹⁹¹ – direct to submit a copy of any statement or opinion with respect to NIDV to the secretariat of the Ministry of Health’s authorisation¹⁹² was unclear in which case an opinion will be accepted or rejected. Such a qualifies as a prior restraint.

56. Prior restraints are rarely justified, as they are one of the most unfavourable forms of restriction on FoE.¹⁹³ The IACtHR interprets the ACHR¹⁹⁴ broadly as a prohibition of any form of prior restraint. The jurisprudence of the African Commission also leads to the conclusion that it prohibits any prior restriction.¹⁹⁵ Although the ECtHR does not expressly prohibit the use of a prior restriction in all cases, it only allows it narrowly: a clear legal framework is needed to ensure both strict monitoring of the scope of prohibitions and effective judicial review to prevent abuse of power.¹⁹⁶

57. The above is clearly missing in this given case as the measure issued is not proportionate. It introduces a prior restraint for any publication of any statement or opinion that is published or posted in a public forum.¹⁹⁷ Prohibiting any publication on NIDV without time limit for approval¹⁹⁸ cannot be the less intrusive interference, as news is a perishable commodity and to delay its publication, even for a short period,

¹⁹¹ Compromis 27.

¹⁹² Clarifications 9.

¹⁹³ *New York Times Co v United States* 403 US 713, 714 (1971).

¹⁹⁴ *Palamara-Iribarne v Chile* Case 11.571 (IACtHR, 22 November 2005) [78].

¹⁹⁵ *Media Rights Agenda and Others v Nigeria* App nos 105/93, 128/94, 130/94 and 152/96 (ACommHPR, 31 October 1998) [57].

¹⁹⁶ *Ahmet Yildirim v Turkey* App no 3111/10 (ECtHR, 18 December 2012) [64].

¹⁹⁷ Clarifications 11.

¹⁹⁸ Clarifications 9.

may well deprive it of all its value and interest.¹⁹⁹ The restriction is too broad as it covers all forms of media and all kinds of opinion, moreover it could lead to arbitrary decisions, since the Ministry of Health is not obligated to justify the decision.

58. Moreover, the assumption that the experts' opinions would spread disinformation²⁰⁰ is also incorrect, as opinions are viewpoints that are not susceptible of being proven to be true or false, but the underlying facts itself – on which the opinions are based on – are.²⁰¹ Consequently, issuing a measure which limits the free publication of experts cannot be necessary to protect the public health. It must be pointed out, that ensuring the pluralism of media is particularly important in times of a virus-crises, as independent and reliable information significantly contributes to the fight against the disease.²⁰²

¹⁹⁹ *Observer and Guardian v the United Kingdom* App no 13585/88 (ECtHR, 26 November 1991) [60]; *Cumpănă and Mazăre v Romania* [GC] App no 33348/96 (ECtHR, 17 December 2004) [118]; *Ahmet Yıldırım v Turkey* App no 3111/10 (ECtHR, 18 December 2012) [47].

²⁰⁰ Compromis 27.

²⁰¹ *Dalban v Romania* App no 28114/95 (ECtHR, 28 September 1999) [50]; Dominika Bychawska-Siniarska ‘Protecting the Right to Freedom of Expression under the European Convention on Human Rights’ (*Council of Europe*, July 2017) 78.

²⁰² Congressional Executive Commission on China, ‘Information Control and Self-Censorship in the PRC and the Spread of SARS’ <<https://www.cecc.gov/publications/issue-papers/information-control-and-self-censorship-in-the-prc-and-the-spread-of-sars>> accessed 3 November 2020; Shengjie Lai, Nick W Ruktanonchai, Liangcai Zhou, Olivia Prosper, Wei Luo, Jessica R Floyd, Amy Wesolowski, Mauricio Santillana, Chi Zhang, Xiangjun Du, Hongjie Yu, Andrew J Tatem, ‘Effect of non-pharmaceutical interventions for containing the COVID-19 outbreak in China’ <<https://www.medrxiv.org/content/10.1101/2020.03.03.20029843v3.full.pdf+html>> accessed 2 November 2020; Reporters without borders, ‘If the Chinese press were free, the coronavirus might not be a pandemic’ <<https://rsf.org/en/news/if-chinese-press-were-free-coronavirus-might-not-be-pandemic-argues-rsf>> accessed 2 November 2020.

iii. *The role of the Union as a watchdog and the opportunity to criticize the government's healthcare policies became unfeasible*

59. The media of Ized is exclusively dominated by private concerns,²⁰³ thus the press plays an essential role as 'watchdog' with the task of informing the citizens unbiasedly on public matters.²⁰⁴

60. Trade unions tend to play the same role, as it acts on behalf of the workers to protect their occupational and employment-related interests.²⁰⁵ Equally, medical experts count as academic researchers, thus their professional opinion enjoy a high level of protection.²⁰⁶ Furthermore, with the important role of the Internet in enhancing the public's access to news and facilitating the dissemination of information, popular users²⁰⁷ of the social media are also assimilated to 'public watchdogs'.²⁰⁸ Consequently, it is vital that not only state actors could share their opinion on NIDV and the crisis-situation, but also medical experts, trade unions and Netizens too. The Union has an

²⁰³ Compromis 2.

²⁰⁴ *Satakunnan Markkinapörssi Oy and Satamedia Oy v Finland* [GC] App no 931/13 (ECtHR, 27 June 2017) [126]; *Bédat v Switzerland* [GC] App no 56925/08 (ECtHR, 29 March 2016) [51]; *Axel Springer AG v Germany* [GC] App no 39954/08 (ECtHR, 7 February 2012) [79]; *The Sunday Times v the United Kingdom (no. 2)* App no 13166/87 (ECtHR, 26 November 1991) [50]; *Bladet Tromsø and Stensaas v Norway* [GC] App no 21980/93 (ECtHR, 20 May 1999) [59], [62]; *Pedersen and Baadsgaard v Denmark* [GC] App no 49017/99 (ECtHR, 17 December 2004) [71]; *News Verlags GmbH & Co.KG v Austria* App no 31457/96 (ECtHR, 11 January 2000) [56]; *Dupuis and Others v France* App no 1914/02 (ECtHR, 7 June 2007) [35]; *Campos Dâmaso v Portugal* App no 17107/05 (ECtHR, 14 January 2020) [31].

²⁰⁵ *Palomo Sánchez and Others v Spain* App nos 28955/06, 28957/06, 28959/06 and 28964/06 (ECtHR, 12 September 2011) Joint Dissenting Opinion Of Judges Tulkens, Davíd Thór Björgvinsson, Jočienė, Popović And Vučinić [5]; *Mamère v France* App no 12697/03 (ECtHR, 7 November 2006) [20]; *Animal Defenders International v The United Kingdom* App no 48876/08 (ECtHR, 22 April 2013) [103]; *Medžlis Islamske Zajednice Brčko and Others v Bosnia and Herzegovina* [GC] App no 17224/11 (ECtHR, 27 June 2017) [86]; *Cangi v Turkey* App no 24973/15 (ECtHR, 29 January 2019) [35].

²⁰⁶ *Magyar Helsinki Bizottság v Hungary* [GC] App no 18030/11 (ECtHR, 8 November 2016) [168]; *Falzon v Malta* App no 45791/13 (ECtHR, 20 March 2018) [57].

²⁰⁷ Compromis 25.

²⁰⁸ *Magyar Helsinki Bizottság v Hungary* [GC] App no 18030/11 (ECtHR, 8 November 2016) [168]; *Falzon v Malta* App no 45791/13 (ECtHR, 20 March 2018) [57].

important role in critically examining state healthcare policies and helping healthcare workers ensure that measures taken due to the of the virus do not serve as a means of privatizing healthcare and losing 12,000 jobs simply because of capitalism as this goal was evident in the 14 February demonstration too.²⁰⁹

61. In the light of the above, the decision to issue guidelines with such serve restrictions, violates the rights of the Union and makes it completely impossible for it to be able to represent the interests of people as a watchdog.

²⁰⁹ Compromis 19.

IX. PRAYER FOR RELIEF

In the light of arguments advanced and authorities cited, the Applicants respectfully request this Honourable Court to adjudge and declare that:

1. Ized's decision to enact Section 22 of the National Security Act, and to designate the Central Public Park as the sole public site to hold public gatherings, violated Xana's and the Social Democratic Workers Union's rights recognised by Articles 19 and 21 of the ICCPR.
2. Ized's decision to convict Xana under Section 22 of the National Security Act violated her rights recognised by Articles 19 and 21 of the ICCPR.
3. Ized's decision to issue the Statement of 16 March violated the Social Democratic Workers Union's rights recognised by Articles 19 and 21 of the ICCPR.
4. Ized's decision to issue guidelines under Section 23 of the National Security Act on 16 March violated the Social Democratic Workers Union's rights recognised by Article 19 of the ICCPR.

On behalf of Xana and the Social Democratic Workers Union

301A

Counsels for Applicants

Memorial for
Respondent
2020/2021

**THE 2020-2021 MONROE E. PRICE
INTERNATIONAL MEDIA LAW MOOT COURT COMPETITION**

Xana and the Social Democratic Workers Union
(Applicants)

v.

Ized
(Respondent)

MEMORIAL FOR RESPONDENT

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II. LIST OF ABBREVIATIONS

ACHPR	African Charter on Human and Peoples' Rights
ACHR	American Convention on Human Rights
ACommHPR	African Commission on Human and Peoples' Rights
ACtHPR	African Court on Human and Peoples' Rights
CJEU	Court of Justice of the European Union
Clarifications	Price Media Law Moot Court Competition official clarifications of the 2021 International Rounds and the 2020/2021 Regional Rounds in South Asia, Asia Pacific, South-East Europe, North-East Europe, Northern Europe, the Americas, the Middle East, and Africa Regional Rounds
CoE	Council of Europe
Compromis	The 2020/2021 Price Media Law Moot Court Competition Case
Constitution	Ized's Constitution
CPP	Central Public Park
DSP	Democratic Socialist Party
ECHR	European Convention on Human Rights

ECtHR	European Court of Human Rights
EU	European Union
FoA	Freedom of Assembly
FoE	Freedom of Expression
Guidelines	The guidelines issued by the Minister of Defence on 16 March 2020
HIV	Human Immunodeficiency Virus
Honourable Court	Chamber of the Universal Court of Human Rights, Universal Freedom of Expression Court
Hospital	Vaai General Hospital
IACommHR	Inter-American Commission on Human Rights
IACtHR	Inter-American Court of Human Rights
ICCPR	International Covenant on Civil and Political Rights
MoD	Minister of Defence
MoA	Margin of Appreciation
NIDV	Novel Immuno-Deficiency Virus
NN	National Network
No(s)	Number(s)
NSA	Ized's National Security Act
NUA	National United Alliance

OSCE	Organisation for Security and Co-operation in Europe
Regulation	The regulation issued by the Minister of Defence on 1 February 2020
Statement	The statement issued by the Minister of Defence on 16 March 2020
The Union	The Social Democratic Workers Union
UDHR	Universal Declaration of Human Rights
UN	United Nations
UN Doc	United Nations Document
UNGA	United Nations General Assembly
UNHRC	United Nations Human Rights Committee
WHO	World Healthcare Organisation
Xana	Jo Xana

III. LIST OF AUTHORITIES

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IV. STATEMENT OF RELEVANT FACTS

1. Ized is a tropical country with a population of 20 million people. The country has two major political parties, the National United Alliance (NUA) and the Democratic Socialist Party (DSP).¹
2. Several private media institutions disseminate news to the public in Ized.² National Network, one of the private organisations, is the largest media service provider in the country.³ It has three television channels and two radio channels and hosts the most popular social media platform, ‘The Net’, which has over 4 million users. It is said to have a virtual monopoly in the media sector.⁴
3. The Net allows its users to post their opinions, follow and be followed by other users, and share the posts of others.⁵ Users can organise ‘Net-Assemblies’, where several users can gather to share their opinion and raise public issues.⁶

¹ Compromis 1.

² Compromis 2.

³ Compromis 2.

⁴ Compromis 3.

⁵ Compromis 5.

⁶ Compromis 6.

4. The Social Democratic Workers Union is a trade union with legal personality affiliated with the DSP. Among its members are healthcare workers employed in the state healthcare service.⁷
5. The DSP has held a parliamentary majority and functioned in a government until January 2020.⁸ One of the main election issues concerned the rapid spread of a new viral disease, commonly referred to as Novel Immuno-Deficiency Virus (NIDV). Many experts believe the virus is a vector-borne disease and it is transmitted via mosquitoes. According to official statistics, nearly 30,000 cases of NIDV were recorded since September 2019, and 420 deaths were attributed to the virus.⁹
6. On 15 January new information was released on all National Network media channels stating the actual death toll from NIDV was close to 2,000 persons. The information rapidly spread on The Net as well, while the DSP-led government claimed the leaked information was fabricated and untrue.¹⁰
7. On 16 January an independent medical research institute stated that the initial government estimates about the deaths caused by NIDV might not have been accurate.¹¹ The members of the Institute of Medical Research are considered an the acknowledged and credible professionals within the society of Ized.¹²

⁷ Compromis 7.

⁸ Compromis 8.

⁹ Compromis 10.

¹⁰ Compromis 11.

¹¹ Compromis 12.

¹² Clarifications 24.

8. In the January 2020 elections, the NUA secured a clear majority in parliament and established a new government¹³, which then enacted the new National Security Act (NSA) to regulate the use of public sites and to authorise the government to regulate publications during a public emergency.¹⁴ On 1 February a state of public emergency was declared with regards to the NIDV crisis for three months. Ized's Central Public Park was designated as the site on which gatherings may be held. Many citizens have praised the measures.¹⁵
9. On 14 February, the Union and its leader Jo Xana organised an illegal demonstration outside the Vaai General Hospital. The location of the demonstration was announced only a day earlier, after which the Ministry of Defence has immediately issued a statement warning all citizens that any person attending will be arrested and that the planned demonstration was unlawful under Section 22 of the NSA.¹⁶
10. Approximately 400 persons, including state health sector employees, have attended the demonstration, which quickly became violent. Xana encouraged the demonstrators to block the only entrance of the hospital available for patients and claimed that the government was spreading lies about NIDV. She also stated that the virus was sexually transmitted. Her followers acted on her encouragement and turned people away from the hospital.¹⁷
11. The demonstration was broken up by security officers, who arrested demonstrators including Xana.¹⁸ The next day Xana was charged under Section 22 of the NSA and released

¹³ Compromis 13.

¹⁴ Compromis 14, 15.

¹⁵ Compromis 16.

¹⁶ Compromis 18.

¹⁷ Compromis 19.

¹⁸ Compromis 20.

on bail. All other demonstrators were released without charges pressed.¹⁹ On 3 March Xana was convicted in the High Court of Ized. She was sentenced to three months imprisonment, suspended for one year, so as long as she refrained from unlawful activities during the suspension, she would not need to serve any time in jail.²⁰ Xana appealed her conviction before the Supreme Court, the highest court in Ized, which upheld her conviction and sentence.²¹

12. The Minister of Defence was authorised to issue guidelines on the publication of any news, opinion, or another form of expression in the interests of public safety, order or health under Section 23 Subsection 1 of the NSA.²² Accordingly, on 16 March the Minister of Defence issued a Statement which discussed the restriction of unauthorised gatherings and said that those who organise unauthorised gatherings on social media platforms would be arrested.²³ He also issued a guideline which set out the prohibition of publication of any opinion of any medical expert or another person, with respect to NIDV, without obtaining prior authorisation from the Ministry of Health. The guidelines direct applicants to submit a copy of any statement or opinion with respect to NIDV to the secretariat of the Ministry of Health and await a decision. No time limit for approval is specified.²⁴

13. Xana and the Union filed petitions before Ized's Supreme Court on 20 March, complaining that their rights protected under Articles 10 and 11 of Ized's Constitution have been

¹⁹ Compromis 21.

²⁰ Compromis 22.

²¹ Compromis 22.

²² Compromis 27.

²³ Compromis 27.

²⁴ Clarifications 9.

violated.²⁵ After several days of hearings, the Supreme Court determined that neither Xana's nor the Union's rights have been violated.²⁶

²⁵ Compromis 29.

²⁶ Compromis 31.

V. STATEMENT OF JURISDICTION

Ized (Respondent) have applied to the Universal Freedom of Expression Court, the special Chamber of the Universal Court of Human Rights, hearing issues relating to the violation of rights recognised in the Article 19 and Article 21 of the ICCPR.

Xana and the Social Democratic Workers Union filed petitions before Ized's Supreme Court complaining that their rights under Articles 10 and 11 of Ized's Constitution had been violated. The Supreme Court determined that neither Xana's nor the Union's rights under the Constitution had been violated. Xana and the Social Democratic Workers Union exhausted their domestic appeals.

This Honourable Court has jurisdiction as the final arbiter over all regional courts where parties have exhausted all domestic remedies.

The Respondent requests this Honourable Court to issue a judgment in accordance with relevant international law, including the UDHR, the ICCPR, Conventions, jurisprudence developed by relevant courts, and principles of international law.

VI. QUESTIONS PRESENTED

The questions presented, as certified by this Honourable Court, are as follows:

1. Whether Ized's decision to enact Section 22 of the National Security Act, and to designate the Central Public Park as the sole public site to hold public gatherings, violated Xana's and the Social Democratic Workers Union's rights recognised by Articles 19 and 21 of the ICCPR.
2. Whether Ized's decision to convict Xana under Section 22 of the National Security Act violated her rights recognised by Articles 19 and 21 of the ICCPR.
3. Whether Ized's decision to issue the Statement of 16 March violated the Social Democratic Workers Union's rights recognised by Articles 19 and 21 of the ICCPR.
4. Whether Ized's decision to issue guidelines under Section 23 of the National Security Act on 16 March violated the Social Democratic Workers Union's rights recognised by Article 19 of the ICCPR.

VII. SUMMARY OF ARGUMENTS

IZED'S DECISION TO ENACT SECTION 22 OF THE NSA, AND TO DESIGNATE THE CPP AS THE SOLE PUBLIC SITE TO HOLD PUBLIC GATHERINGS, DID NOT VIOLATE XANA'S AND THE UNION'S RIGHTS RECOGNISED BY ARTICLES 19 AND 21 OF THE ICCPR

Firstly, the Regulation designating the Central Public Park as the sole public site to hold gatherings was envisaged by law, as the Minister of Defence issued it under Section 22 of the National Security Act. The Regulation enabled citizens to regulate their conduct accordingly and foresee the consequences of their actions as it was published and contained exact terms.

Secondly, the interference pursued the protection of public health. The designation of the Central Public Park mitigated the exposure to mosquitoes carrying the deadly virus, as Central Public Park could be regularly fumigated.

Thirdly, the interference was necessary in a democratic society. The Regulation met a pressing social need as the rapid spread of the mortal Novel Immuno-Deficiency Virus amounted to a level of a serious and direct threat. During the state of emergency induced by the epidemiological situation, Central Public Park was the only place where gatherings could be held safely. The interference established a good balance between fundamental rights and solving a serious virus-crisis. A demonstration against the medical testing of animals and numerous gatherings were held at the very same site enabling protesters to safely express their opinion and exercise their fundamental rights under circumstances where it would not be otherwise possible.

IZED'S DECISION TO CONVICT XANA UNDER SECTION 22 OF THE NSA DID NOT VIOLATE HER RIGHTS RECOGNISED BY ARTICLES 19 AND 21 OF THE ICCPR

Firstly, the conviction of Jo Xana was envisaged by law as both judicial decisions had their legal basis on Section 22 of National Security Act complying with the well-known international principle of *nullum crimen sine lege*. Jo Xana could clearly foresee the effects of her conduct, as it was specified by the Statement of the Minister of Defence issued on 13 February.

Secondly, the interference pursued a legitimate aim. On one hand, the demonstration was held in front of the Vaai General Hospital, a site not designated under the National Security Act. The area was not fumigated and exposed participants to mosquitoes spreading the Novel Immuno-Deficiency Virus. On the other hand, the demonstration on 14 February quickly shifted into a violent one. Demonstrators blocked the only entrance of the hospital and disrupted the functioning of the Vaai General Hospital. Consequently, not only the detention of other participants but also the arrest and sentence of Jo Xana aimed to protect the public order and public health.

Thirdly, the interference was necessary and proportionate. By conducting a protest outside the Vaai General Hospital, the Applicants have disregarded the clear and precise rules laid down in favour of protecting public health. The state was officially notified of the demonstration's venue on 13 February, only one day before the demonstration, thus it had no reasonable time to secure the site. The demonstration turned violent as forty participants blocked the exclusive entrance of the Vaai General Hospital and begun turning people away. Medical care is an essential aspect of the right to health, and with the action of blocking the only entrance available for patients, this right was violated. During the state of emergency induced by the rapid spread of a deadly disease, the country's healthcare system must be easily accessible for every citizen, immediately. Thus, rapid intervention from the police was also justified. Jo Xana was

responsible for the violent manner of the gathering: she intentionally influenced the participants to act violently as she was the leader of the demonstration using a loudspeaker to encourage participants to turn people away and block the sole entrance of the most frequented hospital in the capital. Moreover, among the protesters there were state health sector employees. Pursuant to Ized's Constitution, they can be subjected to higher level of restriction, therefore the intervention was proportionate.

IZED'S DECISION TO ISSUE THE STATEMENT OF 16 MARCH DID NOT VIOLATE THE SOCIAL DEMOCRATIC WORKERS UNION'S RIGHTS RECOGNISED BY ARTICLES 19 AND 21 OF THE ICCPR

Firstly, the Statement issued by the Minister of Defence was envisaged by law, hence it had a legal basis in national law. The Minister of Defence issued the Regulation under Section 22 of the National Security Act designating the Central Public Park as the sole public site to hold gatherings. The National Security Act's wording fulfils the foreseeability requirements because it defines that a public site shall mean any location or space that is used by members of the public and contains a non-exhaustive enumeration about what 'public sites' can mean. Consequently, online public sites shall be included in this concept in complying with international requirements. The Regulation was foreseeable and accessible since the statement merely clarified the National Security Act and the Regulation of the Minister of Defence thus, it enabled the citizens to regulate their conduct accordingly.

Secondly, the statement pursued the protection of public health and public order, legitimate aims enumerated under Article 19 and Article 21 of ICCPR and the constitution of Ized. Inasmuch as the information given in real-time at gatherings held online, via social media, it cannot be verified in advance by the state, thus false information reaches a large number of

people. Accurate and reliable information about Novel Immuno-Deficiency Virus is essential to reduce the rapid spread of the deadly virus. The measures required to execute these aims, like the centralisation of information and the repression of fake news is the government's mission.

Thirdly, the general ban on organising gatherings on social media platforms was necessary and proportionate. The Central Public Park was still available for holding gatherings, furthermore, all necessary supports were provided for demonstrators who wished to gather there. Various types of peaceful demonstrations were held there without any intervention, for example, a demonstration even concerning medical issues, when a group of animal rights activists protested at the very same place. It was the Government's obligation to repress the politically motivated dissemination of fake news and safeguard the health of citizens. Due to the rapid spread of disinformation Net-Tags like #FiredForFakeVirus and the irresponsible encouragement of boycotting healthcare services posed a grave risk to public health and public order. The board of National Network experiencing the continuous infringement of public emergency regulations in the view of its duties and responsibilities, autonomously and unanimously, decided to temporarily discontinue the Net-Assembly feature in order to protect their users. The temporary discontinuance of Net-Assemblies was an inevitable, impartial and proportionate decision.

IZED'S DECISION TO ISSUE GUIDELINES UNDER SECTION 23 OF THE NATIONAL SECURITY ACT ON 16 MARCH DID NOT VIOLATE THE SOCIAL DEMOCRATIC WORKERS UNION'S RIGHTS RECOGNISED BY ARTICLE 19 OF THE ICCPR

Firstly, the interference issued by the Minister of Defence was envisaged by law because the Minister has been authorised by the National Security Act to issue guidelines. Since the National Security Act is a legal instrument enacted by the parliament, in accordance with democratic principles, it was foreseeable and accessible.

Secondly, publishing opinions in respect to the virus without any factual basis could result in obstructing the public health response and lead to fatal aftermath. The guidelines prescribing prior authorisation served as the purpose of decreasing the spread of disinformation and pursued the protection of public health.

Thirdly, the interference was necessary and proportionate. Alleged medical experts were disseminating fake news anonymously in the 'Unite', claiming that the virus is sexually transmitted, however, there was credible evidence that the virus is transmitted via vectors. Prior authorisation aids to stop the rapid spread of fake news and applied only when personal viewpoints are to be published. In addition, the Ministry of Health has the latest and most relevant information about the NIDV, which guarantees that only opinions with reliable factual basis will be published. The interference was proportionate, as its temporal scope was limited for a period of three months, was based on objective criteria and affected only particular type of information. The Union abused its role as a public watchdog to criticise the government's healthcare policies. Instead of helping the epidemic management, the Union engaged in political battles with the government. This behaviour led to the rapid increase of disinformation posing serious threats to public health, endangering the life of the nation.

VIII. ARGUMENTS

ISSUE A: IZED'S DECISION TO ENACT SECTION 22 OF THE NSA, AND TO DESIGNATE THE CPP AS THE SOLE PUBLIC SITE TO HOLD PUBLIC GATHERINGS, DID NOT VIOLATE XANA'S AND THE UNION'S RIGHTS RECOGNISED BY ARTICLES 19 AND 21 OF THE ICCPR

1. The enactment of Section 22 of the NSA and the designation of the CPP as the sole public site where gatherings may be held was (a) envisaged by law, (b) pursued a legitimate aim and (c) was necessary in a democratic society.

a) The interference was envisaged by law

2. The concept of envisaged by law requires an interference to have a legal basis, to be accessible and foreseeable.¹
3. The designation of the CPP had a legal basis in national law as the Regulation was issued by the Minister of Defence under Section 22 of the NSA, a law enacted by the legislative body of Ized.² The NSA and the Regulation were accessible to the

¹ *The Sunday Times v The United Kingdom* (No 1) App no 6538/74 (ECtHR, 26 April 1979) [49]; *Müller v Switzerland* App no 10737/84 (ECtHR, 24 May 1988) [29]; *Ahmet Yildirim v Turkey* App no 3111/10 (ECtHR, 18 December 2012) [57]; *Tolstoy Miloslauský v The United Kingdom* App no 18139/91 (ECtHR, 13 July 1995) [37]; *Sanoma Uitgevers BV v Netherlands* App no 38224/03 (ECtHR, 14 September 2010) [81], [83]; *Malone v The United Kingdom* App no 8691/79 (ECtHR, 2 August 1984) [66]; *Kafkaris v Cyprus* App no 21906/04 (ECtHR, 12 February 2008) [140]; *Kokkinakis v Greece* App no 14307/88 (ECtHR, 25 May 1993) [40]; *Lindon, Otchakovsky-Laurens and July v France* App nos 21279/02, 36448/02 (ECtHR, 22 October 2007) [41]; *Editorial Board of Pravoye Delo and Shtekel v Ukraine* App no 33014/05 (ECtHR, 5 August 2011) [52]; *RTBF v Belgium* App no 50084/06 (ECtHR, 29 March 2011) [115]; *Altuğ Taner Akçam v Turkey* App no 27520/07 (ECtHR, 25 October 2011) [87]; *Usón Ramírez v Venezuela* Case no 12.554 (IACtHR, 25 July 2008) [55]; *Tomás Eduardo Cirio v Uruguay* Case no 11.500 (IACommHR, 27 October 2006) [64]; UN Economic and Social Council, UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, 'Siracusa Principles on the Limitation and Derogation of Provisions in the ICCPR' (1984) UN Doc E/CN.4/1984/4 principle [17]; Human Rights Committee, UNHRC 'General Comment 34, Article 19, Freedoms of Opinion and Expression' (12 September 2011) UN Doc CCPR/C/GC/34 [25]; UNHRC *Leonardus Johannes Maria de Groot v The Netherlands* (14 July 1994) UN Doc CCPR/C/54/D/578/1994.

² Compromis 14.

Applicants, as they were published.³ The condition of foreseeability requires a law to be formulated precisely enough to enable citizens to regulate their conduct accordingly and foresee the consequences of their actions.⁴ However, absolute precision cannot be achieved as legislation has to keep up with changing circumstances.⁵

4. Accordingly, many laws are inevitably couched in terms which, to a greater or lesser extent, are vague and whose interpretation and application are questions of practice.⁶ This applies especially during the state of emergency induced by the rapid spread of a deadly virus,⁷ when actions must be taken immediately, therefore more powers have to be settled on the executive body.⁸ The absolutely precise wording of the law would lead to rigid interpretation,⁹ as a consequence of which actions necessary to effectively handle the epidemiological situation could not be taken on time. Consequently, such terms as ‘the public emergency that threatens the life of the nation’ do not count as

³ *Silver and Others v the United Kingdom* App nos 5947/72, 6205/73, 7052/75, 7061/75, 7107/75, 7113/75 and 7136/75 (ECtHR, 25 March 1983) [87].

⁴ UNHRC CCPR ‘General Comment No. 37: Article 21 (Right of Peaceful Assembly) (adopted 27 July 2020) UN Doc CCPR/C/GC/37 Article 44; *Margareta and Roger Andersson v Sweden* App no 12963/87 (ECtHR, 25 February 1992) [75].

⁵ *The Sunday Times v the United Kingdom (no 1)* App no 6538/74 (ECtHR, 26 April 1979) [49]; *Hertel v Switzerland* App no 25181/94 (ECtHR, 25 August 1998) [35]; *Usón Ramírez v Venezuela* IACtHR Series C No 207 (20 November 2009) [55].

⁶ *Primov and Others v Russia* App no 17391/06 (ECtHR, 12 June 2014) [125].

⁷ Compromis 10, 11, 27.

⁸ Jim Rossi, ‘State Executive Lawmaking in Crisis’ (2006) 56 No 1 Duke Law Journal 237; National Conference of State Legislature ‘Legislative Oversight of Emergency Executive Powers’ (current as of 6 May 2020, compiled by Nicholas Birdsong) <<https://www.ncsl.org/research/about-state-legislatures/legislative-oversight-of-executive-orders.aspx>> accessed 3 November 2020; CESCR Statement on the Coronavirus Disease (COVID-19) Pandemic and Economic, Social and Cultural Rights (11 April 2020) Article 18; OCHR Human Rights Treaties Branch ‘Compilation of statements by human rights treaty bodies in the context of COVID-19’ (September 2020) Article 1.

⁹ *Hertel v Switzerland* App no 25181/94 (ECtHR, 25 August 1998) [35].

ambiguous terms, but refer to objectively perceivable facts, e.g. various natural catastrophes or spread of infectious disease.¹⁰

b) The interference pursued a legitimate aim

5. The list of permissible restrictions of fundamental rights is exhaustive.¹¹ Ized's government enacted the NSA pursuant to the protection of public health.¹² The health and safety of citizens must be protected first and foremost, and by designating the CPP the protection of these rights is provided. The exposure to mosquitoes threatens the life of people, for fear that they carry a deadly disease. However, the CPP can be regularly fumigated to mitigate exposure.¹³

c) The interference was necessary and proportionate

6. FoA is not an absolute human right.¹⁴ Its restriction must conform with the three-part cumulative test applied by the ECtHR.¹⁵ Therefore, it will be argued below that the enactment of Section 22 of the NSA and the designation of the CPP was necessary in a democratic society, as it was with regards to a (i) pressing social need, suitable to pursue

¹⁰ Compromis 10, 11, 27.

¹¹ International Covenant on Civil and Political Rights (adopted 16 December 1966, *entered into force* 23 March 1976) 999 UNTS 171 ('ICCPR') Article 21; Compromis 29.

¹² Compromis 14, 15.

¹³ Compromis 16.

¹⁴ UNHRC CCPR 'General Comment No. 37: Article 21 (Right of Peaceful Assembly) (adopted 27 July 2020) UN Doc CCPR/C/GC/37 Articles 3, 7; *Kudrevičius and Others v Lithuania* App no 37553/05 (ECtHR, 15 October 2015) [142].

¹⁵ *Handyside v United Kingdom* App no 5493/72 (ECtHR, 7 December 1976) [48].

its legitimate aim and it was (ii) the least intrusive measure taken, (iii) having an appropriate relation to the advantages obtained through thereof.¹⁶

i. The rapid spread of NIDV amounted to a level of serious and direct threat

7. On 4 February, the MoD issued the Regulation under Section 22 of the NSA¹⁷ declaring a state of emergency and designating the CPP as the sole site where gatherings may be held.¹⁸ The Regulation entered into force in light of the state of emergency.¹⁹ As stated in Issue A,²⁰ the death toll was rapidly increasing as a result of the spread of NIDV, a deadly virus which – pursuant to credible evidence – could be transferred via mosquitoes.²¹ Both diurnal and nocturnal mosquitoes are present in Ized.²² Concluding from the above, the epidemiological situation amounted to a pressing social need.²³ The CPP has ample space, and it is regularly fumigated to mitigate the exposure²⁴ and secure the health of participants.²⁵

¹⁶ *Handyside v United Kingdom* App no 5493/72 (ECtHR, 7 December 1976) [48]; *Fontevicchia and D'Amico v Argentina* Series C No 238 (IACtHR, 29 November 2011) [54].

¹⁷ Compromis 14.

¹⁸ Compromis 16.

¹⁹ *ibid.*

²⁰ Arguments 5.

²¹ Compromis 16.

²² Compromis 10.

²³ *Zana v Turkey* App no 18954/91 (ECtHR, 25 November 1997) [51].

²⁴ Compromis 16.

²⁵ Compromis 10, 26, 27.

ii. *CPP was the only place where gatherings could be held safely*

8. FoA encompasses, among others, the right to choose the location of an assembly,²⁶ which may be essential for the message that the participants wish to convey.²⁷ Assemblies should be able to communicate their message effectively and must therefore be facilitated within ‘sight and sound’ of their target audience unless compelling reasons necessitate a change of venue.²⁸ The use of such sites must always be assessed in the light of the circumstances of each case.²⁹ Assemblies may not be relegated to remote areas where they cannot effectively capture the attention of those who are being addressed.³⁰
9. The CPP is in the capital,³¹ where decision making usually takes place. Moreover, it is more easily accessible for all rural people to participate in the demonstrations, than designating any other site in the country, as it is shown by the examples of the Czech Republic, Sweden, Belgium and New Zealand. The CPP has ample space, has four access points, and is regularly visited by members of the public.³² The CPP is the only

²⁶ European Commission for Democracy Through Law (‘Venice Commission’) OSCE Office for Democratic Institutions and Human Rights (‘OSCE/ODIHR’) *Guidelines on Freedom of Assembly* (3rd edition, 8 July 2019) CDL-AD(2019)017 [22].

²⁷ *Sáska v Hungary* App no 58050/08 (ECtHR, 27 November 2012) [21]-[23].

²⁸ European Commission for Democracy Through Law (‘Venice Commission’) OSCE Office for Democratic Institutions and Human Rights (‘OSCE/ODIHR’) *Guidelines on Freedom of Assembly* (3rd edition, 8 July 2019) CDL-AD(2019)017 [82]; UN HRC *Turchenyak v Belarus* Views on the merits (10 September 2013) CCPR/C/108/D/1948/2010 [7.4]; *Lashmankin and Others v Russia* App nos 57818/09, 51169/10, 4618/11, 19700/11, 31040/11, 47609/11, 55306/11, 59410/11, 7189/12, 16128/12, 16134/12, 20273/12, 51540/12, 64243/12, 37038/13 (ECtHR, 7 February 2017) [405].

²⁹ *Yilmaz Yildiz and others v Turkey*, App no 4524/06, (ECtHR, 14 October 2014) [43]; UNGA Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies (4 February 2016) A/HRC/31/66 [30].

³⁰ UNHRC, ‘Consideration of reports submitted by States parties under Article 40 of the Covenant. Concluding observations of the Human Rights Committee’ (26 July 2011) CCPR/C/KAZ/CO/1 [26].

³¹ Compromis 16.

³² *ibid.*

venue where the safety of participants is guaranteed as it is regularly fumigated in order to mitigate exposure to mosquitoes.³³ Consequently, it granted the Applicants the opportunity to effectively convey their message, as by-passers could join the demonstration and media coverage was also possible. The target audience of the demonstration was not only healthcare workers, rather all the citizens. The demonstration raised awareness about public matters affecting the political community, e.g., the privatisation of healthcare services and claimed that NIDV was sexually transmitted.³⁴

10. Even though the state is obliged to facilitate the exercise of human rights, this obligation also includes the physical protection of protesters,³⁵ especially their health.³⁶ Taking the rapid spread and unknown means of transmission of NIDV, the government took the least intrusive measure, as it had to balance different interests under unsure circumstances, to save the life of citizens.

³³ Compromis 16.

³⁴ Compromis 17.

³⁵ *Oya Ataman v Turkey* App no 74552/01 (ECtHR, 5 December 2006) [35]; *Makhmudov v Russia* App no 35082/04 (ECtHR, 26 July 2007) [63]-[65]; *The United Macedonian Organisation Ilinden and Ivanov v Bulgaria* App no 44079/98 (ECtHR, 20 October 2005) [115].

³⁶ *Cisse v France* App no 51346/99 (ECtHR, 9 April 2002) [51].

iii. *The interference served as a good balance between fundamental rights and solving the NIDV crisis*

11. The alleged interference was proportionate,³⁷ as it corresponded to a social need sufficiently pressing to outweigh the public interest in FoA.³⁸ Under the circumstances of the state of emergency, the state has a wide MoA.³⁹ The designation of the CPP as the sole site to hold gatherings was a reasonable interference compared to international examples, such as Belgium that introduced a general prohibition on assemblies.⁴⁰ As the majority of Netizens addressed, the designation of CPP served as a good balance between fundamental rights and solving the NIDV crisis.⁴¹ This is factually proven as the demonstration against the medical testing of animals was successfully held on 1 March in the CPP.⁴² The effectivity of the latter demonstration and others⁴³ proves that the CPP served as a site perfectly enabling protesters to safely express their opinion and exercise their fundamental rights under circumstances where it would not be otherwise possible.

³⁷ *The Sunday Times v the United Kingdom (no 1)* App no 6538/74 (ECtHR, 26 April 1979) [62]; *Handyside v the United Kingdom* App no 5493/72 (ECtHR, 7 December 1976) [48].

³⁸ *The Sunday Times v the United Kingdom (no 1)* App no 6538/74 (ECtHR, 26 April 1979) [65]-[67].

³⁹ *Hämäläinen v Finland* App no 37359/09 (ECtHR, 16 July 2014) [67], [75]; *X, Y and Z v The United Kingdom* App no 21830/93 (ECtHR, 22 April 1997) [44]; *Christine Goodwin v the United Kingdom* App no 28957/95 (ECtHR, 11 July 2002) [85]; *Von Hannover v Germany (No 2)* App nos 40660/08 and 60641/08 (ECtHR, 7 February 2012) [82]; *A v Norway* App no 28070/06 (ECtHR, 9 April 2009) [66]; *Armonienė v Lithuania* App no 36919/02 (ECtHR, 25 November 2008) [38].

⁴⁰ International Center for Not-for-Profit Law and European Center for Not-for-Profit Law, 'Covid-19 Civic Freedom Tracker' (introduced 13 March 2020) <<https://www.icnl.org/covid19tracker/?location=&issue=5&date=&type=>> accessed 1 November 2020.

⁴¹ Compromis 16.

⁴² Compromis 23.

⁴³ *ibid.*

ISSUE B: IZED’S DECISION TO CONVICT XANA UNDER SECTION 22 OF THE NSA DID NOT VIOLATE HER RIGHTS RECOGNISED BY ARTICLES 19 AND 21 OF THE ICCPR

12. The decision to convict Xana under Section 22 of the NSA was (a) envisaged by law, (b) pursued a legitimate aim and (c) was necessary in a democratic society.

a) The interference was envisaged by law

13. Nullum crimen sine lege is a binding principle safeguarded by numerous international treaties.⁴⁴ The Regulation of the MoD, designating the CPP as the sole site to hold gatherings, was issued and entered into force on 1 February of the NSA⁴⁵ The demonstration in front of the Hospital was held on 14 February.⁴⁶ Therefore, with special regard to the statement of the Minister of Defence issued on 13 February,⁴⁷ Xana could foresee the effects of her conduct. The legal basis of the decisions of the High Court of Ized⁴⁸ and of the Supreme Court⁴⁹ was Section 22 of NSA.

⁴⁴ International Covenant on Civil and Political Rights (ICCPR) (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 Article 15; European Convention on Human Rights (adopted 4 November 1950, entered into force 3 September 1953) 213 UNTS 132 Article 7; African Charter on Human and Peoples’ Rights (adopted 27 June 1981, entered into force 21 October 1986) (1982) 21 ILM 58 Article 7(2); *Antia and Khupenia v Georgia* App no 7523/10 (ECtHR, 18 June 2020) [36].

⁴⁵ Compromis 14, 16.

⁴⁶ Compromis 18.

⁴⁷ *ibid.*

⁴⁸ Compromis 22.

⁴⁹ Compromis 31.

14. Rule of law guarantees were accomplished, as Xana had the opportunity to appeal her conviction.⁵⁰ This provides an effective judicial review of the executive authority's action, as the right to appeal is considered to be an adequate safeguard.⁵¹

b) The interference pursued a legitimate aim

15. For the restriction of fundamental human rights to be permissible, it must serve a legitimate purpose. The citizens must be provided with healthcare services and the state must maintain public order, specifically in the state of emergency due to the ongoing NIDV crisis.

16. The demonstration led by Xana quickly shifted into a non-peaceful assembly, as the demonstrators blocked the entrance of the hospital, thus violating public order and public health.⁵² The applicant's arrest and initial detention pursued the legitimate aims of preventing disorder and protecting the rights of others.⁵³ For fear that her actions may promote violent reactions, Xana's conviction and the sanctions imposed did pursue a legitimate aim.⁵⁴

⁵⁰ Compromis 29, 31.

⁵¹ *Klass and Others v Germany* App no 5029/71 (ECtHR, 6 September 1978) [56]; *Uzun v Germany* App no 35623/05 (ECtHR, 2 September 2010) [72]; *Trabajo Rueda v Spain* App no 32600/12 (ECtHR, 30 May 2017) [37]; *Malcolm Ross v Canada* CCPR/C/70/D/736/1997 (UNHRC, 18 October 2000) [11.1].

⁵² Compromis 19.

⁵³ *Steel and others v The United Kingdom* App no 24838/94 (ECtHR, 23 September 1998) [96].

⁵⁴ *Razvozhayev v Russia and Ukraine and Udaltsov v Russia* App nos 75734/12, 2695/15 and 55325/15 (ECtHR, 19 November 2019) [284]; International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 Article 21; Compromis 29.

c) The interference was necessary and proportionate

17. Similarly to the method used in Issue A,⁵⁵ the elements of the three-part cumulative test will be examined below with special regard to the site of the venue, the violence of the demonstrators, the responsibility of the leader and the sanctions imposed.⁵⁶

i. The notification one day before the planned demonstration did not enable the state to secure the venue

18. The NSA enables the MoD to declare a public emergency, and designate public sites where gatherings may be held.⁵⁷ The authorities shall promptly communicate a decision to prohibit an assembly to assembly organisers, together with a clear statement of the legal rationale for their decision.⁵⁸ On 13 February, immediately after the Union announced the venue of the planned demonstration, the MoD immediately released a statement specifying that it was unlawful under Section 22 of the NSA and that any person attending the demonstration would be arrested.⁵⁹ The MoD reacted with due diligence and fulfilled its duty to warn the organisers about the consequences of their planned actions.⁶⁰

⁵⁵ Arguments 6.

⁵⁶ *The Sunday Times v the United Kingdom (no 1)* App no 6538/74 (ECtHR, 26 April 1979) [62]; *Handyside v the United Kingdom* App no 5493/72 (ECtHR, 7 December 1976) [48].

⁵⁷ Compromis 14, 16.; International Center for Not-for-Profit Law and European Center for Not-for-Profit Law, 'Covid-19 Civic Freedom Tracker' (introduced 13 March 2020) <<https://www.icnl.org/covid19tracker/?location=&issue=5&date=&type=>> accessed 1 November 2020.

⁵⁸ Guidelines on Freedom of Association and Assembly in Africa (ACommHPR, May 2017) [29].

⁵⁹ Compromis 18.; *Berladir and Others v Russia* App no 34202/06 (ECtHR, 10 July 2012) [56].

⁶⁰ Compromis 18.

19. The Applicants have ignored the clear and precise rules laid down in favour of protecting public health by conducting a protest outside the Hospital. As its name signals, it is one of the most important and frequented ones in Ized since it is situated in the capital city.⁶¹

20. Given the state of emergency⁶² and rapid spread of NIDV, a notification one day before the demonstration did not provide state authorities with sufficient time to secure the venue.⁶³ Moreover, in the CPP, the state would have provided the event with all safeguards needed.⁶⁴

ii. *The gathering was violent and infringed the rights of others*

21. The right to peaceful assembly protects the non-violent gathering of persons with a common expressive purpose in a publicly accessible place.⁶⁵ However, this demonstration cannot be regarded as a non-violent assembly, since at least forty

⁶¹ Compromis 19.

⁶² ‘OHCHR & Human Rights Committee Address Derogations During COVID-19’ (*International Justice Resource Center*, 29 April 2020) <https://ijrcenter.org/2020/04/29/ohchr-human-rights-committee-address-derogations-during-covid-19/?fbclid=IwAR1DOmFqk33-6quHF3BxoNSkijnZTmnrV14di19Fz-1r75M_yOdHgsLSFus> accessed 1 November 2020; UN OHCHR, ‘Emergency Measures and COVID-19: Guidance’ (27 April 2020).

⁶³ *Navalnyy v Russia* [GC] App nos 29580/12, 36847/12, 11252/13, 12317/13, 43746/14 (ECtHR, 15 November 2018) [100]; *Kudrevičius and Others v Lithuania* App no 37553/05 (ECtHR, 15 October 2015) [147].

⁶⁴ Compromis 18.

⁶⁵ Guidelines on Freedom of Association and Assembly in Africa (ACommHPR, May 2017) [37]; UNHRC CCPR ‘General Comment No. 37: Article 21 (Right of Peaceful Assembly) (adopted 27 July 2020) UN Doc CCPR/C/GC/37 Article 4; *Kivenmaa v Finland* CCPR/C/50/D/412/1990 (UNHRC, 31 March 1994) [7.6]; *Sekerko v Belarus* CCPR/C/109/D/1851/2008 (UNHRC, 5 November 2013) [9.3]; *Poplavny v Belarus* CCPR/C/118/D/2139/2012 (UNHRC, 24 November 2016) [8.5]; *Popova v Russian Federation* CCPR/C/122/D/2217/2012 (UNHRC, 16 May 2018) [7.3]; *Navalnyy v Russia* [GC] App nos 29580/12, 36847/12, 11252/13, 12317/13, 43746/14 (ECtHR, 15 November 2018) [98]; *Ter-Petrosyan v Armenia* App no 36469/08 (ECtHR, 25 April 2019) [53]; *Fáber v Hungary* App no 40721/08 (ECtHR, 24 July 2012) [37]; *Gün and Others v Turkey* App no 8029/07 (ECtHR, 18 June 2013) [49]; *Taranenko v Russia* App no 19554/05 (ECtHR, 15 May 2014) [66]; ECtHR *Guide on the Case-law of the European Convention on Human Rights - Mass protests* (updated 31 August 2020) [6].

attendees were participating in violent activities, such as blocking the entrance of the Hospital and turning people trying to enter the building away.⁶⁶ Participants' conduct may be deemed violent if they are inciting others to the imminent use of unlawful force or have violent intentions.⁶⁷ In cases where demonstrators had engaged in acts of violence, the demonstrations had been within the scope of Article 11, but the interferences with FoA were justified for the prevention of disorder or crime and the protection of the rights and freedoms of others.⁶⁸ With the action of blocking the only entrance available for patients⁶⁹, the right to public services⁷⁰ is threatened as nobody was able to get in and out of the hospital. Medical care is included in the right to public services and is an essential aspect of the right to health.⁷¹ In a state of emergency,⁷² the country's healthcare system must be well prepared and in reach of every citizen,

⁶⁶ Compromis 19.

⁶⁷ *Lashmankin and Others v Russia* App nos 57818/09, 51169/10, 4618/11, 19700/11, 31040/11, 47609/11, 55306/11, 59410/11, 7189/12, 16128/12, 16134/12, 20273/12, 51540/12, 64243/12, 37038/13 (ECtHR, 7 February 2017) [402].

⁶⁸ *Protopapa v Turkey* App no 16084/90 (ECtHR, 24 February 2009) [104]-[112]; *Vrahimi v Turkey* App no 16078/90 (ECtHR, 22 September 2009) [112]-[119]; *Andreou Papi v Turkey* App no. 16094/90 (ECtHR, 22 September 2009) [106]-[111]; *Taranenko v Russia* App no. 19554/05 (ECtHR, 15 May 2014) [70]-[71], [94]-[95].

⁶⁹ Compromis 19.; Clarifications 19, 20.

⁷⁰ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 Article 25(c).

⁷¹ UN CESCR The 1966 International Covenant on Economic, Social and Cultural Rights (entered into force 3 January 1976) Article 12; Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217A (III) Article 25; Fact Sheet 31 of the Office of the United Nations High Commissioner for Human Rights and the World Health Organization <<https://www.ohchr.org/documents/publications/factsheet31.pdf>> accessed 25 October 2020; Lewis Graham, 'The European Court of Human Rights and the Emerging Right to Health' (*Oxford Human Rights Hub*, 11 May 2017) <<https://ohrh.law.ox.ac.uk/the-european-court-of-human-rights-and-the-emerging-right-to-health/>> accessed 26 October 2020.

⁷² European Convention on Human Rights (adopted 4 November 1950, entered into force 3 September 1953) Article 15; UNHRC, 'CCPR General Comment No. 29: Article 4 (Derogations during a State of Emergency)' (31 August 2001) [2]; UN OHCHR, 'Emergency Measures and COVID-19: Guidance' (27 April 2020).

immediately. In emergency cases the right to life⁷³ could be endangered if patients cannot get treatment on time.

iii. Xana's sentence was lawful and proportionate

22. Xana, as the leader, influenced the demonstrators with the use of a loudspeaker.⁷⁴ Being the organiser of the demonstration⁷⁵ and the leader of the Union means a significant influence on the crowd.⁷⁶ She encouraged demonstrators to block the entrance⁷⁷ of the Hospital and turn people away which is among the most frequented ones in the country, as stated in Issue B.⁷⁸

23. Xana is responsible for the following reasons. The demonstration was organised by the Union; however, it is not a natural person⁷⁹, and cannot be held responsible for the actions of others. Xana, on the other hand, is a natural person and is the leader of the Union,⁸⁰ which establishes her responsibility.⁸¹

⁷³ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 Article 6; UN Economic and Social Council, Committee on Economic, Social and Cultural Rights General Comment No. 14: Article 12. (The Right to the Highest Attainable Standard of Health) (11 August 2000) [3], [12].

⁷⁴ Compromis 19.

⁷⁵ Compromis 17, 19.

⁷⁶ Compromis 19.; Tom R. Tyler, John M. Darley, 'Building a Law-Abiding Society: Taking Public Views About Morality and the Legitimacy of Legal Authorities into Account When Formulating Substantive Law' (31 October 2013) <<https://scholarlycommons.law.hofstra.edu/hlr/vol28/iss3/5/>> accessed 1 November 2020.

⁷⁷ Compromis 19.

⁷⁸ Arguments 21.

⁷⁹ Compromis 7.

⁸⁰ Compromis 19.

⁸¹ UNODC, 'The Doha Declaration. Liability of Legal Persons' (April 2019) <<https://www.unodc.org/e4j/en/organized-crime/module-4/key-issues/liability-legal-persons.html>> accessed 4 November 2020.

24. The Hight Court of Ized sentenced Xana to three months imprisonment, suspended for one year. meaning that as long as she refrained from unlawful behaviour for the period of the suspension, she would not need to serve any time in jail⁸² The sentence was in favour of Xana, as she could have been sentenced to one-year imprisonment and a fine.⁸³ Given the circumstances, Xana’s conviction was reasonable and proportionate.⁸⁴
25. Based on Ized’s Constitution, state employees’ FoE and FoA can be subject to higher level of restriction.⁸⁵ There were state health sector employees among the members of the Union and consequently among the protesters,⁸⁶ therefore breaking up the protest was not disproportionate.

⁸² Clarifications 22, 23.

⁸³ Compromis 14.

⁸⁴ *Kudrevičius and Others v Lithuania* App no 37553/05 (ECtHR, 15 October 2015) [182].

⁸⁵ Compromis 29.

⁸⁶ Compromis 7, 29.; Clarifications 8.

ISSUE C: IZED’S DECISION TO ISSUE THE STATEMENT OF 16 MARCH DID NOT VIOLATE THE SOCIAL DEMOCRATIC WORKERS UNION’S RIGHTS RECOGNISED BY ARTICLES 19 AND 21 OF THE ICCPR

26. Similarly, to the Issues discussed before, the elements of the three-part cumulative test will be examined below to illustrate that issuing the Statement on 16 March (a) was envisaged by law, (b) pursued a legitimate aim and (c) was necessary and proportionate.

a) The interference was envisaged by law

27. The Statement issued by the MoD had a legal basis in national law under the NSA.⁸⁷

The NSA regulates the use of ‘public sites’⁸⁸ and authorises the MoD to designate specific ‘public sites’ that may be used to conduct gatherings in the event of a public emergency that threatens the life of the nation. The spread of this hitherto unknown virus could lead to disastrous situations. Consequently, issuing the Statement was inevitable and envisaged by law,⁸⁹ as it refers to clear and objective concepts.

⁸⁷ Compromis 14.

⁸⁸ *ibid.*

⁸⁹ *The Sunday Times v The United Kingdom* (No 1) App no 6538/74 (ECtHR, 26 April 1979) [49]; *Müller v Switzerland* App no 10737/84 (ECtHR, 24 May 1988) [29]; *Ahmet Yıldırım v Turkey* App no 3111/10 (ECtHR, 18 December 2012) [57]; *Tolstoy Miloslauský v The United Kingdom* App no 18139/91 (ECtHR, 13 July 1995) [37]; *Sanoma Uitgevers BV v Netherlands* App no 38224/03 (ECtHR, 14 September 2010) [81], [83]; *Malone v The United Kingdom* App no 8691/79 (ECtHR, 2 August 1984) [66]; *Kafkaris v Cyprus* App no 21906/04 (ECtHR, 12 February 2008) [140]; *Kokkinakis v Greece* App no 14307/88 (ECtHR, 25 May 1993) [40]; *Lindon, Otchakovsky-Laurens and July v France* App nos 21279/02, 36448/02 (ECtHR, 22 October 2007) [41]; *Editorial Board of Pravoye Delo and Shtekel v Ukraine* App no 33014/05 (ECtHR, 5 August 2011) [52]; *RTBF v Belgium* App no 50084/06 (ECtHR, 29 March 2011) [115]; *Altuğ Taner Akçam v Turkey* App no 27520/07 (ECtHR, 25 October 2011) [87]; *Usón Ramírez v Venezuela* Case no 12.554 (IACtHR, 25 July 2008) [55]; *Tomás Eduardo Cirio v Uruguay* Case no 11.500 (IACommHR, 27 October 2006) [64]; UN Economic and Social Council, UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, ‘Siracusa Principles on the Limitation and Derogation of Provisions in the ICCPR’ (1984) UN Doc E/CN.4/1984/4 principle [17]; Human Rights Committee, UNHRC ‘General Comment 34, Article 19, Freedoms of Opinion and Expression’ (12 September 2011) UN Doc CCPR/C/GC/34 [25]; UNHRC *Leonardus Johannes Maria de Groot v The Netherlands* (14 July 1994) UN Doc CCPR/C/54/D/578/1994.

28. The law must be both adequately accessible and foreseeable, as mentioned in Issue A.⁹⁰

Foreseeability not only requires that the impugned measure should have a legal basis in domestic law⁹¹ but also refers to the quality of the law in question.⁹² Legal instruments must be formulated with sufficient precision⁹³ to enable the individuals to anticipate the consequences which a given action may entail and thus to regulate their conduct accordingly.⁹⁴ The interference based on the Statement was prescribed by law as it was foreseeable,⁹⁵ accessible and provided legal protection against arbitrary interferences

⁹⁰ Arguments 3-4.

⁹¹ *Ahmet Yıldırım v Turkey* App no 3111/10 (ECtHR, 18 December 2012) [57]; *The Sunday Times v The United Kingdom* (No 1) App no 6538/74 (ECtHR, 26 April 1979) [47]; *Tolstoy Miloslauský v The United Kingdom* App no 18139/91 (ECtHR, 13 July 1995) [37]; *Sanoma Uitgevers BV v Netherlands* App no 38224/03 (ECtHR, 14 September 2010) [83]; *Leyla Şahin v Turkey* App no 44774/98 (ECtHR, 10 November 2005) [88]; *Malone v The United Kingdom* App no 8691/79 (ECtHR, 2 August 1984) [66].

⁹² *Ahmet Yıldırım v Turkey* App no 3111/10 (ECtHR, 18 December 2012) [57]; *The Sunday Times v The United Kingdom* (No 1) App no 6538/74 (ECtHR, 26 April 1979) [49]; *Sanoma Uitgevers BV v Netherlands* App no 38224/03 (ECtHR, 14 September 2010) [81]; *Kafkaris v Cyprus* App no 21906/04 (ECtHR, 12 February 2008) [140]; *Kruslin v France* App no 11801/85, (ECtHR, 24 April 1990) [27].

⁹³ *Müller v Switzerland* App no 10737/84 (ECtHR, 24 May 1988) [29]; *Kokkinakis v Greece* App no 14307/88 (ECtHR, 25 May 1993) [40]; *Wingrove v The United Kingdom* App no 17419/90 (ECtHR, 25 November 1996) [40]; *Lindon, Otchakovsky-Laurens and July v France* App nos 21279/02, 36448/02 (ECtHR, 22 October 2007) [41]; *Editorial Board of Pravoye Delo and Shtekel v Ukraine* App no 33014/05 (ECtHR, 5 August 2011) [52]; UN Economic and Social Council, UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, ‘Syracusa Principles on the Limitation and Derogation of Provisions in the ICCPR’ (1984) UN Doc E/CN.4/1984/4 principle 17; UNHRC, ‘General Comment 16, Article 17 (Right to Privacy), The Right to Respect of Privacy, Family, Home and Correspondence, and Protection of Honour and Reputation’ (Twenty-third session, 1988), UN Doc HRI/GEN/1/Rev.1 at 21 (1994) [3]; Human Rights Committee, UNHRC ‘General Comment 34, Article 19, Freedoms of Opinion and Expression’ (12 September 2011) UN Doc CCPR/C/GC/34 [24]-[25].

⁹⁴ *The Sunday Times v The United Kingdom* (No 1) App no 6538/74 (ECtHR, 26 April 1979) [49]; *RTBF v Belgium* App no 50084/06 (ECtHR, 29 March 2011) [115]; *Ahmet Yıldırım v Turkey* App no 3111/10 (ECtHR, 18 December 2012) [57]; *Altuğ Taner Akçam v Turkey* App no 27520/07 (ECtHR, 25 October 2011) [87]; *Wingrove v The United Kingdom* App no 17419/90 (ECtHR, 25 November 1996) [40]; *Larissis and Others v Greece* App no 23372/94 (ECtHR, 24 February 1998) [40]; *Sanoma Uitgevers BV v The Netherlands* App no 38224/03 (ECtHR, 14 September 2010) [81].

⁹⁵ *Goodwin v the United Kingdom* App no 17488/90 (ECtHR, 27 March 1996) [31]; *Tammer v Estonia* App no 41205/98 (ECtHR, 6 February 2001) [37]; *Chauvy and Others v France* App no 64915/01 (ECtHR, 29 June 2004) [43]; UNHRC, ‘General Comment 34: Article 19: Freedoms of opinion and expression’ (12 September 2011) UN Doc CCPR/C/GC/34 [25].

29. In the Regulation⁹⁶ issued by the MoD designated the CPP as the sole site to hold public gatherings and declared the state of public emergency. The measure was based on the newly enacted the NSA,⁹⁷ which entered into force in late January. The existence of a law presumes that the recipients will abide by it,⁹⁸ and the Statement merely clarified the NSA in order to make it clearer and more reachable. In addition, the MoD issued the Statement on 16 March, the same day the latest statistics were published,⁹⁹ hence the measures were reachable.

30. Laws must be able to keep pace with changing circumstances,¹⁰⁰ therefore many laws are inevitably couched in terms whose interpretation and application are questions of practice.¹⁰¹ This does not mean that they would fail the foreseeability requirement per se. The NSA's wording fulfils this requirement, because it states that 'a public site shall mean any location or space that is used by members of the public'.¹⁰² The NSA includes

⁹⁶ Compromis 16.

⁹⁷ Compromis 14.

⁹⁸ *Swadeshi Cotton Mills Co Ltd v Government of U.P. and Others* Civil Appeal no 2285 of 1969 (Supreme Court Of India, 10 November 1972) [3]; *Ashok Kumar Sharma v State Of Rajasthan* S.B. Civil Writ Petition No 12519 of 2012 (Supreme Court Of India, 9 January 2013) [8]; 'Ignorance or Mistake of Law as a Defense in Criminal Cases' (*Dickinson Law Review*, October 1935 to May 1936) 113. <<https://heinonline.org/HOL/LandingPage?handle=hein.journals/dlr40&div=20&id=&page=>>__accessed 1 November 2020; Rule of Law Education Centre <[https://www.ruleoflaw.org.au/what-is-the-rule-of-law/#:~:text=At%20its%20most%20basic%20level,the%20law%20and%20obey%20it.&text=\(2\)%20that%20the%20law%20should,to%20be%20guided%20by%20it.%E2%80%9D](https://www.ruleoflaw.org.au/what-is-the-rule-of-law/#:~:text=At%20its%20most%20basic%20level,the%20law%20and%20obey%20it.&text=(2)%20that%20the%20law%20should,to%20be%20guided%20by%20it.%E2%80%9D)> accessed 1 November 2020; John T. Scholz, 'Voluntary Compliance and Regulatory Enforcement' (1984) <<https://heinonline.org/HOL/LandingPage?handle=hein.journals/lawpol6&div=33&id=&page=>> accessed 1 November 2020; Tom R. Tyler, John M. Darley, 'Building a Law-Abiding Society: Taking Public Views About Morality and the Legitimacy of Legal Authorities into Account When Formulating Substantive Law' (31 October 2013) <<https://scholarlycommons.law.hofstra.edu/hlr/vol28/iss3/5/>> accessed 1 November 2020.

⁹⁹ Compromis 27.

¹⁰⁰ *Lindon, Otchakovsky-Laurens and July v France* App nos 21279/02, 36448/02 (ECtHR, 22 October 2007) [41]; *Feldek v Slovakia* App no 29032/95 (ECtHR, 12 July 2001) [56]; *Centro Europa 7 S.R.L. and Di Stefano v Italy* App no 38433/09 (ECtHR, 7 June 2012) [141].

¹⁰¹ *The Sunday Times v The United Kingdom* (No 1) App no 6538/74 (ECtHR, 26 April 1979) [49]; *Lindon, Otchakovsky-Laurens and July v France* App nos 21279/02, 36448/02 (ECtHR, 22 October 2007) [41].

¹⁰² Compromis 14.

a non-exhaustive enumeration, resulting in it being precise enough and evading vague terms.¹⁰³

31. Consequently, online public sites shall be included in this concept.¹⁰⁴ The Union had the opportunity to file a petition before the Supreme Court.¹⁰⁵ This procedure provides an effective judicial review of the executive authority's action,¹⁰⁶ as the right to appeal is considered in itself to be an adequate safeguard.¹⁰⁷

b) The interference pursued a legitimate aim

32. The Statement issued by the MoD on 16 March has the objective to protect persons under aims explicitly prescribed both by the ICCPR and the Constitution,¹⁰⁸ namely public health¹⁰⁹ and public order.¹¹⁰ Accurate and accessible information about NIDV

¹⁰³ Compromis 14.

¹⁰⁴ *Kalda v. Estonia* App no 17429/10 (ECtHR, 19 January 2016) [52]; *Jankovskis v Lithuania* App no 21575/08 (ECtHR, 17 January 2017) [62]; *Times Newspapers Ltd, v The United Kingdom* App nos 3002/03 and 23676/03 (ECtHR, 10 March 2009) [27]; *Ahmet Yildirim v Turkey* App no 3111/10 (ECtHR, 18 December 2012) [48]; *Delfi AS v Estonia* [GC] App no 64569/09 (ECtHR, 16 June 2015) [133].

¹⁰⁵ Compromis 30.

¹⁰⁶ *Trabajo Rueda v Spain* App no 32600/12 (ECtHR, 30 May 2017) [37].

¹⁰⁷ *Klass and Others v Germany* App no 5029/71 (ECtHR, 6 September 1978) [56]; *Uzun v Germany* App no 35623/05 (ECtHR, 2 September 2010) [72]; *Trabajo Rueda v Spain* App no 32600/12 (ECtHR, 30 May 2017) [37]; *Malcolm Ross v Canada* Communication No 736/1997, UN Doc CCPR/C/70/D/736/1997 (HRC, 26 October 2000) [11.1].

¹⁰⁸ Compromis 29.

¹⁰⁹ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 Article 19; *Mamere v France* App no 12697/03 (ECtHR, 7 November 2006) [20]; *Éva Molnár v Hungary* App no 10346/05 (ECtHR, 7 October 2008) [34].

¹¹⁰ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 Article 19; *Navalnyy v Russia* [GC] App nos 29580/12, 36847/12, 11252/13, 12317/13 and 43746/14 (ECtHR, 15 November 2018) [121]-[123]; *Éva Molnár v Hungary* App no 10346/05 (ECtHR, 7 October 2008) [34]; *Balçık and Others v Turkey* App no 25/02 (ECtHR, 29 November 2007) [49].

is essential both to reduce the risk of transmission of the virus, and to protect the population against dangerous disinformation.¹¹¹

33. Consequently, the measures required to execute these aims, like centralisation of information and the repression of fake news is the government's mission. Inasmuch as the information given in real time at gatherings held online, via social media, it cannot be verified priorly by the state. Thus, false information reaches a large number of people, the restrictions contained in the Statement pursue the legitimate aim of public health and order.

c) The interference was necessary and proportionate

34. In order to comply with the principle of necessity, it is requisite to evaluate whether the interference with FoE does not go beyond than what is essential to meet the pressing social need and it must be the least intrusive instrument amongst those which might achieve their protective function.¹¹² With special regard to the relationship between FoA and FoE, the issue of FoE must be examined in light of FoA applying as *lex specialis*.¹¹³

¹¹¹ UN CESCR Statement on the coronavirus disease (COVID-19) pandemic and economic, social and cultural rights (adopted 17 April 2020) E/C.12/2020/1 Article 18.

¹¹² UNHRC, 'General Comment 34, Article 19: Freedoms of opinion and expression' (12 September 2011) UN Doc CCPR/C/GC/34 [34]; UNHRC, 'General Comment 27, Article 12 (Freedom of Movement)' (2 November 1999) UN Doc CCPR/C/21/Rev.1/Add.9 [14]; *Ricardo Canese v Paraguay* Case no Serie C No. 111 (IACtHR, 31 August 2004) [96]; *Herrera Ulloa v Costa Rica* Case no ser. C No. 107 (IACtHR, 2 July 2004) [121]-[123]; IACtHR, 'Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts 13 and 29 American Convention on Human Rights)' (13 November 1985) Advisory Opinion OC-5/85, Series A No 5 [46]; *The Sunday Times v The United Kingdom* App no 6538/74 (ECtHR, 26 April 1979) [59]; *Barthold v Germany* App no 8734/79 (ECtHR, 25 March 1985) [59].

¹¹³ *Schwabe and M.G. v Germany* App nos 8080/08 and 8577/08 [101] (ECtHR, 1 December 2011); *Ezelin v France* App no 11800/85 (ECtHR, 26 April 1991) [37]; *Karademirci and Others v Turkey* App nos 37096/97 and 37101/97 (ECtHR, 25 January 2005) [26]; *Novikova and Others v Russia* App nos 25501/07, 57569/11, 80153/12, 5790/13 and 35015/13 (ECtHR, 26 April 2016) [91]; see also, on the relationship between these two Convention provisions, *Öllinger v Austria* App no 76900/01 (ECtHR, 29 June 2006) [38]; *Djavit An v Turkey* App no 20652/92 (ECtHR, 9 July 2003) [39].

35. Taking the aforementioned criteria into consideration, it will be argued below, that the general ban to organise gatherings on social media platforms was necessary and proportionate as (i) the CPP was still available for holding gatherings, (ii) the spread of disinformation posed grave risk to public health and public order and (iii) temporarily discontinuing the Net-Assemblies was an inevitable, impartial and proportionate decision.

i. The CPP was still available for holding gatherings

36. The Ministry of Defence ensured that the CPP was still available for all gatherings,¹¹⁴ and all necessary support would be provided for demonstrators who wished to gather there, including the fumigation of mosquitoes which spread the NIDV.¹¹⁵ It should be underlined that during the state of emergency and the ban on public gatherings several peaceful demonstrations were held at the CPP without any intervention. On 1 March a group of animal rights activists protested at the CPP against medical testing, proving that demonstrations raising issues of the medical sector could be conducted without any intervention from state authorities.¹¹⁶ The Union feared that the CPP was under heavy surveillance by state security forces,¹¹⁷ however, based on the above mentioned facts, there is no evidence which would support such allegation. Given these points it can be

¹¹⁴ *Kudrevičius And Others v Lithuania* [GC] App no 37553/05 (ECtHR, 15 October 2015) [158]-[159]; *Djavit An v Turkey* App no 20652/92 (ECtHR, 20 February 2003) [57]; *Bączkowski and Others v Poland* App no 1543/06 (ECtHR, 3 May 2007) [64]; *Giuliani and Gaggio v Italy* [GC] App no 23458/02 (ECtHR, 24 March 2011) [251]; *Oya Ataman v Turkey* App no 74552/01 (ECtHR, 5 December 2006) [39].

¹¹⁵ Compromis 16, 18.

¹¹⁶ Compromis 23.

¹¹⁷ *ibid.*

concluded that the Union's decision to discontinue offline demonstrations altogether and not utilize the CPP was not reasonable.¹¹⁸

ii. *The spread of disinformation posed grave risk to public health and public order*

37. On 10 March the Union decided to launch digital demonstrations on The Net.¹¹⁹ As the virtual sequel of the unlawful demonstration on 14 February, two Net-Assemblies used the same slogans as the demonstration, such as #FiredForFakeVirus and #Care4Healthcare.¹²⁰ These Net Tags were disseminating disinformation and fake news, because the assertions had no factual basis.¹²¹ The Union and its supporters promoted radical reactions and started to encourage users to boycott healthcare services.¹²² This clearly shows that the demonstrations had nothing to do with the NIDV crisis but they were explicit political attacks against the government,¹²³ linked to the opposing DSP.¹²⁴

¹¹⁸ Compromis 23.

¹¹⁹ Compromis 24.

¹²⁰ Compromis 19., 24.; UNHRC Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association UN Doc A/HRC/41/41 (17 May 2019) [22]-[23], [43].

¹²¹ *McVicar v The United Kingdom* App no 46311/99 (ECtHR, 7 May 2002) [83]; *Lingens v Austria* App no 9815/82 (ECtHR, 8 July 1986) [46]; *Rashkin v Russia* App no 69575/10 (ECtHR, 7 July 2020) dissenting opinion of Judge Elósegui [17]; David O. Klein, Joshua R. Wueller 'Fake News: A Legal Perspective' (*Journal of Internetlaw*, volume 20 number 10, edited by DLA PIPER, April 2017) [5]-[6] < <http://governance40.com/wp-content/uploads/2018/12/Fake-News-A-Legal-Perspective.pdf> > accessed 29 October 2020; Joint Declaration on Freedom of Expression and "Fake News", Disinformation and Propaganda by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media, the OAS Special Rapporteur on Freedom of Expression and the ACHPR Special Rapporteur on Freedom of Expression and Access to Information FOM.GAL/3/17 (3 March 2017) [3a].

¹²² Compromis 25.

¹²³ Compromis 24, 25.; 'Germany coronavirus: Hundreds arrested in German 'anti-corona' protests' (*BBC News*, 30 August 2020) <<https://www.bbc.com/news/world-europe-53959552>> accessed 1 November 2020; 'Covid: Protests take place across Italy over anti-virus measures' (*BBC News*, 28 October 2020) <<https://www.bbc.com/news/world-europe-54701042>> accessed 1 November 2020.

¹²⁴ Compromis 1, 7.

38. The protest on 14 February was unlawful for multiple reasons. Firstly, it was conducted outside of the CPP, a site specifically designated for holding such gatherings.¹²⁵ Secondly, the gathering shifted into a non-peaceful assembly, hindering people in need of medical care and promoting disinformation,¹²⁶ as mentioned before in Issue B.¹²⁷ Under these circumstances, it is not reasonable to let potentially violent gatherings further continue in online space.

39. The online gatherings launched by the Union attracted more than 80,000 people altogether.¹²⁸ In comparison to that the Union's average reach is negligible, with only 4,000 weekly newspaper readers.¹²⁹ Furthermore, there were only 400 people at the 14 February demonstration,¹³⁰ and the Union has merely 1,000 members who are Netizens.¹³¹ These numbers in contrast to the presence of the online gatherings show the tremendous amplifying effect of social media.¹³²

40. For the reasons mentioned above, the MoD issued the Statement further clarifying the NSA,¹³³ as explained in Issue C.¹³⁴ This decision could be seen as a general ban;

¹²⁵ Compromis 14.

¹²⁶ Compromis 19.

¹²⁷ Arguments 21, 37.

¹²⁸ Compromis 24.

¹²⁹ Compromis 7.

¹³⁰ Compromis 19.

¹³¹ Compromis 7.

¹³² *Ungváry and Irodalom Kft. v Hungary* App no 64520/10 (ECtHR, 3 December 2013) partly dissenting and partly concurring opinion of Judge Kūris, joined by Judge Raimondi [17]; Soroush Vosoughi, Deb Roy and Sinan Aral, 'The Spread of True and False News Online' (*Mit Initiative On The Digital Economy Research Brief*, 2018) < <http://ide.mit.edu/sites/default/files/publications/2017%20IDE%20Research%20Brief%20False%20News.pdf> > accessed 29 October 2020.

¹³³ Compromis 14, 27.

¹³⁴ Arguments 29.

however, the ECtHR has consistently held¹³⁵ that general bans on demonstrations can be justified if there is a real danger of their resulting in disorder¹³⁶ which cannot be prevented by other less stringent measures.

41. Taking the Net-Assemblies' main characteristics into consideration, these are widely accessible,¹³⁷ user-edited surfaces, where online demonstrations happen real time, substituting non-virtual demonstrations.¹³⁸ The information given at gatherings held on social media cannot be verified priorly by the state, consequently fake news and disinformation reach a large number of people in seconds.¹³⁹ The corrected version of the news as a perishable commodity, will be deprived of all of its interest, as a result ex-poste restrictions would be pointless.¹⁴⁰ The uncontrolled spread of disinformation is faster and more expanded than the government or any expert could disprove it, especially after it has reached a critical mass.¹⁴¹ Online gatherings in respect to the

¹³⁵ *Sunday Times v United Kingdom (No. 2)* App no 13166/87 (ECtHR, 26 November 1991) [51]; see also *Association Ekin v France* App no 39288/98 (ECtHR, 17 July 2001) [56]; *Chauvy and others v France* App no 64915/01 (ECtHR, 29 June 2004) [47]; *Mosley v United Kingdom* App no 48009/08 (ECtHR, 10 May 2011) [117]; *Wizerkaniuk v Poland* App no 18990/05 (ECtHR, 5 July 2011) [65]; *Observer and Guardian v United Kingdom* App. no. 13585/88 (ECtHR, 26 November 1991) see the partly dissenting opinion of Judge De Meyer joined by Judges Pettiti, Russo, Foighel and Bigi; *Ahmet Yildirim v Turkey* App no 3111/10 (ECtHR, 18 December 2012) [64]; European Convention on Human Rights (adopted 4 November 1950, entered into force 3 September 1953) 213 UNTS 1932 Article 11.

¹³⁶ Compromis 24, 25, 26.; *Animal Defenders International v the United Kingdom* [GC] App no 48876/08 (ECtHR, 22 April 2013) [106]; *Ždanoka v Latvia* [GC] App no 58278/00 (ECtHR, 16 March 2006) [112]-[115].

¹³⁷ Compromis 6.

¹³⁸ *Delfi AS v Estonia* [GC] App no 64569/09 (ECtHR, 16 June 2015) [110]; *Cengiz and Others v Turkey* App nos 48226/10 and 14027/11 (ECtHR, 1 December 2015) [52]; *Times Newspapers Ltd. v The United Kingdom (Nos. 1 and 2)* App nos 3002/03 and 23676/03 (ECtHR, 10 March 2009) [27]; *Ahmet Yildirim v Turkey* App no 3111/10 (ECtHR, 18 December 2012) [48].

¹³⁹ *Delfi AS v Estonia* [GC] App no 64569/09 (ECtHR, 16 June 2015) [110]; *Times Newspapers Ltd. v The United Kingdom (Nos. 1 and 2)* App nos 3002/03 and 23676/03 (ECtHR, 10 March 2009) [27].

¹⁴⁰ *Ahmet Yildirim v Turkey* App no 3111/10 (ECtHR, 18 December 2012) [47]; *Observer and Guardian v The United Kingdom* App no 13585/88 (ECtHR, 26 November 1991) [60].

¹⁴¹ Alok Srivastava v India (2020) W.P. (C) No. 468/2020; WHO Risk Communication, 'Infodemic Management-Infodemiology' <<https://www.who.int/teams/risk-communication/infodemic-management>> accessed 1 November 2020; Gordon Pennycook, Jonathon McPhetres, Yunhao Zhang, Jackson G. Lu, and David G. Rand 'Fighting COVID-19 Misinformation on Social Media: Experimental Evidence for a Scalable Accuracy-Nudge Intervention'

NIDV, where opinions without factual basis can be expressed,¹⁴² mean a serious threat to public health and order, because ‘misinformation or mixed messages can cost lives’,¹⁴³ consequently endangering the life of the nation.¹⁴⁴

(*Psychological Science*, 2020, Vol. 31(7) 770 –780) <<https://journals.sagepub.com/doi/pdf/10.1177/0956797620939054>> accessed 29 October 2020; Marié Hattingh, Machdel Matthee, Hanlie Smuts, Ilias Pappas, Yogesh K. Dwivedi, and Matti Mäntymäki ‘A Systematic Review on Fake News Themes Reported in Literature’ (*US National Library of Medicine National Institutes of Health*, 10 March 2020) <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7134307/#CR2>> accessed 29 October 2020; Peter Dizikes, ‘Study: On Twitter, false news travels faster than true stories’ (8 March 2018) <<https://news.mit.edu/2018/study-twitter-false-news-travels-faster-true-stories-0308>> accessed 1 November 2020.

¹⁴² Compromis 6.

¹⁴³ WHO Risk Communication ‘Infodemic Management-Infodemiology’ <<https://www.who.int/teams/risk-communication/infodemic-management>> accessed 1 November 2020; Alok Srivastava v India (2020) W.P. (C) No. 468/2020; Gordon Pennycook, Jonathon McPhetres, Yunhao Zhang, Jackson G. Lu, and David G. Rand ‘Fighting COVID-19 Misinformation on Social Media: Experimental Evidence for a Scalable Accuracy-Nudge Intervention’ (*Psychological Science*, 2020, Vol. 31(7) 770 –780) <<https://journals.sagepub.com/doi/pdf/10.1177/0956797620939054>> accessed 29 October 2020; Marié Hattingh, Machdel Matthee, Hanlie Smuts, Ilias Pappas, Yogesh K. Dwivedi, and Matti Mäntymäki ‘A Systematic Review on Fake News Themes Reported in Literature’ (*US National Library of Medicine National Institutes of Health*, 10 March 2020) <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7134307/#CR2>> accessed 29 October 2020; Peter Dizikes, ‘Study: On Twitter, false news travels faster than true stories’ (8 March 2018) <<https://news.mit.edu/2018/study-twitter-false-news-travels-faster-true-stories-0308>> > accessed 1 November 2020.

¹⁴⁴ *Lawless v Ireland (No. 3)* App No 332/57 (ECtHR, 1 July 1961) [28]; UN HRC General comment No. 29: Article 4 (adopted at the One thousand nine hunder and fiftieth meeting, on 24 July 2001, entered into force on 31 August 2001) ‘Derogations during a State of Emergency’ CCPR/C/21/Rev.1/Add.11 [3]; UN Economic and Social Council, UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, ‘Siracusa Principles on the Limitation and Derogation of Provisions in the ICCPR’ (1984) UN Doc E/CN.4/1984/ [40]-[41]; Nicole Questiaux ‘Study of the implications for human rights of recent developments concerning situations known as states of siege or emergency’ (‘ UN doc. E/CN.4/Sub.2/1982/15, 27 July 1982.

iii. *The temporary discontinuance of Net-Assemblies was an inevitable, impartial and proportionate decision*

42. The MoD issued its Statement recognising the real danger to public health and public order¹⁴⁵ to fulfil the positive obligation of the state to safeguard the citizens' rights,¹⁴⁶ and protect the population against the virus. It is crucial for the executive branch to be able to effectively control online gatherings to avoid panic, otherwise, disinformation could result in fatal aftermath.¹⁴⁷

43. The temporary discontinuance of the Net-Assemblies was an impartial decision made by the board of NN,¹⁴⁸ a privately owned company regulating its own conduct.¹⁴⁹ The decision was not politically motivated, since Gus Dabyu has stepped down from the elections.¹⁵⁰ Furthermore, the decision was approved unanimously, proving that even if

¹⁴⁵ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 Article 19; *Mamere v France* App no 12697/03 (ECtHR, 7 November 2006) [20]; *Éva Molnár v Hungary* App no 10346/05 (ECtHR, 7 October 2008) [34]; *Navalnyy v Russia* [GC] App nos 29580/12, 36847/12, 11252/13, 12317/13 and 43746/14 (ECtHR, 15 November 2018) [121]-[123]; International Committee Of The Red Cross, 'Statement to United Nations General Assembly' (8 October 2020) <<https://www.icrc.org/en/document/covid-19-threat-all-us-especially-serious-threat-amid-armed-conflict>> accessed 1 November 2020.

¹⁴⁶ Jean-François Akandji-Kombe, 'Positive obligations under the European Convention on Human Rights: A guide to the implementation of the European Convention of Human Rights' (Human rights handbooks, No. 7).

¹⁴⁷ Alok Srivastava v India (2020) W.P. (C) No. 468/2020; WHO Risk Communication 'Infodemic Management-Infodemiology' <<https://www.who.int/teams/risk-communication/infodemic-management>> accessed 1 November 2020; Gordon Pennycook, Jonathon McPhetres, Yunhao Zhang, Jackson G. Lu, and David G. Rand 'Fighting COVID-19 Misinformation on Social Media: Experimental Evidence for a Scalable Accuracy-Nudge Intervention' (*Psychological Science*, 2020, Vol. 31(7) 770-780) <<https://journals.sagepub.com/doi/pdf/10.1177/0956797620939054>> accessed 29 October 2020; Marié Hattingh, Machdel Matthee, Hanlie Smuts, Ilias Pappas, Yogesh K. Dwivedi, and Matti Mäntymäki 'A Systematic Review on Fake News Themes Reported in Literature' (*US National Library of Medicine National Institutes of Health*, 10 March 2020) <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7134307/#CR2>> accessed 29 October 2020; Peter Dizikes, 'Study: On Twitter, false news travels faster than true stories' (8 March 2018) <<https://news.mit.edu/2018/study-twitter-false-news-travels-faster-true-stories-0308>> accessed 1 November 2020.

¹⁴⁸ Clarifications 2.; Compromis 28.

¹⁴⁹ Compromis 28.

¹⁵⁰ Compromis 4.

Dabyu would have any influence on his peers, the ban was a transparent and unequivocal decision.¹⁵¹

44. Since The Net is the most popular social media platform in Ized,¹⁵² it has the biggest role in shaping the public opinion. As the holding of gatherings was restricted to the CPP,¹⁵³ the board of NN experiencing the continuous infringement of public emergency regulations in the view of its duties and responsibilities¹⁵⁴ decided to temporarily discontinue the Net-Assembly feature¹⁵⁵ in order to protect their users. The interference was proportionate since all the other functions¹⁵⁶ of The Net, such as posting, following and sharing posts,¹⁵⁷ are still available among other social media platforms.¹⁵⁸

¹⁵¹ Clarifications 2.

¹⁵² Compromis 3.

¹⁵³ Compromis 16.

¹⁵⁴ *Delfi AS v Estonia* [GC] App no 64569/09 (ECtHR, 16 June 2015) [110]; *Times Newspapers Ltd, v The United Kingdom (Nos. 1 and 2)* App nos 3002/03 and 23676/03 (ECtHR, 10 March 2009) [27]; *Ahmet Yildirim v Turkey* App no 3111/10 (ECtHR, 18 December 2012) [48]; International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 Article 19 (3).

¹⁵⁵ Compromis 24, 25, 28.

¹⁵⁶ *Ahmet Yildirim v Turkey* App no 3111/10 (ECtHR, 18 December 2012) [66]; *Cengiz and Others v Turkey* App nos 48226/10 and 14027/11 (ECtHR, 1 December 2015) [64].

¹⁵⁷ Compromis 5.

¹⁵⁸ Compromis 5, 27.; Clarifications 3, 4.

ISSUE D: IZED’S DECISION TO ISSUE GUIDELINES UNDER SECTION 23 OF THE NATIONAL SECURITY ACT ON 16 MARCH DID NOT VIOLATE THE SOCIAL DEMOCRATIC WORKERS UNION’S RIGHTS RECOGNISED BY ARTICLE 19 OF THE ICCPR

45. False information is specifically tailored to instigate the fear and panic as these messages contain information of all kinds, including rumours, gossip and unreliable news which can obstruct the public health response and add to social disorder and polarization.¹⁵⁹ As mentioned in Issue A,¹⁶⁰ this is really dangerous and threatens the public health in a virus crisis. This is why during a state of emergency induced by the rapid spread of a deadly virus, it is inevitable to centralise the communication about NIDV to reduce the spread of disinformation to protect the public health.¹⁶¹ States can take measures to restrict FoE when such limitations are prescribed by law, pursue a legitimate aim and are necessary and proportionate.¹⁶²

¹⁵⁹ WHO *Managing Epidemics: Key Facts about Major Deadly Diseases* (May 2020) 34.

¹⁶⁰ Arguments 5.

¹⁶¹ Compromis 27.; Alok Srivastava v India (2020) W.P. (C) No. 468/2020; WHO Risk Communication ‘Infodemic Management-Infodemiology’ <<https://www.who.int/teams/risk-communication/infodemic-management>> accessed 1 November 2020; Gordon Pennycook, Jonathon McPhetres, Yunhao Zhang, Jackson G. Lu, and David G. Rand ‘Fighting COVID-19 Misinformation on Social Media: Experimental Evidence for a Scalable Accuracy-Nudge Intervention’ (*Psychological Science*, 2020, Vol. 31(7) 770 –780) <<https://journals.sagepub.com/doi/pdf/10.1177/0956797620939054>> accessed 29 October 2020; Marié Hattingh, Machdel Matthee, Hanlie Smuts, Ilias Pappas, Yogesh K. Dwivedi, and Matti Mäntymäki ‘A Systematic Review on Fake News Themes Reported in Literature’ (*US National Library of Medicine National Institutes of Health*, 10 March 2020) <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7134307/#CR2>> accessed 29 October 2020; Peter Dizikes, ‘Study: On Twitter, false news travels faster than true stories’ (8 March 2018) <<https://news.mit.edu/2018/study-twitter-false-news-travels-faster-true-stories-0308>> accessed 1 November 2020.

¹⁶² *Handyside v the United Kingdom* App no 5493/72 (ECtHR, 7 December 1976) [49]; *Francisco Martorell v Chile* Informe No 11/96 (IACtHR, 3 May 1996) [55]; *Herrera Ulloa v Costa Rica* Case no ser. C No. 107 (IACtHR, 2 July 2004) [120].

a) The interference was envisaged by law

46. The MoD has been authorised by the NSA to issue guidelines on the publication of news, opinion, or any other form of expression¹⁶³ in the event of a public emergency, in the interest of public safety, order or health. The NSA is a legal instrument enacted by the parliament, in accordance with democratic principles.¹⁶⁴ The public emergency was declared on 1 February¹⁶⁵ and the guideline was issued by the MoD on the same day.¹⁶⁶ For this reason the interference was envisaged by law.¹⁶⁷

¹⁶³ Compromis 15.

¹⁶⁴ *ibid.*

¹⁶⁵ Compromis 17.

¹⁶⁶ Compromis 27.

¹⁶⁷ *The Sunday Times v The United Kingdom* (No 1) App no 6538/74 (ECtHR, 26 April 1979) [49]; *Müller v Switzerland* App no 10737/84 (ECtHR, 24 May 1988) [29]; *Ahmet Yıldırım v Turkey* App no 3111/10 (ECtHR, 18 December 2012) [57]; *Tolstoy Miloslauský v The United Kingdom* App no 18139/91 (ECtHR, 13 July 1995) [37]; *Sanoma Uitgevers BV v Netherlands* App no 38224/03 (ECtHR, 14 September 2010) [81], [83]; *Malone v The United Kingdom* App no 8691/79 (ECtHR, 2 August 1984) [66]; *Kafkaris v Cyprus* App no 21906/04 (ECtHR, 12 February 2008) [140]; *Kokkinakis v Greece* App no 14307/88 (ECtHR, 25 May 1993) [40]; *Lindon, Otchakovsky-Laurens and July v France* App nos 21279/02, 36448/02 (ECtHR, 22 October 2007) [41]; *Editorial Board of Pravoye Delo and Shtekel v Ukraine* App no 33014/05 (ECtHR, 5 August 2011) [52]; *RTBF v Belgium* App no 50084/06 (ECtHR, 29 March 2011) [115]; *Altuğ Taner Akçam v Turkey* App no 27520/07 (ECtHR, 25 October 2011) [87]; *Usón Ramírez v Venezuela* Case no 12.554 (IACtHR, 25 July 2008) [55]; *Tomás Eduardo Cirio v Uruguay* Case no 11.500 (IACommHR, 27 October 2006) [64]; UN Economic and Social Council, UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, ‘Siracusa Principles on the Limitation and Derogation of Provisions in the ICCPR’ (1984) UN Doc E/CN.4/1984/4 principle [17]; Human Rights Committee, UNHRC ‘General Comment 34, Article 19, Freedoms of Opinion and Expression’ (12 September 2011) UN Doc CCPR/C/GC/34 [25]; UNHRC *Leonardus Johannes Maria de Groot v The Netherlands* (14 July 1994) UN Doc CCPR/C/54/D/578/1994.

47. It is generally acknowledged that FoE is a fundamental right.¹⁶⁸ FoE is a lynchpin of democracy,¹⁶⁹ key to the protection of all human rights and one of the basic conditions for their progress and the development of every person.¹⁷⁰ Nevertheless, it is recognised that this right is not absolute, hence it can be restricted to ensure the exercise of other human rights.¹⁷¹

48. The guideline was based on a publicly accessible document enacted by the parliament, which fulfils the requirement of accessibility,¹⁷² as mentioned in Issue A.¹⁷³ The most compelling evidence of foreseeability and accessibility is that the NSA was published and was accessible for two weeks before the declaration of a public emergency. Consequently, the measures enacted under the NSA were foreseeable and accessible.¹⁷⁴

¹⁶⁸ Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217A (III) Article 19; European Convention on Human Rights (adopted 4 November 1950, entered into force 3 September 1953) 213 UNTS 1932 Article 10; International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 Article 19(2); American Convention on Human Rights (adopted 22 November 1969, entered into force 18 July 1978) Article 13; African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) (1982) 21 ILM 58 Article 9(2).

¹⁶⁹ Toby Mendel, 'Restricting Freedom of Expression: Standards and Principles' (*Centre for Law and Democracy*, 2010) <<http://www.law-democracy.org/wp-content/uploads/2010/07/10.03.Paper-on-Restrictions-on-FOE.pdf>> accessed 1 November 2020.

¹⁷⁰ *Handyside v the United Kingdom* App no 5493/72 (ECtHR, 7 December 1976) [49]; *Lingens v Austria* App no 9815/82 (ECtHR, 8 July 1986) [41]; *Oberschlick v Austria* App no 11662/85 (ECtHR, 23 May 1991) [57]; *Association Ekin v France* App no 39288/98 (ECtHR, 17 July 2001) [56]; *Perna v Italy* App no 48898/99 (ECtHR, 6 May 2003) [39].

¹⁷¹ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 Article 19(3); European Convention on Human Rights (adopted 4 November 1950, entered into force 3 September 1953) 213 UNTS 1932 Article 10(2); African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) (1982) 21 ILM 58 Article 9(2); American Convention on Human Rights (adopted 22 November 1969, entered into force 18 July 1978) Article 13.

¹⁷² *The Sunday Times v the United Kingdom (No 1)* App no 6538/74 (ECtHR, 26 April 1979) [49]; *Silver and Others v the United Kingdom* App nos 5947/72, 6205/73, 7052/75, 7061/75, 7107/75, 7113/75, 7136/75 (ECtHR, 25 March 1983) [87], [93]; *Margareta and Roger Andersson v Sweden* App no 12963/87 (ECtHR, 25 February 1992) [75].

¹⁷³ Arguments 3-4.

¹⁷⁴ Compromis 14.; Human Rights Committee, General Comment 34, Article 19 (Hundred and second session, 2011), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. CCPR/C/GC/34 (2011) ('General Comment 34') Article 25; *Sanoma Uitgevers BV v Netherlands* App no 38224/03 (ECtHR, 14 September 2010) [81]; *Usón Ramírez v Venezuela* Case no 12.554 (IACtHR, 25 July 2008) [55]; *Tomás Eduardo Cirio v Uruguay* Case no 11.500 (IACommHR, 27 October 2006) [64]; *Hyde Park and others v Moldova* App no 33482/06 (ECtHR, 31 March 2009); *Silver and Others v the United*

49. As mentioned before in Issue B,¹⁷⁵ the Union was provided with an effective judicial review of the executive authority's action.¹⁷⁶ In conclusion the Regulation was not arbitrary, but it certainly was predictable.

b) The interference pursued a legitimate aim

50. The guidelines issued on 16 March by the MoD serve the purpose of decreasing the spread of disinformation, therefore the protection of public health as mentioned in Issue C.¹⁷⁷

c) The interference was necessary and proportionate

It will be argued below that issuing the Guidelines under Section 23 of the NSA was necessary in a democratic society, as (i) it responded to a pressing social need, (ii) was the least intrusive means taken and (iii) was appropriate to reach the legitimate aim pursued.

Kingdom App nos 5947/72, 6205/73, 7052/75, 7061/75, 7107/75, 7113/75, 7136/75 (ECtHR, 25 March 1983) [87]; UN Human Rights Committee (HRC), CCPR General Comment No. 37: Article 21 (Right of Peaceful Assembly), 27 July 2020 [44]; *Margareta and Roger Andersson v Sweden* App no 12963/87 (ECtHR, 25 February 1992) [75].

¹⁷⁵ Arguments 14.

¹⁷⁶ *Trabajo Rueda v Spain* App no 32600/12 (ECtHR, 30 May 2017) [37]; *Klass and Others v Germany* App no 5029/71 (ECtHR, 6 September 1978) [56]; *Uzun v Germany* App no 35623/05 (ECtHR, 2 September 2010) [72]; *Malcolm Ross v Canada* Communication No 736/1997, UN Doc CCPR/C/70/D/736/1997 (HRC, 26 October 2000) [11.1].

¹⁷⁷ Arguments 32.

i. *Alleged medical experts were disseminating fake news*

51. On 15 March in the 'Unite', a weekly magazine edited by the Union members¹⁷⁸ several unnamed¹⁷⁹ medical experts confirmed that the virus is sexually transmitted.¹⁸⁰ These alleged experts claimed that they are state healthcare workers, who remained unnamed for their fear of losing their jobs.¹⁸¹ To contradict the rapid spread of disinformation¹⁸² the Ministry of Health issued a report claiming that there is a credible evidence that the virus is transmitted via vectors.¹⁸³ Even if the content of these articles were true, the government claimed that only the inefficient and unprofessional employees would be

¹⁷⁸ Compromis 26.

¹⁷⁹ Ashraf Sadat Ahadzadeh, 'Anonymous Source Undermines Credibility: An Elaboration Likelihood Model' (24 April 2017) <https://www.researchgate.net/publication/328061532_Anonymous_Source_Undermines_Credibility_An_Elaboration_Likelihood_Model> accessed 1 November 2020; Ivanka Pjesivac, Rachel Rui, 'Anonymous sources hurt credibility of news stories across cultures: A comparative experiment in America and China' (23 September 2014) <<https://journals.sagepub.com/doi/10.1177/1748048514548534>> accessed 1 November 2020; Thomas Chesney, 'The impact of anonymity on weblog credibility' (8 June 2010) <<https://www.sciencedirect.com/science/article/abs/pii/S1071581910000790>> accessed 1 November 2020; Esther Thorson, 'Anonymous Sources Harm Credibility of All Stories' (September 2009) <https://www.researchgate.net/publication/312971942_Anonymous_Sources_Harm_Credibility_of_All_Stories> accessed 1 November 2020; Peter Dizikes, 'Study: On Twitter, false news travels faster than true stories' (8 March 2018) <<https://news.mit.edu/2018/study-twitter-false-news-travels-faster-true-stories-0308>> accessed 1 November 2020.

¹⁸⁰ Compromis 26.

¹⁸¹ *ibid.*

¹⁸² Compromis 24, 25, 26, 27.; Alok Srivastava v India (2020) W.P. (C) No. 468/2020; WHO Risk Communication 'Infodemic Management – Infodemiology' <<https://www.who.int/teams/risk-communication/infodemic-management>> accessed 1 November 2020; Gordon Pennycook, Jonathon McPhetres, Yunhao Zhang, Jackson G. Lu, and David G. Rand 'Fighting COVID-19 Misinformation on Social Media: Experimental Evidence for a Scalable Accuracy-Nudge Intervention' (*Psychological Science*, 2020, Vol. 31(7) 770 –780) <<https://journals.sagepub.com/doi/pdf/10.1177/0956797620939054>> accessed 29 October 2020; Marié Hattingh, Machdel Matthee, Hanlie Smuts, Ilias Pappas, Yogesh K. Dwivedi, and Matti Mäntymäki 'A Systematic Review on Fake News Themes Reported in Literature' (*US National Library of Medicine National Institutes of Health*, 10 March 2020) <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7134307/#CR2>> accessed 29 October 2020; Peter Dizikes, 'Study: On Twitter, false news travels faster than true stories' (8 March 2018) <<https://news.mit.edu/2018/study-twitter-false-news-travels-faster-true-stories-0308>> accessed 1 November 2020.

¹⁸³ Compromis 27.

dismissed as the result of a comprehensive vetting process,¹⁸⁴ so the above-mentioned fear seemed to be groundless.

52. These articles, mentioned just above,¹⁸⁵ are the part of a political blame game,¹⁸⁶ led by the Union. Since there is neither reliable information about these unknown experts nor the evidence they rely on, the articles can only be assessed as disinformation.¹⁸⁷ Such false claims published by the the Union – which is associated with the socialists, and its aim is to overthrow the government¹⁸⁸ – may be prohibited as long as the requirements of Article 19 (3) of the ICCPR are met.¹⁸⁹ International standards would tolerate falsehoods unless these were deployed to violate rights such as public safety and health.¹⁹⁰

¹⁸⁴ Compromis 13.

¹⁸⁵ Arguments 51.

¹⁸⁶ Tim Groseclose and Nolan McCarty ‘The Politics of Blame: Bargaining before an Audience’ (2001) 45 No 1 American Journal of Political Science <<https://www.jstor.org/stable/2669362?seq=1>> accessed 1 November 2020.

¹⁸⁷ Public Prosecutor v Takagi MAC 903124-2015, MAC 903125-2015, MAC 903126-2015, MAC 903127-2015, MAC 903128-2015, MAC 903129-2015, MAC 903130-2015, MAC 903131-2015 (District Court of the Criminal Justice Division in Singapore, 23 March 2016); Irish Council for Civil Liberties, ‘Covid-19 Highlights Why Disinformation Online is a Rights-Based Issue’ <<https://www.iccl.ie/opinion/covid-19-highlights-why-disinformation-online-is-a-rights-based-issue/>> accessed on 4 November 2020.

¹⁸⁸ Compromis 7, 24.

¹⁸⁹ *Paturel v France* App no 54968/00 (ECtHR, 22 December 2005) [37]; *Brasilier v France* App no 71343/01 (ECtHR, 11 April 2006) [37]; *Pedersen and Baadsgaard v Denmark* App no 49017/99 (ECtHR, 17 December 2004) [76]; *De Haes And Gijssels v Belgium* App no 19983/92 (ECtHR, 24 February 1997) [42]; *Oberschlick v Austria* App no 20834/92 (ECtHR, 23 May 1991) [33].

¹⁹⁰ United Nations Educational, Scientific and Cultural Organization - COVID-19: The role of judicial operators in the protection and promotion of the right to freedom of expression - Guidelines CI-2020/FEJ/ME-1 (2020) 4; *Éva Molnár v Hungary* App no 10346/05 (ECtHR, 7 October 2008) [34]; Jean-François Akandji-Kombe, ‘Positive obligations under the European Convention on Human Rights: A guide to the implementation of the European Convention of Human Rights’ (Human rights handbooks, No. 7); International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 Article 19(3).

ii. *The prior authorisation of publication with respect to NIDV was necessary to decrease the spread of fake news*

53. Due to the rapid increase of disinformation¹⁹¹ the MoD prescribed prior authorisation to publish any opinion of any medical expert or another person concerning NIDV.¹⁹² Even the ECtHR has acknowledged that under particular circumstances prior restraints may be imposed.¹⁹³ Article 10 of the ECHR does not generally prohibit the imposition of prior restraints, nevertheless, a legal framework is required, ensuring both tight control over the scope of bans and effective judicial review to prevent any abuse of power.¹⁹⁴ The interference was necessary and proportionate as it did not qualify as a general prohibition and its temporal scope was limited.

54. The interference aids to stop the rapid spread of fake news, which is essential during a time of public emergency to protect the public order and health.¹⁹⁵ This obligation is to

¹⁹¹ Compromis 27.; Alok Srivastava v India (2020) W.P. (C) No. 468/2020; WHO Risk Communication ‘Infodemic Management – Infodemiology’ <<https://www.who.int/teams/risk-communication/infodemic-management>> accessed 1 November 2020; Gordon Pennycook, Jonathon McPhetres, Yunhao Zhang, Jackson G. Lu, and David G. Rand ‘Fighting COVID-19 Misinformation on Social Media: Experimental Evidence for a Scalable Accuracy-Nudge Intervention’ (*Psychological Science*, 2020, Vol. 31(7) 770 –780) <<https://journals.sagepub.com/doi/pdf/10.1177/0956797620939054>> accessed 29 October 2020; Marié Hattingh, Machdel Matthee, Hanlie Smuts, Ilias Pappas, Yogesh K. Dwivedi, and Matti Mäntymäki ‘A Systematic Review on Fake News Themes Reported in Literature’ (*US National Library of Medicine National Institutes of Health*, 10 March 2020) <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7134307/#CR2>> accessed 29 October 2020; Peter Dizikes, ‘Study: On Twitter, false news travels faster than true stories’ (8 March 2018) <<https://news.mit.edu/2018/study-twitter-false-news-travels-faster-true-stories-0308>> accessed 1 November 2020.

¹⁹² Compromis 27.

¹⁹³ *Sunday Times v United Kingdom (No. 2)* App no 13166/87 (ECtHR, 26 November 1991) [51]; see also *Association Ekin v France* App no 39288/98 (ECtHR, 17 July 2001) [56]; *Chauvy and others v France* App no 64915/01 (ECtHR, 29 June 2004) [47]; *Mosley v United Kingdom* App no 48009/08 (ECtHR, 10 May 2011) [117]; *Wizerkaniuk v Poland* App no 18990/05 (ECtHR, 5 July 2011) [65]; *Observer and Guardian v United Kingdom* App. no. 13585/88 (ECtHR, 26 November 1991) see the partly dissenting opinion of Judge De Meyer joined by Judges Pettiti, Russo, Foighel and Bigi; *Ahmet Yıldırım v Turkey* App no 3111/10 (ECtHR, 18 December 2012) [64]; *Cengiz and Others v Turkey* App nos 48226/10 and 14027/11 (ECtHR, 1 December 2015) [64].

¹⁹⁴ *Association Ekin v France* App no 39288/98 (ECtHR, 17 July 2001) [58].

¹⁹⁵ *Mosley v United Kingdom* App no 48009/08 (ECtHR, 10 May 2011) [117]; Alok Srivastava v India (2020) W.P. (C) No. 468/2020; WHO Risk Communication ‘Infodemic Management – Infodemiology’ <<https://www.who.int/teams/risk-communication/infodemic-management>> accessed 1 November 2020; Gordon Pennycook, Jonathon McPhetres, Yunhao Zhang, Jackson G. Lu, and David G. Rand ‘Fighting COVID-19 Misinformation on Social Media: Experimental Evidence for a Scalable Accuracy-Nudge Intervention’

be applied only when personal opinions is to be published about NIDV, so it could not be described as a general prohibition.¹⁹⁶ In addition to these, as the Ministry of Health has the latest and most relevant information about the NIDV¹⁹⁷, this obligation guarantees that only opinions with reliable factual basis will be published.¹⁹⁸

55. Even is the interference qualified as a general prohibition, it would not count as disproportionate, as it was limited for a period of one and a half months.¹⁹⁹ The state of emergency was declared on 1 February, lasting until 1 May.²⁰⁰ The Guideline was issued on 16 March. Moreover,²⁰¹ it was based on objective criteria²⁰² and affected only particular type of information.²⁰³

(*Psychological Science*, 2020, Vol. 31(7) 770–780) <<https://journals.sagepub.com/doi/pdf/10.1177/0956797620939054>> accessed 29 October 2020; Marié Hattingh, Machdel Mathee, Hanlie Smuts, Ilias Pappas, Yogesh K. Dwivedi, and Matti Mäntymäki ‘A Systematic Review on Fake News Themes Reported in Literature’ (*US National Library of Medicine National Institutes of Health*, 10 March 2020) <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7134307/#CR2>> accessed 29 October 2020; Peter Dizikes, ‘Study: On Twitter, false news travels faster than true stories’ (8 March 2018) <<https://news.mit.edu/2018/study-twitter-false-news-travels-faster-true-stories-0308>> accessed 1 November 2020.

¹⁹⁶ *Compromis 27.; Bédat v Switzerland* [GC] App no 56925/08 (ECtHR, 29 March 2016).

¹⁹⁷ *Compromis 27.; Chauvy and others v France* App no 64915/01 (ECtHR, 29 June 2004) [77].

¹⁹⁸ *Chauvy and others v France* App no 64915/01 (ECtHR, 29 June 2004) [77].

¹⁹⁹ *Compromis 16.*

²⁰⁰ *ibid.*

²⁰¹ *Compromis 27.*

²⁰² ECtHR, *RTBF v. Belgium* [2011] App. no. 50084/06 [107–150].

²⁰³ *Ürper and Others v Turkey* App nos 14526/07, 14747/07, 15022/07, 15737/07, 36137/07, 47245/07, 50371/07, 50372/07 and 54637/07 (ECtHR, 20 October 2009) [42–44]; *Güdenoğlu and Others v Turkey* App nos 42599/08, 30873/09, 38775/09, 38778/09, 40899/09, 40905/09, 43404/09, 44024/09, 44025/09, 47858/09, 53653/09, 5431/10 and 8571/10 (ECtHR, 29 January 2013) [19].

iii. *The Union abused its role as a public watchdog to criticize the government's healthcare policies*

56. The Union is a civil organisation that expresses opinions in public affairs, thus fulfilling the controlling function of the public through freedom of speech.²⁰⁴ When the Union draws attention to matters of public interest, it is exercising a public watchdog role of similar importance to the press.²⁰⁵ It should not be overlooked that the Union acting in this specific role, were bound by the requirement to verify the veracity of the allegations submitted and was obliged to act in good faith to provide accurate and reliable information.²⁰⁶

57. Despite the fact that the Union should have played a major social role in the field of epidemic management,²⁰⁷ it rather engaged in political battles with the government, thus hindering it.²⁰⁸ This behaviour led to the rapid increase of disinformation posing serious threats to public health and endangered the life of the nation.²⁰⁹ The specific aspects of

²⁰⁴ *Palomo Sánchez and others v Spain* App nos 28955/06, 28957/06, 28959/06 and 28964/06 (ECtHR, 12 September 2011) [38], [166]; Compromis 7.

²⁰⁵ *Medžlis Islamske Zajednice Brčko and others v Bosnia And Herzegovina* App No 17224/11 (ECtHR, 27 June 2017) [86]; *Animal Defenders International v the United Kingdom* [GC] App no 48876/08 (ECtHR, 22 April 2013) [103]; *Magyar Helsinki Bizottság v Hungary* [GC] App no 18030/11 (ECtHR, 8 November 2016) [166]-[168]; *Falzon v Malta* App no 45791/13 (ECtHR, 20 March 2018) [57]; *Vides Aizsardzības Klubs v Latvia* App no 57829/00 (ECtHR, 27 May 2004) [36]; *Mamere v France* App no 12697/03 (ECtHR, 7 November 2006) [20]; *Palomo Sánchez and others v Spain* App nos 28955/06, 28957/06, 28959/06 and 28964/06 (ECtHR, 12 September 2011) [38], [166]; Compromis 7.

²⁰⁶ *Medžlis Islamske Zajednice Brčko and others v Bosnia And Herzegovina* App No 17224/11 (ECtHR, 27 June 2017) [87]; *Goodwin v the United Kingdom* App no 17488/90 (ECtHR, 27 March 1996) [39]; *Fressoz and Roire v France* [GC] App no 29183/95 (ECtHR, 21 January 1999) [54]; *Bladet Tromsø and Stensaas v Norway* [GC] App no 21980/93 (ECtHR, 20 May 1999) [65]; *Magyar Helsinki Bizottság v Hungary* [GC] App no 18030/11 (ECtHR, 8 November 2016) [159].

²⁰⁷ Trade Union Congress, 'Covid-19 Coronavirus Guidance to Unions' (16 April 2020) <<https://www.tuc.org.uk/resource/covid-19-coronavirus-guidance-unions-updated-16-april>> accessed 1 November 2020.

²⁰⁸ Compromis 24, 25, 26.

²⁰⁹ Compromis 24, 25, 26, 27.

the exercise of FoE in the internet leads to examine the fair balance between FoE and other rights and requirements.²¹⁰

58. In this particular case the interference was issued in order to fulfil the positive obligation of the state to safeguard the citizens' rights,²¹¹ and protect the population against the virus.

²¹⁰ *Delfi AS v Estonia* [GC] App no 64569/09 (ECtHR, 16 June 2015) [133]; *Editorial Board of Pravoye Delo and Shtetel v Ukraine* App no 33014/05 (ECtHR, 5 May 2011) [63]; *Węgrzynowski and Smolczewski v Poland* App no 33846/07 (ECtHR, 16 July 2013) [98]; Jean-François Akandji-Kombe, 'Positive obligations under the European Convention on Human Rights: A guide to the implementation of the European Convention of Human Rights' (Human rights handbooks, No. 7).

²¹¹ Jean-François Akandji-Kombe, 'Positive obligations under the European Convention on Human Rights: A guide to the implementation of the European Convention of Human Rights' (Human rights handbooks, No. 7).

IX. PRAYER FOR RELIEF

In the light of arguments advanced and authorities cited, Respondent respectfully requests this Honourable Court to adjudge and declare that:

1. Ized's decision to enact Section 22 of the National Security Act, and to designate the Central Public Park as the sole public site to hold public gatherings, did not violate Xana's and the Social Democratic Workers Union's rights recognised by Articles 19 and 21 of the ICCPR.
2. Ized's decision to convict Xana under Section 22 of the National Security Act did not violate her rights recognised by Articles 19 and 21 of the ICCPR.
3. Ized's decision to issue the Statement of 16 March did not violate the Social Democratic Workers Union's rights recognised by Articles 19 and 21 of the ICCPR.
4. Ized's decision to issue guidelines under Section 23 of the National Security Act on 16 March did not violate the Social Democratic Workers Union's rights recognised by Article 19 of the ICCPR.

On behalf of Ized

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Counsels for Respondent