The Constitutional Court of the Republic of Croatia, composed of Jasna Omejec, President of the Court, and Judges Mato Arlović, Marko Babić, Snježana Bagić, Slavica Banić, Mario Jelušić, Davor Krapac, Ivan Matija, Antun Palarić, Aldo Radolović, Duška Šarin and Miroslav Šeparović, deciding on proposals to institute proceedings to review the conformity of a law with the Constitution of the Republic of Croatia (*Narodne novine* Nos. 56/90, 135/97, 113/00, 28/01, 76/10), at its session held on 6 July 2011 rendered the following

D E C I S I O N

I. Proceedings have been instituted to review conformity with the Constitution and Article 1 paragraphs 3 and 4 of the Public Assembly (Amendments and Revisions) Act (*Narodne novine*, No 150/05) are hereby repealed.

II. Article 1 paragraphs 3 and 4 of the Public Assembly (Amendments and Revisions) Act in point I of these operative provisions, in the part referring to the premises of the Croatian Parliament, the Government of the Republic of Croatia and the Constitutional Court of the Republic of Croatia, shall be placed out of force as of 15 July 2012.

III. This decision shall be published in *Narodne novine*.

S t a t e m e n t o f r e a s o n s

I. THE PROCEEDINGS BEFORE THE CONSTITUTIONAL COURT

1. The Croatian Independent Trade Unions from Zagreb, represented by Krešimir Sever (hereinafter: the first proponent), submitted a proposal for the Constitutional Court to institute proceedings to review the conformity with the Constitution of Article 1 paragraphs 3 and 4 of the Public Assembly (Amendments and Revisions) Act (*Narodne novine*, No 150/05; hereinafter: the ‘05 Amendments). This constitutional case is filed under no. U-I-295/2006.

Also Sanja Juras, Kristijan Grđan, Gordan Bosanac, Đurđica Kolarec and Mira Ličina from Zagreb and Bojana Genov from Mali Lošinj and Neva Tolle from Kraljevac na Sutli, gathered in the informal civil initiative "Matija Gubec", submitted a proposal for the Constitutional Court to institute proceedings to review the conformity with the Constitution of Article 1 paragraphs 3 and 4 of the ‘05 Amendments. The Constitutional Court deems all of these explicitly listed citizens as a group of citizens in the capacity of the proponent of these constitutional court proceedings (hereinafter: the second proponent). This constitutional case is filed under no. U-I-4516/2007.

2. On the grounds of Article 25 of the Constitutional Act on the Constitutional Court of the Republic of Croatia (*Narodne novine*, nos. 99/99, 29/02 and 49/02 – consolidated wording; hereinafter: the Constitutional Act), the Constitutional Court

requested and received from the Croatian Parliament the Proposal for the Public Assembly (Amendments and Revisions) Act together with the Final Proposal of the Act, PZ NO 404, class: 231-01/05-01/02, entry no: 65-05-02 of 2 December 2005 (hereinafter: the Final Proposal of the '05 Amendments).

3. On the grounds of Article 25 of the Constitutional Act, on 28 May 2009 and 7 July 2009 the Constitutional Court requested the opinion of the Government of the Republic of Croatia about the proposals of both the proponents for the review of the constitutionality of Article 1 paragraphs 3 and 4 of the '05 Amendments. The Government of the Republic of Croatia submitted its written opinion on 16 July 2009, class 231-01/05-01/01, entry no: 5030106-09-3 (hereinafter: opinion of the Government of the Republic of Croatia).

4. The Constitutional Court also requested, trough the Venice Forum, which is the special programme of the European Commission for Democracy through Law (Venice Commission), information relevant to these constitutional court proceedings from 56 member states of the Venice Commission, from the observer states (Argentina, Japan, Canada, Kazakhstan, USA, the Holly See and Uruguay), as well as from the Republic of South Africa, as a state with special cooperation status.

The following members of the Venice Commission delivered their declarations: Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Brazil, Bulgaria, Czech Republic, Georgia, Germany, Hungary, Ireland, Kyrgyzstan, Latvia, Lithuania, Luxembourg, Mexico, Monaco, the Netherlands, Norway, Poland, Slovakia and the United Kingdom of Great Britain and Northern Ireland (hereinafter: the United Kingdom). Also South Africa, Canada and Mexico delivered their declarations. The declarations refer to the respective legislations until the end of 2009.

II. THE LEGAL REGULATION OF PUBLIC ASSEMBLY IN THE REPUBLIC OF CROATIA

5. The Croatian Parliament passed the first Public Assembly Act at the joint sitting of the Civil-Political Council and Municipalities Council on 10 April 1992. The Act was published in *Narodne novine* No. 22 of 17 April 1992, and entered into force on the eighth day of its publication, i.e. on 25 April 1992. Article 14 of the Act (Revisions and Amendments) Determining the Fines for Commercial Infringements and Misdemeanours (*Narodne novine* No 29/94) revised the provisions of the Public Assembly Act related to the currency for the sentenced misdemeanours.

Article 3 paragraph 3 of the 1992 Public Assembly Act was repealed in the Constitutional Court decision No. U-I-241/1998 of 31 March 1999 (*Narodne novine* No. 38/99) for its unconstitutionality (see point 20.1 of the statement of reasons for this decision).

5.1. The House of Representatives of the Croatian Parliament passed the second Public Assembly Act at its sitting of 12 November 1999. The Speaker of the Croatian Parliament, who was temporarily replacing the President of the Republic in performing his duties, passed the Decision on the Promulgation of the Public Assembly Act on 26 November 1999. The Public Assembly Act was published in

Narodne novine No. 128 of 30 November 1999, and entered into force on the eight day after its publication, i.e. on 8 December 1999 (hereinafter: the '99 Act).

The '99 Act is still in force. It has been revised twice so far:

- in the Public Assembly (Revisions and Amendments) Act, passed by the Croatian Parliament at its sitting of 12 May 2005, and published in *Narodne novine* No. 90 of 25 July 2005. This Act was repealed in the Constitutional Court decision Nos. U-I-3307/2005, U-I-3309/2005, U-I-3346/2005, U-I-3359/2005 of 23 November 2005 (*Narodne novine* No. 139/05) for its formal unconstitutionality.
- in the Public Assembly (Revisions and Amendments) Act (the '05 Amendments), passed by the Croatian Parliament at its sitting of 9 December 2005, published in *Narodne novine* No. 150 of 21 December 2005, and entered into force on 29 December 2005. The provisions of Article 1 paragraphs 3 and 4 of this Act are being disputed before the Constitutional Court, and are the subject matter of these constitutional court proceedings.

5.2. The '99 Act, together with the revisions and amendments introduced in the '05 Amendments, shall in this decision be referred to as the Public Assembly Act.

A. THE PUBLIC ASSEMBLY ACT (1999)

6. Since different terms have been used to denote the right guaranteed in Article 42 of the Constitution, in this decision the Constitutional Court will use the generic notion "the right to freedom of public assembly", where "public assembly" shall mean all its practiced peaceful forms (protests, demonstrations, manifestations, rallies, parades, events, gatherings etc.). This generic concept indicates that the right to public assembly is grounded on one of the fundamental personal civil and political liberties of an individual (freedom of assembly), whose inherent quality is that it should be enjoyed without disturbance.

The generic concept "the right to freedom of public assembly" also reconciles the terminological differences between the Constitutional text and the Public Assembly Act. Namely, the Constitution refers to "public assembly and peaceful protest" while the Public Assembly Act speaks about "peaceful assembly and public protest". Despite these differences, the Constitutional Court does not find the legal terminology unacceptable. The term "peaceful assembly" has been harmonised with the English term, and the French term *"réunion pacifique"*, entailed in Article 11 of the Convention for the Protection of Human Rights and Fundamental Freedoms of the Council of Europe (*Narodne novine - Međunarodni ugovori*/International Treaties Nos. 18/97, 6/99, 8/99, 14/02 and 1/06; hereinafter: the Convention).

6.1. The Public Assembly Act is an organic law elaborating the constitutionally determined human rights and fundamental freedoms in Title III, section 2 of the Constitution (personal and political freedoms and rights). The Public Assembly Act is a law which restricts the right to public assembly enshrined in Article 42 of the Constitution.

Article 1 and Article 3 paragraphs 1 and 2 of the Public Assembly Act read:

"Article 1

Everyone shall be guaranteed the right of public assembly under the conditions stipulated in this Act."

"Article 3

"Restrictions on the right to public assembly necessary in a democratic society for the protection of freedoms and rights of others, legal order, public morals and health shall only be imposed pursuant to this Act.

The freedom of speech and of public appearance shall be restricted by the ban on any agitation and incitement to war and the use of violence, national, racial, religious and other hatred or intolerance.

(...)."

1) Forms of public assemblies and their regulation

7. Under the Public Assembly Act, public assembly includes: peaceful assembly and public protests, public events and other gatherings (Article 2). They are legally regulated in Article 4, which reads:

"Article 4

Peaceful assembly and public protests shall mean any organized gathering of more than 20 people for the purpose of publicly expressing and promoting political, social and national beliefs and interests.

Public events shall mean gatherings organized with the purpose of making a profit within the registered economic activity which, considering the expected number of participants or character of the event, require special security measures.

Other forms of gatherings shall mean gatherings for the purpose of exercising economic, religious, cultural, humanitarian, sports, entertainment and other interests.

Peaceful assembly and public protests are regulated in more detail in Chapter II of the Public Assembly Act entitled "Peaceful assembly and public protests" (Articles 5 to 23). Public events are regulated in more detail in Chapter III of the Public Assembly Act entitled "Public events" (Articles 24 to 32). Other types of gathering are regulated in more detail in Chapter IV of the Public Assembly Act entitled "Other types of gatherings" (Article 33).

a) Chapter II of the Public Assembly Act (Peaceful assembly and public protests)

8. In the first group of public assemblies, i.e. within the group of peaceful assembly and public protest, the Public Assembly Act differentiates between those that are subject to prior notice to the competent police body and those that are not.

8.1. Article 9 of the Public Assembly Act defines the public assemblies and public protests that are not subject to prior notice:

"Article 9

Gatherings, meetings, round tables or gatherings of registered political parties and trade-unions and other associations, which are held in the appropriate indoor premises for such purposes, shall not be subject to giving prior notice.

Peaceful assemblies and public protests that are held in the location in Article 12 paragraph 1 and Article 13 of this Act shall not be subject to giving prior notice.

Individual protests shall not be subject to giving prior notice.

The organizer or his representative shall inform the police authority about every gathering in paragraphs 1 and 2 of this Article which requires special security measures."

Article 12 paragraph 1 and Article 13 of the Public Assembly Act, to which Article 9 paragraph 2 refers, reads:

"Article 12

The representative body of a city with more than 100,000 inhabitants may specify one location in which public assemblies and public protests shall be held without prior notice.

The city and municipal council and the Assembly of the City of Zagreb may ban serving alcoholic drinks and regulate in more detail catering services in the locations and at the time of holding the public assemblies.

Article 13

In the capital of the Republic of Croatia everyone may hold a peaceful assembly and public protest with no prior notice on the Trg Francuske Republike / The French Republic Square."

8.2. Regarding the forms of peaceful assembly and public gathering that are subject to giving prior notice, the Public Assembly Act stipulates that the organizer or its representative shall give the prior notice (an individual or a legal person who prepares, organizes and supervises the peaceful assembly and public protest). The notice is submitted to the police authority with jurisdiction over the place of holding the peaceful assembly and public protest five days before the scheduled beginning of the event. Exceptionally, for particularly justified reasons, notice may be given not later than 48 hours before holding the peaceful assembly and public protest (Article 7).

The Minister of the Interior may refuse to authorize the peaceful assembly and public protest if it has not been reported in time and properly, if it is reported on a location where, in accordance with the Public Assembly Act, it cannot be held, if its aim is to stir up and instigate armed conflict or use of violence, or national, religious or racial hatred or any other form of intolerance, and if there is actual or direct danger that holding the peaceful assembly would cause violence and other major disruptions of public order and peace. The ruling on the ban shall be passed not later than 24 hours before the peaceful assembly and public protest is scheduled. The organizer may

appeal against this ruling to the Administrative Court of the Republic of Croatia within three days from the day the ruling was served on him. This Court shall decide in an emergency procedure (Articles 14 and 15).

Furthermore, a competent person in the Ministry of the Interior may prevent or interrupt the peaceful assembly or public protest if it has not been reported or has been banned, if it is held in a place not stated in the notice, if a participant in the peaceful assembly or public protest is armed, if the participants are incited to armed conflict or use of violence or national, religious or racial hatred or any other form of intolerance, if the security staff cannot maintain order and peace, if there is a serious threat to the health of participants or other persons, or if there is a serious threat of violence or of other forms of disturbance of public peace and order. The competent person shall inform the manager (i.e. the person designated by the organizer to monitor the peaceful assembly and public protest and organize the work of the security staff - Article 21) about the decision to interrupt the peaceful assembly and public protest and require that he asks the participants to disperse peacefully. Should the manager, or the participants in the peaceful assembly or public protest, fail to proceed in accordance with his request, the competent person shall give the appropriate orders and carry out the necessary measures to disperse the participants (Articles 22 and 23).

Finally, the Public Assembly Act explicitly states that the police officers are obliged to protect the freedom of speech and public appearance at the peaceful assembly or public protest. They have to prevent any disruption or interruption of the peaceful assembly and public protest that is held in accordance with the provisions of the Public Assembly Act and in so doing they are allowed to apply technical and other protective means. The police officers may apply coercive measures only when necessary and in the manner proportional to the nature of danger (Article 5).

b) Chapter III of the Public Assembly Act (Public events)

9. In addition to the above forms of peaceful assembly and public protest, public events are also subject to giving prior notice within the meaning of Article 4 paragraph 2 of the Public Assembly Act. The police authority assesses whether conditions exist for holding a public event pursuant to the notice and other security circumstances. Depending on the assessment, it is competent, in cooperation with the organizer, to order additional security measures or to increase the security staff at the public event. If it assesses that there is a well-founded probability that actual and direct danger would ensue should the organizer not accept additional measure, the police authority is competent to set the organizer an adequate term to implement the measures, which cannot be less than 24 hours, otherwise the event shall be banned (Article 27). There is judicial protection against the final ruling of the competent administrative body.

The head of the police authority shall ban the public event if it is not timely and duly reported, if the organizer fails to take the above additional security measures, if it is announced in a location that is not suitable or intended for a public event and if there is actual danger that holding the public event would directly and really jeopardize the interest and security of the Republic of Croatia and cause a major violation of public order and peace, public morals, environment and public health. The ruling on the ban

shall be rendered not later than 48 hours before the scheduled beginning of the public event, and the organizer may appeal to the Ministry of the Interior not later than 48 hours from when the ruling was served upon him. The Ministry of the Interior shall give the final ruling within 48 hours (Articles 28 and 29).

c) Chapter IV of the Public Assembly Act (Other forms of gathering)

10. Other forms of gathering are not subject to giving prior notice of assembly. Article 33 paragraph 1 of the Public Assembly Act stipulates:

"Article 33

Other forms of gathering shall not be reported.

(...)"

Exceptionally, however, these forms of gathering are to be reported if their character or the expected number of participants require special safety measures to be taken that are not within the regular duties of the competent police authority (Article 33). Furthermore, if this "other" gathering, which is to be reported, aims at making a financial profit, then the organiser must cover the costs incurred by the safety measures taken by the authorized body outside regular police duties in order to ensure public order and peace. A contract is signed about covering the costs at least 48 hours before the scheduled beginning of the public event.

2) Places for holding peaceful assemblies and public protests

11. A general legal rule is applied to all the forms of public assembly in Article 2 which have to be reported (i.e., peaceful assemblies and public protests and public events, save those that do not have to be reported pursuant to the explicit provision of the Public Assembly Act), which provides that they may be held in any location appropriate for the occasion. Articles 10 and 24 of the Public Assembly Act read:

"Article 10

Peaceful assembly and public protest may be held in any location appropriate for the occasion."

"Article 24

Public events shall be organised in any location indoors and/or outdoors that is intended or suitable for holding them."

12. However, Article 11 of the ‘99 Act provided for exceptions from the above rule with regard to peaceful assembly and public protest. Article 11 of the ‘99 Act read:

"Article 11

Notwithstanding the provisions of Article 10 of the Act, a peaceful assembly and public protest shall not be held:

- near hospitals, if it blocks ambulance access and disturbs the peace of patients,
- near nurseries and elementary schools while the children are inside,
- in national parks and protected nature parks save those aimed at promoting the protection of nature and the human environment,
- near important cultural monuments if they endanger the protected values,
- on highways and main roads if they compromise traffic safety,
- in other places if, considering the time, number of participants or the character of the assembly, it could seriously jeopardise the movements and work of a larger number of citizens."

12.1. The ‘05 Amendments partly revised Article 11 of the ‘99 Act. The relevant provisions of the ‘05 Amendments read:

"Article 1

In the Public Assembly Act (*Narodne novine* No. 128/99) in Article 11 subparagraph 4 shall be erased.

The present subparagraphs 5 and 6 shall become paragraphs 4 and 5.

In the new subparagraph 5 the full stop shall be replaced by a comma, and after the new subparagraph 5 a new subparagraph 6 shall be added, which shall read:

"- at least 100 meters from the buildings in which the Croatian Parliament, the President of the Republic, the Government of the Republic of Croatia and the Constitutional Court of the Republic of Croatia have their seats or hold their sessions."

After paragraph 1 shall be added paragraph 2, which shall read:

"In the case in paragraph 1 subparagraph 6 of this Article, the provision of Article 4 paragraph 1 of this Act, in the part determining the number of participants in the assembly, shall not be applied."

These constitutional court proceedings deal with the review of constitutionality of Article 1 paragraphs 2 and 3 of the ‘05 Amendments. Therefore, the matter relates to Article 11 paragraph 1 indent 6 and paragraph 2 of the Public Assembly Act, which in the present consolidated wording reads:

"Article 11

Notwithstanding the provisions of Article 10 of the Act, peaceful assembly and public protest shall not be held:

- near hospitals, if it blocks ambulance access and disturbs the peace of patients
- near nurseries and elementary schools while the children are inside,
- in national parks and protected nature parks save those aimed at promoting the protection of nature and the human environment,
- near important cultural monuments if they threat the protected values,
- on highways and main roads if they compromise the safety of traffic,
- in other places if, considering the time, number of participants or the character of the assembly, it could seriously jeopardise the movements and work of larger number of citizens,

- at least 100 meters from the buildings in which the Croatian Parliament, the President of the Republic, the Government of the Republic of Croatia and the Constitutional Court of the Republic of Croatia have their seats or hold their sessions.

In the case in Article 1 subparagraph 6 of this Article the provision of Article 4 paragraph 1 of this Act, in the part determining the number of participants in the assembly, shall not be applied."

The Article 4 paragraph 1 of the Public Assembly Act to which the legislator refers in the disputed Article 1 paragraph 4 of the ‘05 Amendments (Article 11 paragraph 2 of the Public Assembly Act) reads:

"Article 4

Peaceful assembly and public protest shall mean every organised gathering of more than 20 people, held for publicly expressing and promoting political, social and national beliefs and interests.

(...)".

12.2. When referring to the disputed provisions of the ‘05 Amendments the Constitutional Court will refer to either Article 1 paragraphs 3 and 4 of the ‘05 Amendments or to Article 11 paragraph 1 indent 6 and paragraph 2 of the Public Assembly Act, depending on the context.

13. If we look at where the Public Assembly Act prohibits peaceful assembly and public protest, it is clear that the prohibition of peaceful assembly and public protest in the places listed in Article 11 paragraph 1 indents 1 to 5 of the Public Assembly Act presumes the prior assessment of the competent police authority on the existence of legal requirements for their ban. In all these cases the legal ban on holding the peaceful assembly and public protest depends on the circumstances of each particular case and is grounded on an individual legal act (ruling on banning the specific gathering) of the competent police authority, against which court protection can be sought. Protection of constitutional rights against the court decision can be sought in proceedings instituted by a constitutional complaint before the Constitutional Court.

14. Unlike Article 11 paragraph 1 indents 1 to 5 of the Public Assembly Act, indent 6 of this Article stipulates a legal ban on holding a peaceful assembly and public protest anywhere in the Republic of Croatia in a circle of at least 100 meters from the premises where the Croatian Parliament, the President of the Republic, the Government of the Republic of Croatia and the Constitutional Court of the Republic of Croatia "hold their sessions", i.e. from the premises that "accommodate" these state bodies.

In addition, by the force of the Public Assembly Act, any kind of organised gathering of less than 20 people is also prohibited in the above area, if it is held with the aim of publicly expressing and promoting political, social and national beliefs (the new paragraph 2 of Article 11, which is an exception from the general rule in Article 4 paragraph 1).

15. The Final Proposal of the ‘05 Amendments includes the following reasons leading the Government of the Republic of Croatia to propose to the Croatian Parliament to accept the disputed Article 1 paragraphs 3 and 4 of the ‘05 Amendments:

"The Proposal of the Public Assembly (Amendments and Revisions) Act focuses on only the most necessary restrictions in the interest of national security and for the protection of rights and freedoms of others.

It is important to note that after 11 September 2001 security measures are being intensified in the entire world, and given the specific configuration of the buildings on Markov trg/ Mark's Square and the impossibility of securing the wider space with the appropriate fixed barriers, the only logical thing is to regulate i.e., to determine an appropriate security zone by introducing such a provision. Security zones have been established in the same manner in other states as well, by using fixed safety barriers depending on the land configuration."

In the Final Proposal of the ‘05 Amendments the Government of the Republic of Croatia also referred to the special status of certain state officials and premises:

"....in addition to the category of protected buildings, there is also a category of protected persons. Besides the President of the Republic, Speaker of the Croatian Parliament, Prime Minister of the Republic of Croatia and the President of the Constitutional Court, the circle of protected persons also includes the presidents or heads of foreign states or governments and the presidents of parliaments of foreign states during they stay on the territory of the Republic of Croatia.

...state visits...are usually held in the premises of the Croatian Parliament, the Croatian Government and the Office of the President of the Republic. It is, therefore, necessary to implement all the appropriate and statutory protective measures for removing the sources of potential threats to the security of both protected buildings and protected persons, particularly foreign delegations. Namely, holding peaceful assemblies and public protests near the protected buildings and persons has a considerable effect on the correct implementation of all the measures, manners and forms of their protection."

III. THE PROPONENTS’ OBJECTIONS

16. The proponents dispute the constitutionality of Article 1 paragraphs 3 and 4 of the ‘05 Amendments (Article 11 paragraph 1 indent 6 and paragraph 2 of the Public Assembly Act). In other words they deem in breach of the Constitution:

- the statutory ban on holding a peaceful assembly and public protest in places that are at least 100 meters from the premises where the Croatian Parliament, the President of the Republic, the Government of the Republic of Croatia and the Constitutional Court of the Republic of Croatia have their seats, or where they hold their sessions, and

- the ban on holding an organised peaceful assembly and public protest in this area also by a group of less than 20 persons, i.e. any group of persons regardless of their number if they gather in an organised manner to publicly express and promote political, social and national beliefs.

16.1. The first proponent (Croatian Independent Trade Unions) deems that Article 1 paragraphs 3 and 4 of the '05 Amendments is in breach of Article 3 of the Constitution in the part referring to freedom, respect of human rights and the rule of law, and of Article 14 paragraph 2, Article 16 paragraph 2, Article 38 paragraph 1, Article 42 and Article 134 of the Constitution. It also deems that the given provisions of the Public Assembly Act are in breach of Articles 10 and 11 of the Convention and of Article 21 of the United Nations International Covenant on Civil and Political Rights (*Narodne novine - Međunarodni ugovori* No. 12/93).

The proposal states as follows:

"Freedom of thought and expression is one of the fundamental freedoms of every democratic society. Peaceful assembly and public protest are ways of consuming this freedom.

The right to think what you want, to say what you want should be accompanied by the freedom of speech and public appearance in any place. These rights may be restricted for the protection of the freedoms and rights of others, the legal order, public morals and health. But never for political reasons (...)

The Constitution and international treaties provide for both the right of thought and expression and the right of assembly. It is true, of course, that these rights impose certain obligations and responsibilities and that they are thus subject to certain restrictions (...) However, in imposing them the state should respect certain principles and standards pertinent to western democracies. (...) In every true democratic state each person, a member of society, is expected to actively participate in the creation of the political community and the supervision of the state authorities. It is peaceful assembly and public protest, where the participants express national, political or social beliefs or goals, that are the forms of the active and conscientious fulfilment of the citizens' duties. Only a politically active nation can prevent the alienation of power from the people. (...) It is not acceptable to present own political interests as the interests of the state and impose restrictions on people who criticize certain moves and measures of the authorities...

(...) By the legal solutions adopted the legislator has imposed a general ban on holding an assembly and protest on Trg sv. Marka/ St. Mark's Square, and it has stated that this limitation is required by *the interests of national security and the protection of the rights and freedoms of others*. What is the national security interest? (....) the right to peaceful assembly and public protest are segments of the interest of the Republic of Croatia ... and as such they are held in the public interest.

It is from this aspect that one must ask, how does the peaceful assembly of a certain number of citizens, for example in front of the premises of the Parliament or the Government, jeopardise the sovereignty, territorial integrity, independence, cultural and historical identity, the rule of law and democracy, i.e. whose rights are threatened by these citizens who gathered to express their opinion? (...). The legislator went even further by banning the public protest of even just one person who wants to exercise his right in Article 38 of the Constitution. So, by banning a single person from publicly protesting closer than 100 meters from the above premises, the legislator showed that the ban was introduced primarily to prevent public protest in this place and not for security reasons, because it is very easy to check and supervise one person only. (in the original this part is typed in boldface - remark) (...).

The legislator also refers to terrorism as a global threat. (...). Have we removed the ultimate security risk of terrorism by banning peaceful assembly and public protest on Trg sv. Marka /

St. Mark's Square? Aren't these security risks always present when holding any assembly or public protest regardless of where they take place? Are, according to this view, the lives and security of citizens on Trg Josipa Jelačića/Josip Jelačić Square worth less than the lives and security of state officials, since public assembly and protest are not banned at this square? What kind of classification of citizens is this? And furthermore, is there no such threat when gatherings whose purpose is to achieve economic, religious, sports and other interests are held within a circle of 100 meters from Trg sv. Marka / St. Mark's Square? These gatherings do not have to be reported under Article 33 of the Public Assembly Act, depending on the number of participants, so they are not covered by the ban. (...)

Giving prior notice of holding a public assembly and public protest is followed by an assessment of the security risks involved. If the assessment is that "*there is a grounded probability that holding the assembly would cause violence and other forms of major disruption of public order and peace* (Article 14 paragraph 1 subparagraph 4 of the Public Assembly Act, *Narodne novine* 128/99), the protest can always be banned. Furthermore, in the accepted amendments the legislator has also introduced a new possibility for preventing or suspending a peaceful assembly and public protest where there is "*real and direct threat to the health of the participants and other persons*". The above legal possibilities provide all citizens, and thus also state officials, with the required protection..."

Accordingly, the proponent deems that "the accepted general prohibition of peaceful assembly and public protest on Trg sv. Marka / St Mark's Square has violated the provision of Article 16 of the Constitution, the right of public assembly and peaceful protest in Article 42 of the Constitution and the freedom of thought and expression, stipulated in Article 38 paragraph 1 of the Constitution".

For the reasons given above the proponent proposes for the Constitutional Court to initiate the proceedings and repeal Article 1 paragraphs 3 and 4 of the ‘05 Amendments.

16.2. The second proponent (a group of citizens gathered in the informal civil initiative "Matija Gubec") also disputes Article 1 paragraphs 3 and 4 of the ‘05 Amendments for unconformity with Article 16 and 42 of the Constitution, Article 11 of the Convention, Article 20 of the United Nations Universal Declaration on Human Rights (Decision to Publish the Universal Declaration on Human Rights, *Narodne novine - Međunarodni ugovori* No 12/09) and Article 21 of the International Covenant on Civil and Political Rights.

The second proponent repeats the first proponent's allegations, deeming that the disputed legal provisions lack constitutionally acceptable ground in "actual circumstances" (it also expresses doubts in the existence of any real and foreseeable danger coming from a gathering on Trg sv. Marka / St. Mark's Square), in the practice of certain other states and in the case-law of the European Human Rights Commission (hereinafter: the European Commission or Commission) and European Court of Human Rights (hereinafter: the European Court).

It notes that Trg sv. Marka / St. Mark's Square, on which all the bodies listed in the disputed part of Article 1 of the ‘05 Amendments, except the President of the Republic, are seated or hold sessions, "is a traditional place for expressing political opinions and for gatherings of citizens", and that the ban has "deprived Croatian citizens from the site of democracy and civil freedoms". It deems that the disputed ban "equals a ban on all the protests in public places where citizens could come face

to face with their representatives and civil servants and express their opinions and displeasure".

The second proponent further deems that it is not acceptable to ban a gathering of less than 20 people on Trg sv. Marka / St. Mark's Square, because thereby "even a single citizen threatens national security". It deems that potential disorders could be prevented by other security measures which do not restrict the right of public assembly, by assessing the level of potential danger or by banning a particular gathering that is found to pose a threat that cannot be removed by other measures.

The second proponent states:

"According to the present case-law of the European Court of Human Rights related to the limitation of the right of peaceful assembly, a limitation could only be justified if there is real and foreseeable danger (in the original text this part is underlined - remark) of disorders that cannot be avoided by other measures. A permanent ban on any peaceful assembly in a certain place, regardless of the number of participants, is considered a general ban on peaceful assembly, and in that case, according to the case-law of the European Court of Human Rights, 'the authorities must take into account the effect of a ban on gatherings which do not by themselves constitute a danger for the public order. Only if the disadvantage of such gatherings being caught by the ban is clearly outweighed by the security considerations justifying the issue of the ban, and if there is no possibility of avoiding such undesirable side effects of the ban, can the ban be regarded as being necessary' (the case of Christians against Racism and Fascism vs. the United Kingdom). A permanent ban on gatherings, and particularly a permanent ban on gatherings regardless of the number of participants, on Trg sv. Marka / St. Mark's Square does not meet the above standards. The disputed provision of the Public Assembly Act is not really aimed at protecting public peace and the legal order but at protecting the members of the Government, the representatives in the Croatian Parliament and the President of the Republic from meeting the citizens. (....)

If there is no real and foreseeable risk, no disorders or rejection of democratic principles, which is assessed in each individual case, the ban on peaceful assembly cannot be justified (also the view of the European Court of Human Rights in the case of Stankov and Others vs. Bulgaria). There is no real and foreseeable danger of any i.e. of every gathering on Trg sv. Marka / St. Mark's Square in Zagreb. Thus, the general ban on holding a peaceful assembly on that square, regardless of the nature and circumstances of each individual case, violates the right of peaceful assembly."

For the reasons given above the second proponent proposes for the Constitutional Court to initiate the proceedings and to repeal Article 1 paragraphs 3 and 4 of the '05 Amendments.

IV. THE OPINION OF THE GOVERNMENT OF THE REPUBLIC OF CROATIA

17. In its declaration to the Constitutional Court the Croatian Government stated that Article 11 of the Public Assembly Act shows the legislator's intention of protecting certain "categories" of buildings and areas where the performance of activities or services require the peace and security of the participants from any kind of disturbances (noise, pollution, blocking of passage and the like), to enable the required vehicles undisturbed access to the protected buildings, to protect natural and cultural goods from potential damage and to enable free traffic.

For the above reasons the legislator's intention in the ‘05 Amendments, which was reflected in the amendment of Article 11 paragraph 1 of the ‘99 Act by indent 6 and paragraph 2, resulted in "imposing a ban on holding a peaceful assembly and public protest also near the protected buildings listed in the Ordinance on Activities Related to Counter-Intelligence Protection and to the Security of Certain Persons, Buildings and Areas (*Narodne novine* Nos. 83/03 and 11/04)."

The Croatian Government finds this intention legitimate:

"Namely, holding peaceful assemblies and public protests near the protected buildings greatly affects the proper implementation of all the measures, forms and ways of safeguarding the protected buildings. (The proposed) amendment to Article 11 of the Act significantly contributes to the more efficient work of police and security services not only regarding the development of security plans but also regarding their implementation.

Furthermore, the protected persons are located in the protected buildings, for example, the President of the Republic of Croatia, the Speaker of the Croatian Parliament, the Prime Minister of the Republic of Croatia, presidents or heads of foreign states and governments as well as delegations of different European bodies and other international institutions. It is indisputable that in accordance with the above Ordinance the highest level of protection and security is to be effected during their stay in the protected buildings, and there is just reason to expect that holding peaceful assemblies and public protests in their immediate proximity could result in potential incidents.

In addition, the work of professional services and civil authorities in the protected buildings should enjoy the same protection from any kind of disturbances as the above buildings and areas, which already enjoy such protection in accordance with the provisions of Article 11 of the Act."

The Croatian Government also points out the appropriate solutions contained in the relevant legislation of Austria, Germany and Slovenia and finds that European countries "apply different security standards for determining the distance from the buildings at which the holding of protests is prohibited."

Further to the above, the Croatian Government finds the proponents' proposals for the review of the constitutionality of Article 1 paragraphs 3 and 4 of the ‘05 Amendments not well-founded.

V. THE RELEVANT NATIONAL AND INTERNATIONAL LAW AND PRACTICE

A. THE CONSTITUTION OF THE REPUBLIC OF CROATIA

18. Relevant in the review of the grounds for the proposal are Articles 42 and 38 paragraphs 1 and 2 taken with Article 1 paragraph 1 and Articles 3, 14 and 16 of the Constitution. They read as follows:

"Article 1

The Republic of Croatia...is...a democratic...state.

(...)"

"Article 3

Freedom, equality, ... respect for human rights, ... the rule of law … are the highest values of the constitutional order of the Republic of Croatia and the ground for interpretation of the Constitution."

"Article 14

Everyone in the Republic of Croatia shall enjoy rights and freedoms, regardless of race, colour, sex, language, religion, political or other belief, national or social origin, property, birth, education, social status or other characteristics.

All shall be equal before the law."

"Article 16

Freedoms and rights may only be restricted by law in order to protect freedoms and rights of others, public order, public morals and health.

Every restriction of freedoms or rights shall be proportional to the nature of the necessity for restriction in each individual case."

"Article 38

Freedom of thought and expression shall be guaranteed.

Freedom of expression shall specifically include....freedom of speech and public expression..."

"Article 42

Everyone shall be guaranteed the right of public assembly and peaceful protest in accordance with law."

B. INTERNATIONAL TREATIES AND OTHER INTERNATIONAL INSTRUMENTS

19. Relevant in the review of the grounds for the proposals is Article 11 of the Convention which reads:

"Article 11

FREEDOM OF ASSEMBLY AND ASSOCIATION

Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State."

Furthermore, also relevant is Article 21 of the International Covenant on Civil and Political Rights which reads:

"Article 21

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others."

Finally, also relevant is Article 20 paragraph 1 of the Universal Declaration on Human Rights which reads:

"Article 20

1. Everyone has the right to freedom of peaceful assembly and association..."

C. CASE LAW OF THE CONSTITUTIONAL COURT OF THE REPUBLIC OF CROATIA

20. The Constitutional Court has several times reviewed in its case law the legal regulation of public assembly in the Republic of Croatia.

20.1. In Decision No. U-I-241/1998 of 31 March 1999 (*Narodne novine* No. 38/99) the Constitutional Court had initiated proceedings for review of the constitutionality of the provision of Article 3 paragraph 3 of the Public Assembly Act (*Narodne novine* No. 22/92) and repealed it. The disputed provision read as follows:

"Article 3

(...)

Bodies of local government may specify the place in which each public assembly may be held".

In the statements of reasons for the decision the Constitutional Court also took the following legal views:

"The Court finds that the disputed provision of Article 3 paragraph 3 of the Public Assembly Act restricts the right in Article 42 of the Constitution, because it gave the right to specify the place at which a public assembly may be held to the self-government bodies without any limitations that would be in conformity with the provision of Article 16 of the Constitution.

Furthermore, the Court considers that when a constitutional right may be restricted under the provision of Article 16 of the Constitution, than the restriction must be clear and unequivocal, free of any possibility of extensive arbitrary interpretation in its regulation or implementation.

Namely, a public assembly and peaceful protest, as a rule, assume the manifestation of dissatisfaction and an expression of a certain requirement or message and not only an exchange of opinions of like-minded persons. Therefore, it seems obvious and logical that the organisers of public assemblies would like to have them held at places which are the

usual places where larger numbers of people gather in an inhabited settlement. This is expected to result in both the gathering of a larger number of people and also in more reverberation for the gathering and thus also in the probable fulfilment of its purpose.

If it can be assumed that a certain gathering of people, given their foreseeable or expected number, reasons, motives and purpose of gathering, requires certain restrictions aimed at protecting rights and freedoms in the sense of Article 16 of the Constitution, these restrictions can only be in the function of protecting and preserving the values in Article 16 of the Constitution. They can be specifically regulated only by law, just as the conditions to be fulfilled by the organisers of public assemblies, when organising a public assembly at a specified place and time, may also be laid down by law.

When the disputed provisions grant the bodies of local self-government the right to specify the place for any public assembly, without at the same time giving the reasons why one and not another place may be specified, i.e. when in determining the place for holding a public assembly the bodies of local self-government are not limited within the meaning of the provision of Article 16 of the Constitution, the Court finds that the application of this provision violates the right in Article 42 of the Constitution. (...)

Finally, the Court finds that the disputed provision is in breach of Article 11 of the Convention for the Protection of Human Rights and Fundaments Freedoms of the Council of Europe (*Narodne novine – Međunarodni ugovori*, nos. 18/97) (...) The non-compliance of the disputed provisions with the given provisions of international law violates the principle of the rule of law in Article 3 of the Constitution, as a fundamental value of the constitutional order of the Republic of Croatia."

20.2. In decision No: U-II-242/1998 of 14 April 1999 (*Narodne novine* No 38/99) the Constitutional Court instituted proceedings for review of the constitutionality and repealed the Conclusion on Determining the Places for Public Assembly (The City of Zagreb Official Gazette Nos. 10/92, 11/92, 10/95, 3/97 and 6/97). In its decision it found that the disputed Conclusion had been passed under Article 3 paragraph 3 of the Public Assembly Act (*Narodne novine* No 22/92), which provided that the bodies of local self-government may determine the places at which any public assembly may take place. In respect of this, the Constitutional Court found that: "The Conclusion was lawful but it is not in accordance with the Constitution".

By referring to Decision No U-I-241/1998 of 31 March 1999, which repealed Article 3 paragraph 3 of the Public Assembly Act (*Narodne novine* No 22/92), in its above decision of 14 April 1999 the Constitutional Court noted as follows:

"... Namely, it is not possible to establish from the Conclusion, and from the mere enumeration of five places, why these places were specified and not others, and why one of them could be used only during a certain period in the past. It can be concluded that by organising a public assembly in some other places in Zagreb could endanger the values referred to in Article 16 of the Constitution, i.e. the constitutional rights and freedoms of others, legal order, public morals and health, and these are the only values whose protection may require the restriction of a constitutional right and freedom. The right to free assembly and public protest is undoubtedly such a right."

20.3. In decision Nos.: U-I-3307/2005, U-I-3309/2005, U-I-3346/2005, U-I-3359/2005 of 23 November 2005 (*Narodne novine* No. 139/05) the Constitutional Court repealed the Public Assembly (Amendments and Revisions) Act (*Narodne*

novine No. 90/05*)* for its formal unconstitutionality. The statement of reasons for the decision includes the following legal view of the Constitutional Court:

"The Constitutional Court has found that the Public Assembly Act elaborates the constitutional rights and fundamental freedoms in Chapter III, Section 2 of the Constitution (personal and political freedoms and rights). Thus, revisions and/or amendments to this Act shall require a majority vote of all the representatives in the Croatian Parliament, in accordance with the provisions of Article 82 paragraph 2 of the Constitution,..."

D. THE CASE LAW OF THE EUROPEAN COURT OF HUMAN RIGHTS

21. In these constitutional court proceedings the Constitutional Court examined decisions of the European Commission and rulings and judgments of the European Court, especially in the following cases: *Rassemblement jurassien and Unite jurassienne v. Switzerland (*admissibility decision No*.* 8191/78 of 10 October 1979); *Christians against Racism and Fascism v. the United Kingdom* (admissibility decision No. 8440/78 of 16 July 1980), *Pendragon v. the United Kingdom* (admissibility decision No*.* 31416/96 of 19 October 1998), *Rai, Allmond and "Negotiate Now" v. the United Kingdom* (admissibility decision No*.* 25522/94 of 6 April 1995), *Éva Molnár v. Hungary* (judgment of 7 October 2008, application No. 10346/05); *Paty and others v. Hungary* (judgment of 7 October 2008, application No. 5529/05); *Nurettin Aldemir and others v. Turkey* (judgment of 18 December 2007, applications Nos. 32124/02, 32126/02, 32129/02, 32132/02, 32133/02, 32137/02 and 32138/02) etc.

21.1. The European Court finds the freedom of peaceful assembly inseparably connected with the right of freedom of expression. In the case of *Association of Citizens Radko & Paunkovski v. the former Yugoslav Republic of Macedonia* (judgment of 15 January 2009, application No. 74651/01) it has stated:

"63. Notwithstanding its autonomous role and its particular sphere of application, Article 11 of the Convention must also be considered in the light of Article 10. The protection of opinions and the freedom to express them is one of the objectives of the freedoms of assembly and association as enshrined in Article 11 (...).

64. Freedom of expression is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Such are the demands of pluralism, tolerance and broadmindedness without which there is no "democratic society" (...).

65. Although the Court recognises that it is possible that tension is created in situations where a community becomes divided, it considers that this is one of the unavoidable consequences of pluralism. The role of the authorities in such circumstances is not to remove the cause of tension by eliminating pluralism, but to ensure that the competing groups tolerate each other (...)."

Similarly, in the case *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria* (judgment of 2 October 2001, applications Nos. 29221/95, 29225/95) the European Court held:

"97. ... Freedom of assembly and the right to express one’s views through it are among the paramount values of a democratic society. The essence of democracy is its capacity to resolve problems through open debate. Sweeping measures of a preventive nature to

suppress freedom of assembly and expression other than in cases of incitement to violence or rejection of democratic principles – however shocking and unacceptable certain views or words used may appear to the authorities, and however illegitimate the demands made may be – do a disservice to democracy and often even endanger it.

In a democratic society based on the rule of law, political ideas which challenge the existing order and whose realisation is advocated by peaceful means must be afforded a proper opportunity of expression through the exercise of the right of assembly as well as by other lawful means."

21.2. In the case of *Bączkowski and others v. Poland* (judgment of 3 May 2007, application No 1543/06) the European Court pointed out to the positive obligation of contracting states in the area of the right to freedom of public assembly:

"61. As has been stated many times in the Court's judgments, not only is democracy a fundamental feature of the European public order but the Convention was designed to promote and maintain the ideals and values of a democratic society. Democracy, the Court has stressed, is the only political model contemplated in the Convention and the only one compatible with it. By virtue of the wording of the second paragraph of Article 11, and likewise of Articles 8, 9 and 10 of the Convention, the only necessity capable of justifying an interference with any of the rights enshrined in those Articles is one that may claim to spring from a "democratic society" (...).

64. In the case of *Informationsverein Lentia and others v. Austria* (judgment of 24 November 1993, Series A, No 276, p. 16, § 38) the Court found a state as a final guarantor of the principle of pluralism. "The true and efficient respect of the freedom to assembly cannot be restricted to a mere obligation of the state to refrain from interfering; the pure negative concept would not be in line with the purpose of Article 11 or the Convention itself. Therefore the positive obligations may exist to ensure the efficient enjoyment of these freedoms (...)".

In the case *Plattform »Arzte für das Leben« v. Austria* (judgment of 21 June 1988, application No 10126/82) the European Court took notice of the positive obligations of the contracting states to enable the peaceful nature of public assemblies:

"34. While it is the duty of Contracting States to take reasonable and appropriate measures to enable lawful demonstrations to proceed peacefully, they cannot guarantee this absolutely and they have a wide discretion in the choice of the means to be used (...). In this area the obligation they enter into under Article 11 of the Convention is an obligation as to measures to be taken and not as to results to be achieved."

21.3. The possibility that a peaceful assembly might result in clashes between its supporters and opponents is not a sufficient reason for denying the right to freedom of public assembly, especially of a public assembly related to issues of public interest or those that include political speeches. Accordingly, in the case of *Christian Democratic People's Party v. Moldova* (No 2) (judgment of 2 February 2010, application No. 25196/04) the European Court noted:

"23. The right to freedom of peaceful assembly is secured to everyone who has the intention of organising a peaceful demonstration. The possibility of violent counter-demonstrations or the possibility of extremists with violent intentions joining the demonstration cannot as such take away that right (...). The burden of proving the violent intentions of the organisers of a demonstration lies with the authorities."

(...)

"28. The Court finds that even if there was a theoretical risk of violent clashes between the protesters and supporters..., it was the task of the police to stand between the two groups and to ensure public order (...). Therefore this reason for refusing authorisation could not be considered relevant and sufficient within the meaning of Article 11 of the Convention."

21.4. Finally, in the case of *Makhmudov vs. Russia* (judgment of 26 July 2007, application No. 35082/04) the European Court set standards for assessing the proportionality of the state's interference with the right to freedom of public assembly:

"64. States must not only safeguard the right to assemble peacefully but also refrain from applying unreasonable indirect restrictions upon that right. In view of the essential nature of freedom of assembly and its close relationship with democracy there must be convincing and compelling reasons to justify an interference with this right (...).

65. In carrying out its scrutiny of the impugned interference, the Court has to ascertain whether the respondent State exercised its discretion reasonably, carefully and in good faith. It must also look at the interference complained of in the light of the case as a whole and determine whether it was "proportionate to the legitimate aim pursued" and whether the reasons adduced by the national authorities to justify it are "relevant and sufficient". In so doing, the Court has to satisfy itself that the national authorities applied standards which were in conformity with the principles embodied in Article 11 and, moreover, that they based their decisions on an acceptable assessment of the relevant facts (...)."

Other relevant views of the European Court have been referred to in other appropriate parts in the statement of reasons for this decision.

E. NATIONAL LAW AND PRACTICE OF THE COUNCIL OF EUROPE MEMBER STATES

22. Present national legislations in the Council of Europe member states lack clear and firm "common ground", and therefore there is no common European approach and clear European consensus with regard to restricting the right to freedom of public assembly in the proximity of premises holding seats of the highest bodies of public power.

The relevant data are presented in Enclosure 1 to this decision.

F. OPINIONS OF THE VENICE COMMISSION OF THE COUNCIL OF EUROPE AND OTHER INTERNATIONAL ORGANISATIONS

23. In these constitutional court proceedings the Constitutional Court also acknowledged relevant documents of the Venice Commission of the Council of Europe, Office for Democratic Institutions and Human Rights and the Organisation for European Security and Cooperation entitled "Guidelines on Freedom of Peaceful Assembly" (2010) together with the accompanying explanatory notes (hereinafter: the Guidelines).

The relevant views determined in the Guidelines are presented in Enclosure 2 to this decision, and some of them are cited in the appropriate places in the statement of reasons for this decision.

VI. THE FINDINGS OF THE CONSTITUTIONAL COURT

24. The statutory regulation of the right to the freedom of public assembly in the first place relates to stipulating the requirements for its realisation. Thus the Public Assembly Act - given the subject of regulation - can be considered a law that predominantly aims at restricting the constitutionally guaranteed right of citizens to freedom of public assembly. From the content of the Public Assembly Act it can be concluded that the requirements for exercising this right are not determined in detail nor can they be qualified as overly restrictive - if we look at the legal solutions in their entirety.

The legislator's approach complies with the legal standards related to the legislation on public assembly laid down in the Guidelines (see Enclosure 2, point 3).

25. The legislator's strategy to pass a separate act on public assembly also demanded special requirements with regard to its content. In that sense, the Constitutional Court notes that a separate act restricting freedom of public assembly must respect three principles stemming from the general values enshrined in the Constitution:

- a positive presumption in favour of holding public assemblies,

- a positive obligation of the state to protect the right to the freedom of public assembly,

- the principle of proportionality in restricting the right to the freedom of public assembly.

The Constitutional Court finds that in passing the Public Assembly Act the legislator tried to recognise all the above principles.

In Article 10 of the Public Assembly Act, which stipulates that a peaceful assembly and public protest "shall be held in any appropriate location", the legislator expressed the positive presumption in favour of holding a public assembly, which is a very important aspect of the first fundamental principle to be respected in regulating the right to the freedom of public assembly guaranteed in Article 42 of the Constitution.

Furthermore, Article 5 of the Public Assembly Act provides:

"Police authorities shall protect the freedom of speech and public appearance at a peaceful assembly and public protest.

Police authorities shall prevent any disruption or interruption of a peaceful assembly and public protest which are held pursuant to this Act and in so doing are allowed to use technical and other means of protection.

Police authorities shall apply the coercive measures only when necessary and in a manner proportional to the nature of threat."

The legislator has, therefore, clearly highlighted the state’s obligation to protect freedom of public assembly, and that in limiting this right the proportionality of

measures is required, which are in fact the two other fundamental principles that have to be respected in regulating the right embodied in Article 42 of the Constitution. Thus, the Public Assembly Act forces the state to intervene in order to secure the conditions permitting the exercise of the right to freedom of public assembly, and this may require positive measure to be taken to enable a lawful demonstration to proceed peacefully. It thus includes the requirement for achieving a fair balance between the interests of those seeking to exercise the right of assembly and the general interests of the rest of the community. This approach of the legislator is completely in line with the European standards (see Enclosure 2, point 3).

26. Therefore, these constitutional proceedings do not refer to the compliance of the general legal framework of the Public Assembly Act with the Constitution. The subject of the review is limited only to two specific provisions of the Public Assembly Act which provide for exemptions from the above general legal rules. This relates to the ban on holding public assemblies, defined within the meaning of Article 4 paragraph 1, at least 100 meters from the buildings in which the Croatian Parliament, the President of the Republic, the Government of the Republic of Croatia and the Constitutional Court of the Republic of Croatia have their seats or hold their sessions. In relation to these places the ban is also extended to groups of less than 20 persons, i.e. to any groups regardless of their number if they assemble in an organised manner to publicly express and promote political, social and national beliefs.

In relation to the locations in Article 1 paragraphs 3 and 4 of the ‘05 Amendments (Article 11 paragraph 1 indent 6 and paragraph 2 of the Public Assembly Act) the disputed legal provisions result in a ban on the exercise of the right to freedom of assembly which in practice results in the abolishment of the right. However, in the light of the entire legal regulation of the right to freedom of public assembly in the Republic of Croatia, this ban, given its territorial definiteness, is an isolated case of the territorial limitation of this constitutional right. In the following text both qualifications of the disputed legal measure (the ban and limitation) shall be used depending on the context in which they are mentioned.

27. The Constitutional Court finds that the disputed legal measures banning public assemblies in the meaning of Article 4 paragraph 1 of the Public Assembly Act in the places listed in the disputed Article 1 paragraphs 3 and 4 of the ‘05 Amendments (Article 11 paragraph 1 indent 6 and paragraph 2 of the Public Assembly Act) are legal exemptions, which, in their nature, are:

- general, since they relate to all public assemblies within the meaning of Article 4 paragraph 1 Public Assembly Act in certain places;

- blanket, since they ban all public assemblies within the meaning of Article 4 paragraph 1of the Public Assembly Act in a certain place (location), and they do not simultaneously require the competent authority to examine and assess the objective possibilities for holding them in that place depending on the specific circumstances of each particular (planned) public assembly;

- absolute, since they do not recognise exceptions and do not provide the public authorities with the competence to remove them in any specific case;

- prior, since they are imposed by law in advance (*a priori* legislative prohibitions);

- of extended scope, since the ban on public assemblies within the meaning of Article 4 paragraph 1 of the Public Assembly Act also includes every organised assembly of less than 20 people, which is a deviation from the scope provided for in Article 4 paragraph 1 of the Public Assembly Act;

- selective, since they relate only to public assemblies within the meaning of Article 4 paragraph 1 Public Assembly Act which aim at publicly expressing and promoting political, social and national beliefs. They do not relate either to public events organised for making profit within the registered economic activity which, considering the expected number of participants or character of the event, require special security measures (Article 4 paragraph 2), or to other forms of gatherings that aim at realizing economic, religious, cultural, humanitarian, sports, entertainment and other interests (Article 4 paragraph 3). These gatherings are allowed in places listed in the disputed Article 1 paragraph 3 of the ‘05 Amendments (Article 11 paragraph 1 indent 6 of the Public Assembly Act), even without the obligation of reporting them to the competent police authority if less than 20 persons assemble (Article 1 paragraph 4 of the ‘05 Amendments, i.e. Article 11 paragraph 2 of the Public Assembly Act).

28. The review of the grounds for the applicants' proposals includes three legal issues:

- first, the review of the constitutionality of Article 1 paragraph 3 of the ‘05 Amendments (Article 11 paragraph 1 indent 6 of the Public Assembly Act) in the part banning public assemblies within the meaning of Article 4 paragraph 1 of the Public Assembly Act "in a space of at least 100 meters from the buildings in which the Croatian Parliament, President of the Republic of Croatia, Government of the Republic of Croatia and the Constitutional Court of the Republic of Croatia hold their sessions";

- second, the review of the constitutionality of Article 1 paragraph 3 of the ‘05 Amendments (Article 11 paragraph 1 indent 6 of the Public Assembly Act) in the part banning public assemblies within the meaning of Article 4 paragraph 1 of the Public Assembly Act in a space of at least 100 meters from the buildings that accommodate... the Croatian Parliament, President of the Republic of Croatia, Government of the Republic of Croatia and the Constitutional Court of the Republic of Croatia";

- third, the review of constitutionality of Article 1 paragraph 4 of the ‘05 Amendments (Article 11 paragraph 2 of the Public Assembly Act) which extends the ban on holding public assemblies within the meaning of Article 4 paragraph 1 of the Public Assembly Act in a legally determined space also to every organised gathering of less than 20 people, which is a departure from the rule contained in Article 4 paragraph 1 of the Public Assembly Act.

28.1. The first two issues are functionally connected. The legislator differentiates between the buildings in which the Croatian Parliament, President of the Republic of Croatia, Government of the Republic of Croatia and the Constitutional Court of the Republic of Croatia "hold their respective sessions" from the ones that

"accommodate" these authorities. This differentiation indicates two different kinds of buildings, because, for example, the Government and the Constitutional Court may hold sessions outside the buildings in which they are accommodated (i.e. where they have their seats). Thus, for example, the Rules of Procedure of the Constitutional Court of the Republic of Croatia (*Narodne novine* Nos. 181/03, 16/06, 30/08, 123/09, 63/10) stipulates:

"THE SEAT OF THE CONSTITUTIONAL COURT

Article 2

(1) The Seat of the Constitutional Court shall be in Zagreb, Trg sv. Marka 4.
(2) The Constitutional Court shall sit in Zagreb, but, should it so decide, it may exceptionally hold its sessions in other places in the Republic of Croatia.

Accordingly, starting from the fact that the legislator made a difference between the buildings in which the state authorities listed in the disputed provision of the Public Assembly Act hold their sessions and the buildings in which these bodies have their seats, the Constitutional Court has separately examined these two issues.

28.2. In relation to the third issue the Constitutional Court deems it important to note that the proponents' allegations stating that the disputed Article 1 paragraph 4 of the '05 Amendments (Article 11 paragraph 2 of the Public Assembly Act) also extended the ban to an individual protest (i.e. the protest of a single person) is not true. The disputed article suspended the application of "Article 4 paragraph 1 of this Act, in the part determining the number of participants in the assembly". Since Article 4 paragraph 1 of the Public Assembly Act regulates "the organised assembly of more than 20 people", the Constitutional Court does not see how the proponents concluded from the above legal provisions that the ban also covers "a single protest" in Article 9 paragraph 3 of the Public Assembly Act. It is obvious that the single protest is not included in the legal definition of public assembly within the meaning of Article 4 paragraph 1 of the Public Assembly Act and that it is not subject to prior notification to the competent police authority, which is the presumption for holding any public assembly within the meaning of Article 4 paragraph 1 of the Public Assembly Act, save those expressly listed in Articles 12 and 13 of the Public Assembly Act.

In other words, the suspension of the rule on the "organised gathering of more than 20 people" does not relate to the prohibition of "a single protest", since, by the nature of things, an individual cannot "gather". The Public Assembly Act does not regulate the single protest. The rules in other relevant laws apply to it, and these rules are mostly implemented by the police authorities within their police activities related to keeping public order and peace and public safety.

In accordance with the above, the Constitutional Court did not separately examine the parts of the proponents' proposals related to "the single protest" because they are obviously ill-founded.

A. PROHIBITION RELATED TO THE BUILDINGS IN WHICH THE CROATIAN PARLIAMENT, GOVERNMENT AND CONSTITUTIONAL COURT "HOLD THEIR SESSIONS"

29. The disputed part of Article 11 paragraph 1 indent 6 of the Public Assembly Act (Article 1 paragraph 3 of the ‘05 Amendments) stipulates that, exceptionally from Article 10 of the Public Assembly Act, a public assembly and public protest shall not be held:

"- at least 100 meters from buildings in which the Croatian Parliament, President of the Republic of Croatia, Government of the Republic of Croatia and the Constitutional Court of the Republic of Croatia hold their sessions."

30. The general rule is that the reasons underlying a proposal to introduce separate legal measures should be given in the proposal of the act. The Constitutional Court, however, notes that the Final Proposal of the ‘05 Amendments lacks not only the explanation for the given legal solution but also the general reasons indicating the basic purpose and aim of its introduction.

Neither does the declaration of the Government of the Republic of Croatia, which was delivered to the Constitutional Court in these constitutional court proceedings, mention any reasons for proposing this legal measure. This notification mostly relates to persons and buildings that are declared as protected in a separate regulation. The part of the notification in which the Government of the Republic of Croatia refers to protection from all forms of disturbance (noise, pollution, blocking the free passage and the like), to protection of natural and cultural goods from potential damage, to free road traffic is not relevant in this case, since the matter relates to "holding sessions" of these bodies outside the buildings in which they have their seats.

In the absence of the clear aim of the disputed legal measure in Article 1 paragraph 3 of the ‘05 Amendments (Article 11 paragraph 1 indent 6 of the Public Assembly Act), the Constitutional Court examined this measure in the light of the general purpose of the ‘05 Amendments given by the Government of the Republic of Croatia, as the sponsor of the Act, in the Final Proposal of the ‘05 Amendments. These are: - the interests of national security and - the protection and rights of others (see point 15 of the statements of reasons for this decision).

30.1. In this respect the Constitutional Court found that the ban on holding public assemblies in Article 4 paragraph 1 of the Public Assembly Act at least 100 meters from buildings in which the state authorities "hold their sessions" cannot be justified either by national security interests or by the protection of the rights and freedoms of others. That is to say, both purposes can be achieved by other, more moderate, means which would not annul the constitutional right of citizens to freedom of public assembly as such.

Furthermore, the Constitutional Court notes that the above state authorities are completely free to choose a location and a building for holding sessions outside the buildings of their seats, as well as free to choose the time for holding the sessions. Should they decide to hold a session in a location, i.e. a building, in the proximity of which a form of public assembly is expected to be held in accordance with a prior security assessment, then they should be obliged to face the consequences of their decision. In the view of the Constitutional Court, any other approach would contravene the fundamental principles of a democratic society.

Accordingly, in the lack of an explanation showing the legitimate aim of the disputed legal provision, the fact that the Constitution delegated the regulation of this right to the legislator, embodied in Article 42 of the Constitution ("Everyone shall be guaranteed the right of public assembly and peaceful protest in conformity with law."), could not in the above circumstances be interpreted as the legislator's authority to completely annul this right enshrined in the Constitution. This legislative measure should be qualified as obviously in breach of the Constitution.

30.2. Since the Constitutional Court could not find any reason acceptable under constitutional law to justify the disputed legal measure, and starting from the fact that it annuls the very essence of the constitutional right to the freedom of public assembly - in relation to any specific location and building, not known *a priori* - the Constitutional Court finds that Article 1 paragraph 3 of the ‘05 Amendments (Article 11 paragraph 1 indent 6 of the Public Assembly Act), in the part reading: "hold sessions", is in breach of Article 42 of the Constitution.

B. PROHIBITION RELATED TO THE BUILDINGS IN WHICH THE HIGHEST BODIES OF PUBLIC POWER ARE "SEATED"

31. The disputed part of Article 11 paragraph 1 indent 6 of the Public Assembly Act (Article 1 paragraph 3 of the ‘05 Amendments) stipulates that, exceptionally from Article 10 of the Public Assembly Act, a public assembly and public protest shall not be held:

"- at least 100 meters from the buildings accommodating... the Croatian Parliament, President of the Republic of Croatia, Government of the Republic of Croatia and the Constitutional Court of the Republic of Croatia."

Unlike the buildings in the above point, this part of the disputed provision relates to the buildings in which the Croatian Parliament, President of the Republic of Croatia, Government of the Republic of Croatia and the Constitutional Court of the Republic of Croatia have their respective seats.

1) Is the legal ban justified?

32. The Constitutional Court firstly notes that the constitutional ground for limiting the right to freedom of public assembly (Article 16 of the Constitution and Article 11 paragraph 2 of the Convention) is undisputed.

The fact that the restriction is stipulated in a law that the Croatian Parliament passed in the lawful procedure by a majority vote of all the representatives (Article 83 paragraph 2 of the Constitution) is undisputed as well.

Finally, the fact that the impugned provisions amount to the legislator's interference in the constitutional right of citizens enshrined in Article 42 of the Constitution is also undisputed.

a) Does the restriction have a legitimate aim?

33. The right to the freedom of public assembly can be restricted, within the meaning of Article 16 of the Constitution, in terms of time or place, depending on the assessment whether these limitations are necessary for the protection of the freedoms and rights of others and legal order, public morals or health. Article 11 paragraph 2 of the Convention allows the restriction of this right in the interests of national security or public order and peace, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others.

As in the case related to "holding sessions" of the highest state bodies, the Constitutional Court reviewed the restrictive measure connected with the "accommodation" of these bodies from the aspect of the general objective of the ‘05 Amendments introduced by the Government in the Final Proposal of the ‘05 Amendments. These are: - interests of national security (including protection from terrorism), and - the protection of the rights of others (see point 15 of the statement of reasons for this decision).

a. National security interest

34. The Constitutional Court notes that the notion "national security interest" can be misinterpreted in practice or interpreted too broadly in relation to the constitutional right to the freedom of public assembly. This issue was also raised by the proponent when he posed the following question: "What is the national security interest?" He also deems that the right of public assembly and peaceful protest are in the interest of the Republic of Croatia, and thus such assemblies are also held in the public interest (see point 16.1 of the statement of reasons for this decision).

In this light, the Constitutional Court calls to mind the relevant international legal standards related to the notion of "national security". They are primarily contained in the Siracusa Principles on the Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rights (U.N. Doc. E/CN.4/1985/4, Annex 1985), accepted by the United Nations Economic and Social Council. This document provides the reasons justifying the restriction of the freedom of speech and assembly for national security interests. They read:

"29. National security may be invoked to justify measures limiting certain rights when they are taken to protect the existence of the nation, its territorial integrity and political independence against force or threat of force.

30. National security cannot be invoked as a reason for imposing limitations to prevent merely local or relatively isolated threats to law and order.

31. National security cannot be invoked as a pretext for imposing vague or arbitrary limitations and may only be invoked when there exist adequate safeguards and effective remedies against abuse.

32. The systematic violation of human rights undermines national security and may jeopardise international peace and security. A State responsible for such violation shall not invoke national security as a justification for measures aimed at suppressing opposition to such violation or at perpetrating repressive practice against its population."

The notification of the Government of the Republic of Croatia clearly shows that the Government links "national security interests" with the persons who, in accordance with the separate regulations, enjoy the status of "protected persons" in the Republic of Croatia. Article 7 of the Ordinance on Determining the Activities of Counter-Intelligence and Protection of Certain Persons, Buildings and Areas (*Narodne novine* Nos. 83/03, 11/04 and 70/05; hereinafter: the Ordinance) stipulates that the protected persons of 1st rank are: the President of the Republic of Croatia, the Speaker of the Croatian Parliament, the Prime Minister of the Republic of Croatia, the President of the Constitutional Court of the Republic of Croatia and the President of the Supreme Court of the Republic of Croatia, but also the presidents or heads of foreign states and governments, presidents of foreign parliaments and foreign prime ministers during they stay on the territory of the Republic of Croatia. The particular buildings and places where these persons live, work or stay are considered "protected buildings and areas" (Article 11 of the Ordinance). Security agencies and the police are obliged to directly cooperate with the bodies of state power competent for security issues and protocol activities of the protected persons and safeguarded the buildings and areas, as well as with the organisers of certain public events (Article 3 paragraph 1 of the Ordinance).

The Government rightly claims that the predominant number of official and working visits of the "foreign" protected persons take place in buildings in which the Croatian Parliament, President of the Republic and the Government of the Republic of Croatia have their seats. Therefore, under certain conditions their protection could be qualified as "a national security interest", because it relates to the international legal (diplomatic) obligation of the Republic of Croatia to secure the protection and undisturbed stay of foreign representatives on its territory. In this light, the Constitutional Court finds the proponent’s allegation, expressed in the form of questions ("Are, according to this view, the lives and security of citizens on Trg Josipa Jelačića /Josip Jelačić Square worth less than the lives and security of state officials, since public assembly and protest are not banned on this square? What kind of classification of citizens is this?) as one-sided. This allegation fails to objectively and reasonably comprehend the complexity of requirements that States have to fulfil in order to meet the above international (diplomatic) obligations. The differences in treatment that stem from diplomatic protocol and which are linked to places that the official representatives of foreign states visit in the Republic of Croatia, but also those that stem from the security status of the "safeguarded person" of the Republic of Croatia, cannot in any way be seen through the prism of inequality among citizens or their "classification", as the proponent wrongly deems.

In accordance with the above, the Constitutional Court accepts that the enhanced security protection of the presidents or heads of foreign states or governments, presidents of foreign parliaments and foreign prime ministers during their stay in the Republic of Croatia is a separate aspect of "the national security interest" which sufficiently justifies the limitation on the right of freedom to public assembly in the proximity of protected buildings of the Croatian Parliament, the Government of the Republic of Croatia and the Constitutional Court of the Republic of Croatia. At the same time the Constitutional Court also notes that in the following text the notion "national security interest" will be used only in this narrow meaning related to the protection of safeguarded persons of the 1st category in the protected buildings in the Republic of Croatia.

b. Protection against terrorism

35. In its declaration the Government invokes the danger from terrorism as a reason for introducing the disputed legal measure. The proponent relativises this reason claiming that security risks always accompany every gathering or protest of citizens, regardless of where they take place (see points 16.1 and 17 of the statements of reasons for this decision).

35.1. The Constitutional Court reiterates that national measures for preventing and combating terrorism are legitimate, but they must always be proportional to the "nature of the necessity for restriction in each individual case" (Article 16 paragraph 2 of the Constitution). They cannot be directed against forms of civil disobedience and protests, and can never be used for achieving particular political, religious or ideological objectives. Combating terrorism must never be used as a pretext for arbitrary actions of the government in restricting the human rights and fundamental freedoms enshrined in the Constitution.

The 2004 Berlin Declaration of the International Commission of Jurists on "Upholding Human Rights and the Rule of Law in Combating Terrorism" stresses that " the odious nature of terrorist acts cannot serve as a basis or pretext for states to disregard their international obligations, in particular in the protection of fundamental human rights (...). All restrictions on fundamental rights and freedoms must be necessary and proportionate." Likewise, the Guidelines of the Committee of Ministers of the Council of Europe on Protecting Freedom of Expression and Information in Times of Crisis (1005th meeting of the Ministers' Deputies, 26 September 2007) bring to attention that imposing undue limitations on the exercise of the right to freedom of expression and assembly is not acceptable.

35.2. The Constitutional Court accepts that measures aimed at preventing and combating terrorism may be used as a particularly important justification for limiting the right to freedom of public assembly, especially given that the safeguarded persons and protected national buildings are very often subject to terrorist attacks or attempts, but only if the above requirements of proportionality and necessity are fulfilled. Under these conditions the prevention of and combat against terrorism can be considered a legitimate aim which justifies the legal ban on the freedom of public assembly in the proximity of buildings in which the Croatian Parliament, the Government of the Republic of Croatia and the Constitutional Court of the Republic of Croatia have their seats.

c. Protection of rights and freedoms of others

36. As far as the protection of rights and freedoms of others is concerned, the Constitutional Court reiterates that the legislator has a duty to strike a proper balance between the right to the freedom of public assembly and the competing rights of those who live, work or carry out other businesses in the locality affected by an assembly. That balance must ensure that these other activities taking place in the same space may also proceed, unless they themselves impose unreasonable burdens.

The rights and obligations of others (i.e. of those who do not participate in the assembly), which could be affected by a public assembly, as a rule include the right to privacy, the right to the peaceful enjoyment of one's property, the right to freedom of movement, and under certain conditions also the right to personal security and freedom. Furthermore, the restrictions of the right to freedom of public assembly could also be justified when their aim is to protect the rights of others to the freedom of expression and to information, but also to protect the rights of others to freely manifest their religion or express their beliefs.

36.1. For example, the temporary disruption of traffic or the temporary inability of walking are not, in themselves, valid reasons for imposing restrictions on a public assembly, but under certain conditions the European Court finds them as a justified ground for their implementation. Thus in the case of *Éva Molnár v. Hungary* (2008) the Court found:

"34. The Court observes that paragraph 2 of Article 11 entitles States to impose "lawful restrictions" on the exercise of the right to freedom of assembly. The Court notes that restrictions on freedom of peaceful assembly in public places may serve the protection of the rights of others with a view to preventing disorder and maintaining the orderly circulation of traffic."

When assessing the effect of public assembly on the rights and freedoms of others the frequency of similar gatherings before the same "public" should be taken account of. The cumulative influence on the "public" in locations where numerous public assemblies are allowed (for example in exclusively residential parts of a city) may cause a certain level of disruption to ordinary life which could legitimately be restricted to protect the rights of others. Frequent and repeated protests of certain groups, despite that they can be deemed "peaceful", could, under certain circumstances, be transformed into the misuse of a dominant position, and then they could be restricted for the protection of the rights and freedoms of others. However, the principle of proportionality requires in these cases also that less restrictive effective means should be applied for achieving this aim, and the assessment must always depend on the circumstances of each individual case.

36.2. Finally, the Constitutional Court finds that the protection of the rights and freedoms of others can be justified ground for restricting the right to freedom of peaceful assembly. At the same time, however, starting from the fact that public assemblies, *per definitionem*, amount to only temporary interference in the rights and freedoms of others and given the need for enhancing and maintaining tolerance in a democratic society, the Constitutional Court notes that every restriction of public assembly pursuant to this ground requires a serious degree of likeliness that the infringement with the rights and freedoms of others will be excessive and unreasonable (see for example the case law of the European Court in the following cases: *Ashughyan v. Armenia,* judgment of 17 July 2008, application No 33268/03 § 90; *Balçık and others v. Turkey* (2007), § 49; *Oya Ataman v. Turkey* (2006), § 38; *Nurettin Aldemir and others v. Turkey* (2007), § 43.).

37. In view of the above, the Constitutional Court finds that the objectives of the legal measure related to the ban on public assemblies in the places listed in the disputed Article 11 paragraph 1 indent 6 of the Public Assembly Act, which are pointed out in the Final Proposal of the ‘05 Amendments, are legitimate in relation to the buildings

in which the Croatian Parliament, the Government of the Republic of Croatia and the Constitutional Court of the Republic of Croatia have their seats, but not also in relation to the seat of the President of the Republic.

This evaluation is given in accordance to the actual circumstances present at the moment of passing this decision. However, it also has the character of a principle, since every change of seat of the above state bodies could be subject to an identical constitutionality test from the aspect of the constitutional right to freedom of public assembly.

a. Seat of the President of the Republic of Croatia

38. Starting from the above legal principles, the Constitutional Court has the duty to take account of the facts related to the building where the President of the Republic of Croatia is seated. This building has to be considered together with the fenced grounds around it, because only together do they constitute a unity. It is a large fenced security area which should satisfy the interests of national security, including protection from terrorism, but also the rights and freedoms of others. The building accommodating the President of the Republic of Croatia is constructed in such a way that it, in itself, prevents the communicative purpose of any public assembly.

Acknowledging the given circumstances, the Constitutional Court finds that the legal ban on peaceful assembly and public protest at least 100 meters from the above premises raises doubts as to the legitimacy of the aim it seeks to achieve (protection of "national security interests", including protection from terrorism, and protection of the rights and freedoms of others). Under the circumstances of this case, the ban in Article 11 paragraph 1 indent 6 of the Public Assembly Act (Article 1 paragraph 3 of the ‘05 Amendments) actually territorially expands the ban on public assembly by at least 100 meters from the already fenced and highly protected security area. Having in mind that the building accommodating the President of the Republic of Croatia is located deep inside the fenced area, there is no reasonable and objective justification for this measure. Therefore this legal measure *prima facie* violates the constitutional right to freedom of public assembly enshrined in Article 42 of the Constitution, in relation to the building where the President of the Republic of Croatia is seated.

For the above reasons the Constitutional Court repealed Article 11 paragraph 1 indent 6 (Article 1 paragraph 3 ‘05 Amendments) in the part reading "The President of the Republic of Croatia".

39. On the other hand, the circumstances related to the buildings in which the Croatian Parliament, the Government of the Republic of Croatia and the Constitutional Court of the Republic of Croatia have their seats, are essentially different from those relating to the building of the President of the Republic. In relation to these structures, the Constitutional Court finds that the disputed legal measure has a legitimate aim. They are located on Trg sv. Marka / St. Mark's Square and it is not possible to establish a fenced security area around them.

It is therefore necessary to examine the proportionality of the disputed legal measure that bans public assemblies in the area of at least 100 meters from the above three buildings.

b) Is the legal ban proportional to the legitimate aim it seeks to achieve?

40. Under the general rule, restrictions on constitutional rights have to meet strict requirements of the principle of proportionality. However, the right to the freedom of public assembly is a specific case, because the principle of proportionality does not directly balance the mere right against the reasons for interfering with it. Instead, the principle of proportionality in relation to the right of public assembly requires balancing the nature and extent of the interference, on one hand, against the reason for interfering, on the other hand. Thus, the extent of the interference depends exclusively on the legitimate aim justifying the interference and it always presupposes the requirement for the authorities to give precedence to the least intrusive means for achieving the legitimate objective (Guidelines, point 39, p. 23 and 24).

Therefore, the general rule in the sphere of the right to freedom of public assembly is that the competent authorities should not choose between "non-intervention" and "prohibition" of public assemblies, but rather try to impose "mid-range" limitations that might adequately serve the purposes that they seek to achieve (Guidelines, point 99, p. 37).

40.1. In reviewing the proportionality of the legal measure that bans public assemblies in the area of at least 100 meters from the buildings in which the Croatian Parliament, the Government of the Republic of Croatia and the Constitutional Court of the Republic of Croatia have their seats, the Constitutional Court started from the following legal views:

- first, the right to freedom of public assembly, although of an independent constitutional nature, must always be seen in the light of the right to freedom of expression. Criticism of measures imposed by the government or of state officials cannot, in itself, constitute a sufficient ground for imposing measures restricting the right to freedom of assembly. In this sense the Constitutional Court accepts the legal view of the European Court that "the limits of permissible criticism are wider... with regard to the government than in relation to a private citizen, or even a politician. In a democratic system the actions or omissions of the government must be subject to the close scrutiny not only of the legislative and judicial authorities but also of public opinion" (case of *Incal v. Turkey,* 9 June 1998, application No 22678/93, § 54);

- second, public assemblies are always held for transmitting a message to a certain "targeted" person, group, organisation or body. Thus it is necessary to respect the general rule stipulating that the public assembly should be facilitated within sight and sound of the target audience. Also, in situations where restrictions are imposed in relation to the "time, place and manner" of the public assembly it is necessary to choose the ones that do not interfere with the message communicated to the target audience (Guidelines, points 3.5 and 99-101, p. 9 and 38-39). These can be, for example, permitted restrictions in relation to changes in the "time" or "place" of a public assembly, whereas the "manner" of the restriction may relate to, for example, the prohibition of using sound-amplification equipment or lighting and visual effects, which it may be appropriate to restrict because of the location or time of day for which the assembly is proposed (Guidelines, point 99, page 37). So, generally any measure that permanently disrupts the communicative purpose of the right to freedom of

assembly could be in principle qualified as a *prima facie* violation of this constitutional right;

- third, blanket legislative provisions that ban assemblies in particular locations or at specific times as a rule indicate an excessive interference in the right to freedom of assembly because they do not take account of the particular circumstances of each individual case. Therefore, "....blanket legislative provisions that ban assemblies at specific times or in particular locations require much greater justification than restrictions on individual assemblies (Guidelines, point 2.4. and 102, page 98). The common view of the OESS, ODIHR and Venice Commission is that "blanket bans" on assemblies in the immediate vicinity of buildings accommodating the highest bodies of state power are inappropriate (see Enclosure 2, point 3).

40.2. On the other hand, however, the Constitutional Court has also to acknowledge the fact that the evaluation of the disputed legal measure banning public assemblies in the area of at least 100 meters from the buildings in which the Croatian Parliament, the Government of the Republic of Croatia and the Constitutional Court of the Republic of Croatia have their seats will also depend on the answer to the following question:

- is Trg sv. Marka/St. Mark's Square in any case an appropriate place for holding public assemblies within the meaning of Article 4 paragraph 1 of the Public Assembly Act, which would at the same time enable the realisation of the legislator's legitimate objectives, including the protection from terrorism and the protection of the rights and freedoms of others?

a. Suitability of a location for holding public assemblies

41. The suitability of a location is a necessary prerequisite for holding public assemblies. It is included in Article 10 of the Public Assembly Act, and it is also mentioned in the Guidelines.

41.1. The Constitutional Court recognises the principle that "gatherings should be regarded as an equally legitimate use of public space as the more routine purposes for which public space is used, such as pedestrian and vehicular traffic or commercial activities" (Guidelines, point 3.2, page 9). This principle is also expressed in the case law of the European Court which notes that "any demonstration in a public place can cause a certain level of disruption to ordinary life, including disruption of traffic, and where demonstrators do not engage in acts of violence it is important for the public authorities to show a certain degree of tolerance towards peaceful gatherings if the freedom of assembly guaranteed by Article 11 of the Convention is not to be deprived of all substance" (*Balcik v. Turkey* (2007), § 52.; *Ashughyan v. Armenia* (2008), § 90).

The Constitutional Court also recognises the principle that laws and other planning regulations and architectural design must take account of the potential impact of new designs on freedom of assembly (Guidelines, point 24, p. 20).

42. The above principles, however, are not applicable or hardly applicable to the situation that is being reviewed in these constitutional court proceedings. The specific

case relates to the defined and specified area that is predetermined by the historical and cultural features of Gornji grad/Upper Town, i.e. of Trg sv. Marka/St. Mark's Square in Zagreb.

Trg sv. Marka/St. Mark's Square is a very small square (approximately 5,428 m^2, i.e. 59m x 92m). In the centre of the Square is a church and one of the most important historical monuments of Croatian culture (St Mark's Church has a nave and two aisles, originally from the 14th century, and it dominates the whole area of the Square). The Church is at three sides surrounded - at an exceptionally small distance - by the buildings housing the Croatian Parliament, the Government of the Republic of Croatia and the Constitutional Court of the Republic of Croatia (the Government is 10 meters from the Church, the Croatian Parliament 12.5 meters and the Constitutional Court 21.5 meters). The buildings of the Croatian Parliament and the Government of the Republic of Croatia extend down the entire length of the Square in the north-south direction in a total length of approximately 80 meters, and the distance between them is about 58 meters (with the Church standing between them).

The square is also an archaeological (multi-layered) site: the existence a horizon from the Late Bronze Age was confirmed by the finds of several dwellings, and there were significant finds of a Hallstatt Culture settlement from the Early Iron Age (6^{th} – 6^{th} c. B.C.) and dugouts of the La Tène Culture from the Late Iron Age (2^{nd} – 1^{st} c. B.C.). A medieval cemetery was also found, defined in the narrow belt in front of the south and west façades of St Marks's Church. It had thirty-four skeletal graves, all of them very shallow, just under the thin recent strata. They were 5 to 15 cm deep, only in two cases from 25 to 35 cm. (Source of data: Bugar, Aleksandra; Mašić, Boris. *Srednjovjekovno groblje na Trgu sv. Marka u Zagrebu* /A Medieval Graveyard on St Mark's Square in Zagreb/, Zagreb City Museum, Zagreb, 171-177).

Finally, it is very difficult to approach the Square due to the narrow streets, most of whose buildings are also cultural monuments.

All this indicates that Trg sv. Marka / St. Mark's Square is highly unsuitable for holding public assemblies, which could be a further indicator of the proportionality of the measure stipulated by the legislator in the disputed Article 11 paragraph 1 indent 6 of the Public Assembly Act (Article 1 paragraph 3 of the '05 Amendments), and with which it attempted to achieve a legitimate purpose, i.e. to provide security protection, including the protection from terrorism, and protection of the rights and freedoms of others. It seems that this evaluation cannot even be influenced by the fact that, due to the Upper Town's small size and the location of Trg sv. Marka / St. Mark's Square in it, the legal ban on public assembly within a circle of at least 100 meters from the buildings of the three state institutions means that participants in a public protest would in fact be prevented from accessing the entire central historic part of the Upper Town in Zagreb, and thus also means an actual ban on public assembly in that area.

In this light, what remains to be examined is whether the disputed legal ban is really necessary in the light of the democratic development of the Croatian society.

c) Is the limitation necessary in a democratic society?

43. In the case of *Christians against Racism and Fascism v. the United Kingdom* (1980) the European Commission provided an explanation of the concept "necessary" limitation within the meaning of Article 11 paragraph 2 of the Convention:

"The Commission takes the view that a general ban of demonstrations can only be justified if there is a real danger of their resulting in disorder which cannot be prevented by other less stringent measures. In this connection, the authority must also take into account the effect of a ban on processions which do not by themselves constitute a danger for the public order. Only if the disadvantage of such processions being caught by the ban is clearly outweighed by the security considerations justifying the issue of the ban, and if there is no possibility of avoiding such undesirable side effects of the ban by a narrow circumscription of its scope in terms of territorial application and duration, can the ban be regarded as being necessary within the meaning of Article 11 paragraph 2 of the Convention."

Furthermore, in the case of *Association of Citizens Radko & Paunkovski v. the Former Yugoslav Republic of Macedonia* (2009) the European Court expressed the legal principle on the scope of the concept "necessary in a democratic society" in the light of Article 11 of the Convention. The relevant part of the judgment reads:

"4. 'Necessary in a democratic society'

(a) General principles emerging from the Court's case-law

(...)

66. The exceptions to the rule of freedom of association are to be construed strictly and only convincing and compelling reasons can justify restrictions on that freedom. Any interference must correspond to a "pressing social need". It is in the first place for the national authorities to assess whether there is a "pressing social need" to impose a given restriction in the general interest. While the Convention leaves to those authorities a margin of appreciation in this connection, their assessment is subject to supervision by the Court, going both to the law and to the decisions applying it, including decisions given by independent courts (see *Gorzelik and Others v. Poland*, cited above, §§ 95, 96).

67. When the Court carries out its scrutiny, its task is not to substitute its own view for that of the relevant national authorities but rather to review under Article 11 the decisions they delivered in the exercise of their discretion. This does not mean that it has to confine itself to ascertaining whether the respondent State exercised its discretion reasonably, carefully and in good faith; it must look at the interference complained of in the light of the case as a whole and determine whether it was "proportionate to the legitimate aim pursued" and whether the reasons adduced by the national authorities to justify it are "relevant and sufficient" (...).

Finally in the case of *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria* (2001, § 111) the European Court adopted the principle that the ban on public assembly "in circumstances where there was no real foreseeable risk of violent action or of incitement to violence or any other form of rejection of democratic principles" is not justified under Article 11 paragraph 2 of the Convention.

44. The above standards, taken together with the facts related to the spatial features of Trg sv. Marka / St. Mark's Square in Zagreb, are decisive for determining whether there is, in the light of the development of Croatia as a democratic society, a necessity or a "pressing social need" to *a priori* impose a ban on public assemblies

within the meaning of Article 4 paragraph 1 of the Public Assembly Act, as the legislator did in the impugned Article 1 paragraphs 3 and 4 of the '05 Amendments.

It seems that in the given case there is after all no pressing social need, within the meaning of Article 11 paragraph 2 of the Convention, justifying the existence of an absolute statutory ban on the public assemblies in Article 4 paragraph 1 of the Public Assembly Act. One aspect of the proponents' allegations relating to the different treatment of the participants in different forms of public assemblies on Trg sv. Marka/ St. Mark's Square in Zagreb, i.e. within 100 meters from the premises of the Croatian Parliament, the Government of the Republic of Croatia and the Constitutional Court of the Republic of Croatia, also points to the fact that there is no justification for imposing the impugned legal ban for preserving the values of a democratic society.

2) Difference in treatment in comparable situations

45. The proponent alleges that: "The legislator also calls on the global threat of terrorism. (...) is there not also such a threat when assemblies are held within a circle of 100 meters from Trg sv. Marka / St. Mark's Square for the purpose of realising economic, religious, cultural, humanitarian, sports, entertainment and other interests? Indeed, these gatherings do not have to be reported in accordance with Article 33 of the Public Assembly Act, depending on the number of participants, so the ban does not refer to them. (...)."

a) General principles related to the difference in treatment

46. The Constitutional Court recalls that the principle of equal treatment is one of the guiding principles in regulating the freedom of public assembly. It requires that public assemblies "in comparable circumstances do not face differential levels of restriction" (Guidelines, point 33, page 23). In the Guidelines this principle is defined as a separate form of the prohibition of discrimination.

b) Does the ban amount to the unequal treatment of participants in public assemblies?

47. The Constitutional Court already established the selective character of the disputed legal measure of banning a public assembly at least 100 meters from the buildings accommodating the Croatian Parliament, the Government of the Republic of Croatia and the Constitutional Court of the Republic of Croatia (see point 27 of the statement of reasons for this decision).

This means that the ban relates only to public assemblies that aim at publicly expressing and promoting political, social and national beliefs and objectives (Article 4 paragraph 1 of the Public Assembly Act).

The ban does not relate either to public events organised with the purpose of making a profit within the registered economic activity which, considering the expected number of participants or character of the event, requires special security measures (Article 4 paragraph 2 of the Public Assembly Act), or to other forms of gatherings aimed at realizing economic, religious, cultural, humanitarian, sports, entertainment and other interests (Article 4 paragraph 3 of the Public Assembly Act). Such

gatherings are allowed within the space of 100 meters from the buildings accommodating the Croatian Parliament, the Government of the Republic of Croatia and the Constitutional Court of the Republic of Croatia. Moreover, they can even be held without prior notice to the competent police authority if less than 20 persons gather (Article 1 paragraph 4 of the '05 Amendments, i.e. Article 11 paragraph 2 of the Public Assembly Act).

It is important to recall that previous experiences clearly show that it is possible to organise the stated public assemblies within a circle of at least 100 meters from the buildings accommodating the Croatian Parliament, the Government of the Republic of Croatia and the Constitutional Court of the Republic of Croatia and to fulfil at the same time all the security and other prerequisites that enable them to proceed in an undisturbed, peaceful and non-violent manner.

47.1. Unlike these forms of public assemblies, the public assemblies within the meaning of Article 4 paragraph 1 of the Public Assembly Act, that aim at publicly expressing and promoting political, social and national beliefs and objectives, are legally banned (in a general, blanket, absolute and *a priori* manner). At the same time this ban is also much stronger in relation to the allowed number of participants in these gatherings. Namely, the ban also covers the group of less than 20 people, which is the bottom limit for qualifying a gathering as a "public assembly" within the meaning of Article 4 paragraph 1 of the Public Assembly Act. The relevant Articles of the Public Assembly Act read:

"Article 4

Peaceful assembly and public protest shall mean every organised gathering of more than 20 people held for the purpose of publicly expressing and promoting political, social and national beliefs and interests.

(...)"

"Article 11

(...)

The provision of Article 4 paragraph 1 of this Act shall not be applied to the case in paragraph 1 sub paragraph 6 of this Article in the part determining the number of participants in the gathering".

47.2. The Constitutional Court finds that the impugned legal ban clearly discriminates against the participants in different forms of public assemblies depending on the messages that are communicated to the targeted audience. If the assembly is held to publicly express and promote political, social and national beliefs and interests, then it is banned. On the other hand, if the gathering is held to publicly express and promote non-political, non-social and non-national beliefs and objectives, then it is allowed.

Furthermore, if the assembly is held to publicly express and promote political, social and national beliefs and interests, then the ban is extended to any group of persons, regardless of their number.

c) Can different forms of public assemblies be compared?

48. In evaluating whether public assemblies within the meaning of Article 4 paragraph 1 of the Public Assembly Act and public events and other forms of public assemblies within the meaning of Article 4 paragraphs 2 and 3 are held in the comparable legal situations, the Constitutional Court started from the fundamental principle: Article 42 of the Constitution, and thus also the Public Assembly Act, protects only "peaceful" assemblies (of all kinds).

Also the European Court in the case of *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria* (2001, § 77) particularly emphasised that "Article 11 of the Convention only protects the right to "peaceful assembly". That notion – in accordance with the Commission's case law – does not cover a demonstration where the organisers and participants have violent intentions".

The Guidelines also emphasise that the freedom of assembly "includes all forms of gatherings, either public or private, if they are "peaceful". They elaborate the notion of "peaceful" more comprehensively. The relevant part reads:

"25... Only 'peaceful' assembly is protected by the right to freedom of assembly. The European Court of Human Rights stated that 'in practice, the only type of events that did not qualify as 'peaceful assemblies' were those in which the organisers and participants *intended* to use violence.' Participants must also refrain from using violence (though the use of violence by a small number of participants should not automatically lead to the categorization as non-peaceful of an otherwise peaceful assembly ...). An assembly should therefore be deemed peaceful if its organizers have professed peaceful intentions, and this should be presumed unless there is compelling and demonstrable evidence that those organising or participating in that particular event themselves intend to use, advocate or incite imminent violence.

26. The term 'peaceful' should be interpreted to include conduct that may annoy or give offence to persons opposed to the ideas or claims that it is seeking to promote, and even conduct that temporarily hinders, impedes or obstructs the activities of third parties. Thus, by way of example, assemblies involving purely passive resistance should be characterized as 'peaceful'. Furthermore, in the course of an assembly, 'an individual does not cease to enjoy the right to peaceful assembly as a result of sporadic violence or other punishable acts committed by others in the course of the demonstration, if the individual in question remains peaceful in his or her own intentions or behaviour'.

27. The spectrum of conduct that constitutes 'violence' should be narrowly construed, but may exceptionally extend beyond purely physical violence to include inhuman or degrading treatment, or the intentional intimidation or harassment, of a captive audience. In such instances, the destruction of rights provisions may also be engaged (...).

28. If this fundamental criterion of 'peacefulness' is met, it triggers the positive obligations entailed by the right to freedom of peaceful assembly on the part of the State authorities (...). It should be noted that assemblies that survive this initial test (thus, *prima facie*, deserving protection) may still legitimately be restricted on public order or other legitimate grounds (...)" (pages 20-21).

48.1. It seems that there are no differences between public assemblies within the meaning of Article 4 paragraph 1 of the Public Assembly Act and public events and

other forms of public assemblies within the meaning of Article 4 paragraph 2 and 3 of the Public Assembly Act either from the security aspect or from the aspect of the protection of rights and freedoms of others. They are always "peaceful" assemblies, although held with different purpose.

The different purpose of public assemblies does not constitute a differentiation standard acceptable under constitutional law in a democratic society.

Similarly, the potential need for different estimates regarding the level and scope of security measures intended for public assemblies aimed at different purposes, but also for the level of certitude of their peaceful character, do not constitute a differentiation standard acceptable under constitutional law.

In conclusion, if we compare the public assemblies within the meaning of Article 4 paragraph 1 of the Public Assembly Act and the public assemblies and other forms of public gatherings within the meaning of Article 4 paragraphs 2 and 3 of the Public Assembly Act, they obviously relate to legal situations that can be compared.

d) Is there justification for the different treatment of participants in different forms of public assemblies?

49. In a comparable legal situation in relation to location, time and manner of holding the different forms of public assemblies in a circle of at least 100 meters from the buildings accommodating the Croatian Parliament, the Government of the Republic of Croatia and the Constitutional Court of the Republic of Croatia, the Constitutional Court reiterates that the disputed legal provision exclusively aims at banning public assemblies conveying messages related to political, social and national beliefs and objectives.

The Constitutional Court also notes that, by the nature of things, it is the Croatian Parliament and the Government of the Republic of Croatia that are the "direct addressees" of these messages.

In this light the Constitutional Court has to ask the following question: is there an objective and reasonable justification for banning the public assemblies that convey messages related to political, social and national beliefs and interests in the area of at least 100 meters from the buildings accommodating the Croatian Parliament and the Government of the Republic of Croatia, when their immediate target audience are precisely the bodies that are located in that area; and at the same time allowing in the same area public assemblies that transmit messages related to non-political, non-social and non-national beliefs and interests (i.e., related to economic, religious, cultural, humanitarian, sports, entertainment and other interests), and whose immediate target audience may, by the nature of things, not be the bodies situated in that area?

49.1. The Constitutional Court also notes that both the Final Proposal of the ‘05 Amendments and the declaration of the Government of the Republic of Croatia fail to substantiate this differentiation.

At the same time, the reasons given by the government authorities to justify the absolute, general, blanket, a priori, extended and selective legal ban on any pubic assembly in the meaning of Article 4 paragraph 1 of the Public Assembly Act in the area of at least 100 meters from the buildings accommodating the Croatian Parliament, the Government of the Republic of Croatia and the Constitutional Court of the Republic of Croatia – are not either relevant or sufficient within the meaning of Article 11 of the Convention.

50. In this situation the Constitutional Court must conclude that bans which are governed by the specific purposes of particular forms of public assemblies lack objective and reasonable justification from every aspect, including the aspect of the protection of national security interests, together with the protection from terrorism, and the aspect of the protection of the rights and freedoms of others.

In the absence of "the relevant and sufficient reasons" that would clearly show that the ban on just some particular forms of public assemblies in the area of at least 100 meters from the buildings accommodating the Croatian Parliament, the Government of the Republic of Croatia and the Constitutional Court of the Republic of Croatia is justified, the Constitutional Court must conclude that the disputed legal provision leads to discrimination which is in breach of Article 3 and Article 14 of the Constitution, because it places political, social and national beliefs and interests on the level of reasons for discrimination and with no relevant or sufficient reasons prevents the realisation of the general principle stipulating that public assemblies should be facilitated within ‘sight and sound’ of their target audience.

Moreover, the fact that this legal ban extends to any group of participants, even to that of less than 20 persons, additionally reinforces the view that the disputed legal solution lacks objective and reasonable justification.

51. For the reasons given above the Constitutional Court repealed Article 1 paragraphs 2 and 3 of the ‘05 Amendments (Article 11 paragraph 1 indent 6 and Article 2 of the Public Assembly Act).

VII. CONCLUSIONS OF THE CONSTITUTIONAL COURT

1) Point I of the operative provisions:

52. The Constitutional Court has, on the grounds of Article 55 paragraph 1 of the Constitutional Act, decided as in point I of the pronouncement, having found that:

1) An individual protest (i.e. protest of a single person) is not the subject of regulation of the Public Assembly Act because the rules in other relevant laws apply to it, and these rules are mostly implemented by the police authorities within their police activities related to keeping the public order and peace and public safety (point 28.2);

2) In the absence of reasons that would indicate its legitimate aim, Article 1 paragraph 3 of the ‘05 Amendments (Article 11 paragraph 1 indent 6 of the Public Assembly Act) in the part stipulating the ban on holding public assemblies within the meaning of Article 4 paragraph 1 of the Public Assembly Act "at least 100 meters from the buildings in which the Croatian Parliament, the President of the Republic,

the Government of the Republic of Croatia and the Constitutional Court of the Republic of Croatia hold their sessions" is not in compliance with Article 42 of the Constitution, because it – in relation to any *a priori* unknown concrete location and object – cancels the essence of the constitutional right to the freedom of public assembly with no reason acceptable under constitutional law that could justify it (points 29 and 30);

3) The legal ban on public assembly within the meaning of Article 4 paragraph 1 of the Public Assembly Act in the area of at least 100 meters from the building accommodating the President of the Republic has no legitimate aim or reasonable and objective justification and thus it constitutes *prima facie* violation of the constitutional right to freedom of public assembly guaranteed in Article 42 of the Constitution (point 38);

4) The legal ban on public assembly within the meaning of Article 4 paragraph 1 of the Public Assembly Act in the area of at least 100 meters from the buildings accommodating the Croatian Parliament, the Government of the Republic of Croatia and the Constitutional Court of the Republic of Croatia (Trg sv. Marka / St. Mark's Square in Zagreb):

- has a legitimate aim (point 39),

- the area is highly inappropriate for holding public assemblies, which indicates the proportionality of the disputed legal ban (point 41 and 42),

- notwithstanding, the ban is not "necessary in a democratic society" because there is no "pressing social need" for its existence within the meaning of Article 11 paragraph 2 of the Convention (points 43 and 44). This is so because in this area it is allowed to hold public events that require special security measures (Article 4 paragraph 2 of the Public Assembly Act) as well as other forms of gatherings aimed at realising economic, religious, cultural, humanitarian, sports, entertainment and other interests (Article 4 paragraph 3 of the Public Assembly Act). Thus, by prohibiting only the public assemblies aimed at publicly expressing political, social and national beliefs and interests, these beliefs and objectives become grounds for discrimination with no objective and reasonable justification, which is in breach of Article 3 and Article 14 of the Constitution (points 45 to 50).

2) Point II of the operative provisions:

53. Given the particulars and the unique quality of the area where the buildings of the Croatian Parliament, the Government of the Republic of Croatia and the Constitutional Court of the Republic of Croatia are located (Trg sv. Marka /St. Mark's Square in Zagreb), the Constitutional Court finds it reasonable to give the legislator a wider margin of appreciation in regulating the prerequisites required for holding all forms of public gatherings in this location. This view does not contravene the legal principle adopted by the European Court, which in the case of *Christian Democratic People's Party v. Moldova* (No 2) (2010) emphasised that: "In determining whether a necessity within the meaning of Article 11 § 2 exists, the Contracting States have only a limited margin of appreciation, which goes hand in hand with rigorous European supervision." In the Constitutional Court's view, the specific and unique

circumstances of the specific case allow for the "limited margin of appreciation" to be wider, which goes hand in hand with constitutional and European supervision.

In accordance with the above, the legal prerequisites for holding public assemblies in the proximity of the seats of the Croatian Parliament, the Government of the Republic of Croatia and the Constitutional Court of the Republic of Croatia may be more rigorous than the general prerequisites for holding public assemblies in all other places in the Republic of Croatia. They may relate to time and to (fenced) location and also to the manner of holding the public assemblies (including the number of participants) in the relevant location (see Enclosure 1 point 4), under condition that the restrictions stay within the limits of proportionality and necessity.

In other words, along with the general reasons allowing the restriction of public assemblies and public protests listed in Article 14 paragraph 1 points 3 and 4 of the Public Assembly Act (i.e., a ban on any agitation and incitement to war and the use of violence, national, racial, religious and other hatred or intolerance, or the probability that its holding would lead to direct and real danger of violence and other forms of serious public disorders), the legislator is competent to additionally stipulate separate reasons under which all forms of public assemblies on Trg sv. Marka / St. Mark's Square could be banned, as long as these reasons are "relevant and sufficient" within the meaning of Article 11 of the Convention. On the other hand, it is also legally possible to impose a general legal ban on all forms of public assemblies on Trg sv. Marka / St. Mark's Square, but only if the requirements are stipulated under which the competent bodies have an authority to permit a particular public assembly to be held in the relevant location (see Enclosure 1 point 4).

All the above statements relate only to peaceful public assemblies, since only they enjoy constitutional protection. The assessment of the character of a particular assembly is, by the nature of things, carried out on a case by case basis in a legal procedure, together with the evaluation of the acceptability of the specific assembly from the aspect of Article 16 of the Constitution, and in particular from the aspect of national security together with all other security aspects, including the protection from terrorism, but also from the aspect of potential violations of the rights and freedoms of other people and potential damage to the most valuable cultural and historical heritage in the historic parts of Zagreb. These competences of the police regularly also include giving relevant orders and laying down conditions depending on the circumstances of each individual case, but also the judicial supervision of the final decision.

53.1. The Constitutional Court is aware of the complexity of the duties and of the degree of responsibility that this decision places before the legislator and also before the competent police authorities, as well as of the complexity and importance of a sound evaluation of the general influence of this legal measure, which opens up the legal possibility of holding public assemblies of all forms and with all possible objectives on St. Mark's Square in Zagreb. This evaluation will serve as grounds for determining the content and scope of the future regulatory measure.

Taking into account the time needed for conducting the necessary evaluations of the situation, for preparing a proposal of the regulatory measure which is harmonised with the legal views in this decision and the duration of the legislative procedure for

amending the Public Assembly Act, on the grounds of Article 55 paragraph 2 of the Constitutional Act the Constitutional Court postponed the loss of legal force of Article 1 paragraphs 2 and 3 of the ’05 Amendments (i.e. Article 11 paragraph 1 indent 6 and paragraph 2 of the Public Assembly Act) until the end of the deadline in point II of the operative provisions for this decision.

In estimating the duration of the postponement period the Constitutional Court also took account of the period in which the Croatian Parliament will not hold sessions due to the forthcoming parliamentary elections.

53.2. Pursuant to Article 55 paragraph 2 of the Constitutional Act, the Constitutional Court decided as in point II of the operative provisions.

3) Point III of the operative provisions

54. The publication of this decision is grounded on Article 29 of the Constitutional Act.

4) Enclosures to the decision

55. The integral parts of this decision are:

Enclosure 1: National legislation and practice regarding the right to freedom of public assembly in the Council of Europe member states;

Enclosure 2: Opinion of the Venice Commission of the Council of Europe and other international organisations regarding the right to the freedom of public assembly.

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF CROATIA

Nos.:

U-I-295/2006

U-I-4516/2007

Zagreb, 6 July 2011

PRESIDENT OF THE COURT

Jasna Omejec, LL D

ENCLOSURE 1

NATIONAL LEGISLATION AND PRACTICE REGARDING THE RIGHT TO FREEDOM OF PUBLIC ASSEMBLY IN THE COUNCIL OF EUROPE MEMBER STATES

1. The Constitutional Court takes account of the legislation and practice of the Council of Europe member states in dealing with subjects of particular constitutional court proceedings whenever it has to establish the level of consensus achieved in certain issues among the member states of the Council of Europe, whose member the Republic of Croatia also is (principle of European consensus).

The Constitutional Court grounds the acceptance of the European consensus on the fact that, by becoming a member of the Council of Europe, the Republic of Croatia also accepted the fundamental objective of this international organisation expressed in Article 1 point a) of its Statute: "The aim of the Council of Europe is to achieve a greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage and facilitating their economic and social progress." Furthermore, by acceding to the Convention, the Republic of Croatia confirmed its "deep devotion to...the fundamental freedoms which are the foundation of justice and peace in the world and are best maintained on the one hand by an effective political democracy and on the other by a common understanding and observance of the human rights upon which they depend". It has taken on the commitment, as the government of a European country lead by a genuine spirit of political ideals and tradition of respecting human rights and the rule of law, which are a common heritage of all the members of the Council of Europe, to take steps, together with other governments, for the collective enforcement of certain rights contained in the Universal Declaration on Human Rights (Preamble to the Convention). The above commitments of the Republic of Croatia are the framework within which the Constitutional Court must interpret the national Constitution, laws and other regulations. The acceptance of the principle of European consensus is one of the ways in which the Constitutional Court implements this obligation.

Pursuant to the above, the margin of appreciation of the national legislator in regulating an issue may depend on the level of achieved common ground, i.e. the level of consensus reached by the Council of Europe member states on that issue.

1) Legislative solutions in the Council of Europe member states

2. The legislative solutions in other Council of Europe members states related to the legal ban on holding public assemblies in areas close to certain public authorities range from stipulating a relative legal ban (with different levels of intensity) to stipulating an absolute legal ban on holding public assemblies in the given areas.

a) Relative legal ban

3. A relative legal ban on holding public assemblies of milder intensity (i.e. where, pursuant to the prior notification of the organiser, the competent bodies are have the power, in accordance with their own discretionary assessment on a case by case basis, to evaluate whether a specific public assembly is permitted or not and

ban only the individual public assembly) exists in the majority of states in point 4 of the statement of reasons for this decision.

In these situations the premises accommodating the highest bodies of public power are not as a rule mentioned separately and they are not exempted from the general regime of prior bans "on a case by case basis". The United Kingdom is an example for the partial exception from this rule, since its legislation recognises "designated areas" but applies the above general regime to them as well. On the other hand, prior notification is required for holding a public assembly and the competent police authority may ban the relevant gathering for the reasons laid down in the law. These legal solutions are presented in the European Court's case of *Rai and Evans v. United Kingdom* (admissibility decision, application Nos. 26258/07 and 26255/07 of 17 November 2009). The European Court rejected the applications as obviously ill-founded because the applicants had organised a demonstration in Whitehall opposite Downing Street in London, which is a "designated area", and failed to seek authorisation under the Serious Organised Crime and Police Act 2005.

4. A rigid relative legal ban on the right to freedom of assembly near the premises accommodating the highest bodies of public power (i.e. a general statutory ban on holding a public assembly in these areas with the possibility that the competent body may, nevertheless, approve a specific gathering in these areas) exists, for example, in Slovenia and Germany.

4.1. Article 6 paragraph 2 of the Slovene Public Assembly Act (Zakon o javnih zbiranjih, Uradni list Republike Slovenije, št. 59/02, 60/05, 90/05, 113/05 – uradno prečiščeno besedilo, 85/09, 59/10) provides for a ban on outdoor gatherings or events in the immediate vicinity of buildings that are protected under special regulations if the gathering or event would interfere with the protection of these buildings. *(»Prepovedano je organizirati shode oziroma prireditve na prostem v neposredni bližini objektov, ki se varujejo po posebnih predpisih, če bi shod oziroma prireditev lahko ovirala varovanje teh objektov.«).*

4.2. Although on the level of a "*länder*" and not of the federation, regulation of the right to freedom of public assembly in Germany also includes defining areas with security fences for which the competence lies with the Federation. This issue is resolved in the federal Act on the Security Zones of the Constitutional Bodies of the Federation (*Gesetz über befriedete Bezirke für Verfassungsorgane des Bundes – BefBezG,* 8. 12. 2008, BGBl I, p. 2366). Around the buildings of the Bundestag, Bundesrat and the Federal Constitutional Court there are so-called fenced areas *(befriedete Bezirke)* within which gatherings in open spaces are allowed only with permission. The borders of these areas are defined in the above act in an enclosure (BGBl. I 2008, 2368) which explicitly lists all the streets, squares and buildings in Berlin (seat of the Bundestag and Bundesrat) and Karslruhe (seat of the Federal Constitutional Court) to which the stated ban on holding public assemblies applies. Furthermore, § 2 of the BefBezg is entitled "Protection of constitutional bodies" ("*Schutz von Verfassungsorganen"*) and it stipulates that public assemblies in open areas and parades are prohibited within the fenced area. It is also prohibited to call people to hold assemblies or parades. (*»Für den Deutschen Bundestag, den Bundesrat und das Bundesverfassungsgericht werden befriedete Bezirke gebildet. Die Abgrenzung der befriedeten Bezirke ergibt sich aus der Anlage zu diesem Gesetz.«*)

However, in accordance with § 3 of the BefBezG, public assemblies and parades within the fenced areas are allowed if there is no threat that they would interfere with the work of the German Bundestang and its parliamentary parties, the Budnesrat or the Federal Constitutional Court and its bodies and committees, or that they would block free entry and exit to or from their buildings located within the fenced areas. Regarding the Bundestag and Bundesrat if a gathering or parade is held in one day, it is usually the days with no sittings. The authorisation may be connected with orders. The requests for the authorisations are submitted to the Federal Ministry of the Interior at least seven days prior to the assembly in written form, by electronic means or orally (then minutes are taken). The Federal Ministry of the Interior always decides in compliance with the president of the constitutional body. The decision is posted in writing or by electronic means. *(»1) Öffentliche Versammlungen unter freiem Himmel und Aufzüge innerhalb der nach § 1 gebildeten befriedeten Bezirke sind zuzulassen, wenn eine Beeinträchtigung der Tätigkeit des Deutschen Bundestages und seiner Fraktionen, des Bundesrates oder des Bundesverfassungsgerichts sowie ihrer Organe und Gremien und eine Behinderung des freien Zugangs zu ihren in dem befriedeten Bezirk gelegenen Gebäuden nicht zu besorgen ist. Davon ist im Falle des Deutschen Bundestages und des Bundesrates in der Regel dann auszugehen, wenn die Versammlung oder der Aufzug an einem Tag durchgeführt werden soll, an dem Sitzungen der in Satz 1 genannten Stellen nicht stattfinden. Die Zulassung kann mit Auflagen verbunden werden. (2) Anträge auf Zulassung von Versammlungen nach Absatz 1 sollen spätestens sieben Tage vor der beabsichtigten Versammlung oder dem Aufzug schriftlich, elektronisch oder zur Niederschrift beim Bundesministerium des Innern gestellt werden. Das Bundesministerium des Innern entscheidet jeweils im Einvernehmen mit dem Präsidenten oder der Präsidentin der in § 1 Satz 1 genannten Verfassungsorgane. Die Entscheidung nach Satz 2 ergeht schriftlich oder elektronisch.«).*

b) Absolute legal ban

5. An absolute legal ban on public assemblies in areas close to public bodies is in force for example in Austria, Belgium, Bulgaria, Czech Republic, Lithuania and Slovakia. Examples of the legal solutions in several of these states are given in the text below.

Article 7 of the Austrian Public Assembly Act (*Versammlungsgesetz – VersG, BGBl. Nr. 98/1953 zuletzt geändert BGBl. I Nr. 392/1968, 127/2002*) does not allow gatherings in open areas closer than 300 meters from the buildings accommodating the legislative bodies (National Assembly, National Council and the Parliament). *("Während der Nationalrat, der Bundesrat, die Bundesversammlung oder ein Landtag versammelt ist, darf im Umkreis von 300 m von ihrem Sitze keine Versammlung unter freiem Himmel stattfinden.").*

Article 1 paragraph 5 of the Czech Public Assembly Act (*Zákon ze dne 27. března 1990 o právu shromažďovacím*, *Změna: 175/1990 Sb., 259/2002, Sb, 151/2002 Sb., 501/2004 Sb.*) prohibits assemblies in the area of 100 meters from a building of a legislative body or from a place where it holds its sessions ("*Jsou zakázána shromáždění v okruhu 100 metara od budov zákonodárných sborů nebo od míst, kde tyto sbory jednají").*

Furthermore, § 25 of the Czech Constitutional Court Act *(Zákon ze dne 16. června 1993 Ústavním soudu 182/1993 Sb., Změna: 331/1993 Sb., 236/1995 Sb., 77/1998 Sb., 18/2000 Sb., 132/2000 Sb., 48/2002 Sb., 202/2002 Sb., 320/2002 Sb., 114/2003 Sb., 120/2004 Sb., 83/2004 Sb., 234/2006 Sb., 342/2006 Sb., 227/2009 Sb. účinná až od 1. 7. 2010),* entitled: "Maintaining Peace and Order" ("*Zajištění pořádku"*) provides for bans on assemblies within 100 meters from the building of the Constitutional Court or other places where the Court holds its sessions *("Zakazují se*

shromáždění 1) v okruhu 100 metara od budov Ústavního soudu nebo od míst, kde Ústavní soud jedná.")

In 2010 Bulgaria revised and amended its Act on Gatherings, Meetings and Manifestations (*Закон за събранията, митингите и манифестациите, Обн. ДВ. бр.10 от 2 Февруари 1990г., изм. ДВ. бр.11 от 29 Януари 1998г., изм. ДВ. бр.24 от 26 Март 2010г.)*. This Act previously absolutely restricted assembly in the vicinity of Parliament and military facilities, but the new amendments and revisions introduced a new instrument, the so-called marked zones, and the circle of protected buildings was extended. According to the amended and revised Article 7 of the Act, assemblies, meetings and manifestations cannot be held in a "marked zone" around the buildings of the National Assembly, the Presidency and the Council of Ministers, as well as in the "close proximity" of military facilities. The marked area and security area around these buildings includes no less than 5 and no more than 20 meters from these buildings. The marked area can be determined in the each particular case on the proposal of the Board of the Protected State Bodies with the approval of the competent body within the Ministry of Internal Affairs. *(»Чл. 7. (2) (Изм. – ДВ, бр. 24 от 2010 г.) Събрание, митинг или манифестация не може да се провежда в обозначената зона около сградите на Народното събрание, на Президентството и на Министерския съвет, както и в непосредствена близост до военни обекти. (3) (Нова – ДВ, бр. 24 от 2010 г.) Обозначена зона е зоната за сигурност около сградите по ал. 2, която обхваща не по-малко от пет и не повече от двадесет метра от съответната сграда. Обозначената зона може да се определя за всеки конкретен случай по предложение на администрацията на органите по ал. 2, след съгласуване с компетентните органи на Министерството на вътрешните работи, и се утвърждава от кмета на Столична община, за което се уведомява организаторът на събранието, митинга или манифестацията.«)*

2) Case-law of constitutional courts of the Council of Europe member states

6. The Constitutional Courts of the Council of Europe member states dealt with the right to freedom of public assembly from different aspects.

7. The well-established view of the Federal Constitutional Court of Germany is that mere suspicion or presumption that there will be disorders is not a sufficient reason for imposing a ban on a public assembly. In decision No. BVerfG, 1 BvQ 22/01, 5. 1. 2001 (1-22) this Court reviewed the proposal to order a temporary measure and to repeal the order of the Higher Administrative Court of the Nordrhein-Westfalen Land relating to the ban on a specific public assembly. The German Constitutional Court refused the proposal stating that the freedom of assembly is one of the guarantees that goes along with the principle of the rule of law, including also the limitations imposed on that freedom listed in Article 8 paragraph 2 of the Basic Law. In accordance with the case-law of the Federal Constitutional Court bans may only be imposed with the purpose of protecting the fundamental legal values: the mere threat to public order could not be considered sufficient. *(»18. Zu den rechtsstaatlichen Garantien gehört die Versammlungsfreiheit einschließlich ihrer in Art. 8 Abs. 2 GG aufgeführten Grenzen. Nach der Rechtsprechung des Bundesverfassungsgerichts kommen Versammlungsverbote nur zum Schutz elementarer Rechtsgüter in Betracht, während die bloße Gefährdung der öffentlichen Ordnung im Allgemeinen nicht genügt (vgl. BVerfGE 69, 315 <353>). Zur Abwehr von Gefahren für die öffentliche Ordnung können aber Auflagen erlassen werden.«)*

7.1. In the latest decision of 22 February 2011 the German Constitutional Court extended the obligation to protect the right to freedom of public assembly and

expression also onto some legal subjects whose work in grounded on the rules of civil (private) law. This relates to the impact of the fundamental rights on third persons (Dritwirkung), which in the specific case the Court substantiated by the fact that not only public companies, which are entirely publicly owned, are bound by the fundamental rights but also companies that are in public-private ownership, if they are controlled by the public sector. This case concerns the ban on access to Frankfurt Airport, which was imposed on the applicant of the constitutional complaint – an activist of the "Anti-Deportation Initiatives" – by the Fraport AG Company (a joint-stock company that manages Frankfurt Airport, and is in public-private ownership). The applicant's appeal against the Fraport AG Company was rejected before all civil courts at all instances.

The Federal Constitutional Court repealed all the judgments with the explanation that the disputed ban is in breach of the freedom of assembly, because it prohibits the applicant, with no concrete risk estimation and for an unlimited time, from holding any kind of gatherings in the premises of the entire Frankfurt Airport. Such a civil ban is disproportionate. In principle, civil-law authorisations, to which category the prior authorisation of Fraport AG to hold assemblies belongs, and which it renders pursuant to a discretionary assessment, cannot be interpreted in a manner that exceeds the constitutional boundaries imposed on the government authorities competent to ban assemblies. Accordingly, a ban on assemblies is acceptable only if there is imminent and foreseeable danger to the legal values that are equivalent to the freedom of assembly. This, however, does not prevent the separate treatment of the potential danger of assembling in an airport – which is organised as a place for the general communication traffic – and also taking into account the rights of other holders of fundamental rights. In so doing, the particular vulnerability of an airport in its primary role of a location where air traffic takes place can justify the limitations which – starting from the principle of proportionality – might not be taken into consideration in an open street.

Furthermore, the German Federal Constitutional Court also found that the applicant's rights to expression were violated, because the use of airport premises to express one's opinion cannot be restricted for the protection of legal values in a manner different than in a public street. These restrictions must be in accordance with the principle of proportionality. This excludes a general ban on distributing fliers in the public premises of the airport, as well as access to spaces that are arranged as public forums, and a general ban making general access to these spaces conditional on issuing a licence.

The above judgment of the German Federal Constitutional Court is also important because it directly connects the freedom of public assembly with all the places of the "usual communication traffic" of people. Such gatherings cannot today be limited only to public traffic spaces, but holding an assembly must also be guaranteed in other areas that are increasingly supplementing these spaces, such as shopping centres or other places where people meet. This rule applies regardless if whether there are autonomous areas or are connected to infrastructural objects, or if they are indoor or outdoor places.

8. The Constitutional Courts of the majority of the Council of Europe member states that imposed the measure of an absolute legal ban on the freedom of public

assembly in the proximity of buildings holding seats of the highest bodies of state power have so far not reviewed the compliance of these legal solutions with the national constitutions.

According to available data, the only exception is the Constitutional Court of Latvia. It reviewed the constitutionality of Article 9 paragraph 1 of the Assemblies, Processions and Demonstrations Act at the request of 20 representatives of the 8th sitting of the Latvian Parliament (the Saeimas). Article 9 paragraph 1 of the Act stipulated that it is prohibited to organise meetings and demonstrations closer than 50 metres from the residence of the President and the buildings of the *Saeima*, Cabinet, Council of Local Authorities, courts, public prosecutor, police, prison and foreign diplomatic and consular offices. In the organisation of meetings and demonstrations close to these buildings, the relevant institutions, except foreign diplomatic and consular offices, may also indicate special places closer than 50 metres. In decision No. 2006-03-0106 of 23 November 2006 the Latvian Constitutional Court accepted the request. Despite the finding that the disputed legal ban has a legitimate aim (securing the undisturbed work of the above institutions and preventing the threat to public security), the Latvian Constitutional Court repealed this provision for non-compliance with the Constitution because it found it not proportional with the aim it was sought to achieve (point 29 of the judgment).

ENCLOSURE No 2

OPINIONS OF THE VENICE COMMISSION OF THE COUNCIL OF EUROPE AND OTHER INTERNATIONAL ORGANISATIONS ON THE RIGHT TO FREEDOM OF PUBLIC ASSEMBLY

1. The relevant document of the Venice Commission of the Council of Europe, the Office for Democratic Institutions and Human Rights – ODIHR and the Organization for Security and Co-operation in Europe – OSCE in the field of the right to freedom of public assembly are the OSCE/ODIHR – Venice Commission Guidelines on Freedom of Peaceful Assembly, 2nd Edition, Study no. 568/2010, CDL-AD(2010)020, Strasbourg-Warsaw, 9 July 2010, together with the explanatory remarks (abbreviation in the statement of reasons for the decision: the Guidelines.

2. The Venice Commission made a summary of the fundamental European and international standards relating to the freedom of public assembly, which mostly stems from the Convention, the International Covenant on the Civil and Political Rights, but also from the relevant case-law of the European Court. They read:

"- The freedom of assembly is a fundamental democratic right and should not be interpreted restrictively.

- It covers all types of gathering, whether public or private, provided they are "peaceful".

- It is a "qualified" right and the state may justify what is a *prima facie* interference with the right. Article 11(2) of the Convention expressly permits limitations provided they are "such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others". The State is given a wide margin of appreciation in order to deal with disorder or crime or to protect the rights and freedoms of others.

- A regime of prior authorisation of peaceful assemblies is not necessarily an infringement of the right but this must not affect the right as such.

- The state may be required to intervene to secure conditions permitting the exercise of the freedom of assembly and this may require positive measures to be taken to enable lawful demonstrations to proceed peacefully. This involves arriving at a fair balance between the interests of those seeking to exercise the right of assembly and the general interests of the rest of the community i.e. by applying the principle of proportionality.

- The exercise of fundamental rights and freedoms is a constitutional matter *par excellence* and, as such, should be governed in principle primarily by the Constitution.

- Fundamental rights should, insofar as possible, be allowed to be exercised without regulation, except where their exercise would pose a threat to public order and where necessity would demand state intervention. A legislative basis for any interference with fundamental rights such as the right of peaceful assembly is required by the Convention. The relevant regulation, in other words, should focus on what is forbidden rather than on what is allowed: it should be clear that all that is not forbidden is permissible, and not vice-versa.

- Accordingly, it is not indispensable for a State to enact a specific law on public events and assemblies, as control of such events may be left to general policing and the rights in relation to them may be subject to the general administrative law.
- Laws specifically devoted to the right of freedom of assembly, if they are enacted, should be limited to setting out the legislative bases for permissible interferences by State authorities and regulating the system of permits without unnecessary details.

(Venice Commission Opinion no. 532/2009 on the Draft Law on Meetings, Rallies and Manifestations of Bulgaria CDL-AD(2009)035, Strasbourg, 23 June 2009 – point 6., p. 3)

3. OSCE, ODIHR and the Venice Commission jointly support the view that "blanket bans" on gatherings in locations in the immediate vicinity of buildings accommodating the highest bodies of state power (president of the State, Parliament or government) are not appropriate. These absolute bans:

"26.... pose a particular concern, since governmental institutions top the list of preferred assembly locations in almost any State, and areas surrounding them are appropriate for public speech. Instead of blanket bans, the restrictions should be imposed on a case-by-case basis and be based on the particular characteristics of each assembly. It is understandable that heightened security may often be required to prevent outbreaks of violence during assemblies at these locations, however, this a policing rather than a regulatory issue, and the relevant law enforcement bodies should be empowered to make decisions concerning the security measures to be put in place. It is therefore recommended that the blanket ban on assemblies in the vicinity of government institutions and courts be deleted, and the management of security risks be left to the relevant law enforcement bodies.

(Joint Opinion on the Amendments to the Law on the Right of Citizens to Assemble Peaceably, without Weapons, to Freely Hold Rallies and Demonstrations of the Kyrgyz Republic, Venice Commission and OSCE/ODIHR, Opinion no. 487/2008, CDL(2008)084, Strasbourg, 30 June 2008; see also the Venice Commission Opinion no. 532/2009 on the Draft Law on Meetings, Rallies and Manifestations of Bulgaria CDL-AD(2009)035, Strasbourg, 23 June 2009 – point 42., p. 9).