THE CONSTITUTIONAL COURT
OF THE REPUBLIC OF LATVIA

JUDGMENT
IN THE NAME OF THE REPUBLIC OF LATVIA
Riga, November 23, 2006
in case No. 2006-03-0106

The Republic of Latvia Constitutional Court in the body of the Chairman of the Court session Aivars Endziņš, and the justices Juris Jelāgins, Romāns Apsītis, Aija Branta, Gunārs Kūtris and Andrejs Lepse

under Section 85 of the Republic of Latvia Satversme (the Constitution), as well as Sections 16 (Items 1 and 6), 17 (Item 3 of the first Paragraph) and 28^1

on the basis of the claim by twenty deputies of the 8^{th}. Saeima (the Parliament) – Valērijs Agešins, Andrejs Aleksejevs, Aleksandrs Bartaševičs, Martijans Bekasovs, Vladimirs Buzajevs, Boriss Cilevičs, Oļegs Deņisovs, Sergejs Fjodorovs, Aleksandrs Golubovs, Jānis Jurkāns, Nikolajs Kabanovs, Andrejs Klementjevs, Vitālijs Orlovs, Jakovs Pliners, Ivans Ribakovs, Juris Sokolovskis, Igors Solovjovs, Andris Tolmačovs, Jānis Urbanovičs and Aleksejs Vidauskis

in written proceedings at October 24, 2006 Court session reviewed the matter

"On the Compliance of the Words "or other attributes" and "separate voiced slogans or speeches held", Included in Section 1, Paragraph 4 of the Law "On Meetings, Processions and Pickets"; the First Paragraph of Section 9; the Words "keepers of public order", Included in Section 12, Paragraph 3, Item 1; the Words "and pedestrians", Incorporated in the Second Paragraph of Section 13; the Second

Sentence of Section 14, Paragraph 6; the Words ”not earlier than 10 days”, Included in Section 15, Paragraph 4 as well as Section 16 and Section 18, Paragraph 4 with Section 103 of the Republic of Latvia Satversme, Section 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms as well as with Section 21 of the International Covenant on Civil and Political Rights”.

The establishing part

1. On January 16, 1997 the Saeima passed the Law ” On Meetings, Processions and Pickets” (hereinafter – the Assemblage Law). On April 10, 2003, March 18, 2004 and November 2, 2005 several Amendments were made to the Law. Sections of the Law, in which the impugned norms are included, at the present moment are in effect in the following wording:

1.1. Section 1, Paragraph 4 of the Assemblage Law determines: ” A picket is an activity during which one or more people express certain ideas or opinions by means of posters, slogans or streamers or other attributes in a public place, but there are no speeches held, neither shall there be orally expressed slogans or addresses.”

1.2. Section 9, Paragraph 1 establishes that ”it is prohibited to organize meetings and pickets closer than 50 metres from the residence of the President of State, the Saeima, the Cabinet of Ministers, buildings of the Dome (Council) of the local authorities, courts, the Public Procurator’s Offices, Police, places of imprisonment as well as the buildings of foreign diplomatic or consular offices. In order to hold meetings or pickets in the vicinity of these buildings, the relevant institutions, except diplomatic and consular offices, may designate special areas closer than 50 meters”.

1.3. Section 12, Paragraph 3 of the Law determines: ” The following papers shall be attached to the application:

1) copies of the agreements, which the organizer has concluded with keepers of public order, persons, responsible for public order and security during the activity (presenting the originals as well);

2) written agreement of the owner or manager of the place where the activity takes place, if he is not the organizer of the activity and the activity takes place on the land plot, which is his private property or on the land plots privately used by him.”

1.4. Section 13, Paragraph 2 determines: ” In any case, an application shall be submitted if the meeting, procession or picket disrupts the movement of pedestrians or traffic”.

1.5. Section 14, Paragraph 6 establishes: ”If the number of participants of the planned activity exceeds one hundred, there must be not fewer than two keepers of public order per every hundred participants; if an information has been received from a competent institution that peaceful and organized course of the activity is endangered, the relevant local authority may require the organizer to ensure presence of not fewer than four keepers of public order per every hundred participants.”

1.6. Section 15, Paragraph 4 of the Assemblage Law determines: ”After the local authority official has reviewed the application on organization of a meeting, procession or picket, it not earlier than 10 days and not later than 48 hours before the beginning of the activity shall carry out one of the following actions:

1) issue the organizer a notice, testifying that the local government has no objection against holding the activity;

2) issue the organizer the notice that the local government has no objection against holding the activity, but determining restrictions to holding of the activity;

3) issue a substantiated refusal.

1.7. In its turn Section 16 anticipates: ”An activity may not be held if the organizer has not received a notice, testifying that the local government has no objections against the activity”.

1.8. Section 18, Paragraph 4 determines: ”The organizer of the activity shall have on hand the notice issued by the local government official, testifying that the local authority has no objection against holding the activity and he/she must present this notice at the request of a local government representative or a police officer.

2. The submitter of the claim – **twenty deputies of the 8th. Saeima-** requests to declare as unconformable with the norms of higher legal force the words ”or other attributes”, included in Section 1, Paragraph 4 and ”orally voiced separate slogans or addresses”; Section 9, Paragraph 1; words ”keepers of public order”, incorporated in Section 12, Paragraph 3; words ” and pedestrians”, used in Section 13, Paragraph 2; the second sentence of Section 14, Paragraph 6; words ”not earlier than 10 days”, included in Section 15, Paragraph 4; Section 16 and Section 18, Paragraph 4 (hereinafter – the impugned norms).

It is pointed out in the claim that freedom of assembly is not absolute and in certain circumstances, when the protection of especially important public interests demands it and – if the principle of proportionality is being observed, the State experiences the right of restricting fundamental rights, guaranteed in the Satversme. The submitters hold that the right to freedom of assembly shall be considered as one of the foundations of democratic society and interpretation of restrictions to this right shall be ”narrow”. All the impugned norms more or less limit the right of a person to freedom of assembly, making realization of this right dependent on different circumstances and provisions.

2.1. The submitter of the claim holds that the words ”or other attributes”, which are incorporated into Section 1, Paragraph 4, groundlessly enlarge the definition of the picket, including in it not only the activities, during which posters, slogans or streamers are used, but also quite a lot of other activities. To their mind it allows the local authorities or police to qualify as a picket appearance of any person or a group of persons at a public place, for example, in case if the persons are dressed in one style; and thus these persons may be punished, if no application on the above activity has been submitted.

It is pointed out in the claim that by this restriction none of the legitimate aims, mentioned in Section 116 of the Republic of Latvia Satversme can be reached, as the use of different attributes at the places of assembly in itself does not endanger rights of other people, the democratic structure of the State, public safety, welfare or morals.

They hold that this restriction violates also the fundamental rights to freedom of expression, guaranteed in Section 100 of the Satversme, because these rights refer not only to the contents of information and viewpoints, but also to the form of their dissemination and propagation.

2.2. It is pointed out in the claim that the words ”as well as orally voiced separate slogans or addresses” groundlessly limit the definition of the picket. If during the announced picket its participants orally express any slogans or addresses then this activity would be considered as violation of the Assemblage Law and – in accordance with Section 23 of the Assemblage Law - the activity would be terminated. Besides, the organizer of the picket – when carrying out the duties, envisaged in Section 20, Paragraph 1 and Section 23, Paragraph 1 of the Assemblage Law - may need to exclaim special slogans or orders addressed to the participants of the picket.

The submitter of the claim holds that this restriction does not comply with any legitimate aims, mentioned in Section 116 of the Satversme.

2.3. The submitter of the claim holds that the prohibition to organize a meeting, picket or procession (hereinafter – the activity) closer than 50 meters from the buildings of certain institutions, which is included in Section 9, Paragraph 1 of the Assemblage Law complies with the aim – to protect the rights of other persons, public safety, however, it is not necessary in a democratic society and is not proportionate. The aim of the activity is expression of a viewpoint, very often – expression of protest and therefore it is necessary that the representatives of state power hear it. The submitter holds that this restriction means that organization of activities in the centre of the city of Riga, namely, in places where the representatives of state power would notice it, is almost impossible. Besides the restriction has to be applied only on days off and holidays, when the greatest part of the institutions, mentioned in Section 9, Paragraph 1 of the Assemblage Law do not work.

In the claim a viewpoint is expressed that this restriction is especially disproportionate with regard to processions, during which the potential endangerment of the rights of other persons and public safety, which is connected with distance from the buildings, mentioned in Section 9, Paragraph 1 of the Assemblage Law is of short duration. Besides, the aim of a procession is usually not connected with expression of a viewpoint on the activities of a concrete institution; therefore, the potential danger is not directed against the building of a concrete institution.

To their mind the potential danger might be averted by other measures and not by restricting the freedom of assembly. First of all, Section 9, Paragraph 2 of the Assemblage Law, which determines that during activities pedestrians and motorists must have unhindered access to state and local government institutions, when a given activity is held nearby, might be applied. Secondly, extra police force may be used for guarding the above buildings.

2.4. A viewpoint is expressed in the claim that the obligation, expressed in Section 12, Paragraph 3, Item 1 of the Assemblage Law, to attach to the application on organization of the activity copies of those agreements, which the organizer has concluded with keepers of public order, complies with the legitimate aim – protection of public safety, however, it is not necessary in a democratic society and is disproportionate. To their mind public safety is

guaranteed by other norms of the Assemblage Law, which allow controlling the identity of the keeper of order.

The Assemblage Law does not assign to the leader of an activity the duty of concluding a written agreement with every keeper of public order. Therefore in case, when agreement has been reached in another form, it is impossible to attach to the application on organization of the activity the copy of the agreement. The local government official may verify the identity of the keeper of public order, because – in accordance with Section 14, Paragraph 9, Item 1 and Paragraph 3 - name, surname, personal identification code and the place of residence of keepers of public order shall be indicated in the application. Besides, Section 14, Paragraph 5 of the Assemblage Law envisages that the organizer is entitled to change the particular keepers of public order even after the moment when the application on organization of the activity has been submitted, therefore it is possible that during the activity other persons take care of public order and not the persons, with whom a written agreement has been concluded.

2.5. The submitter of the claim holds that Section 13, Paragraph 2 of the Assemblage Law restricts application of Paragraph 1 of the same Section, namely, if the activity disrupts the movement of traffic or pedestrians, application shall be submitted also for such activities, for which – in another cases –application need not be submitted. It is admitted in the claim that this restriction complies with the legitimate aim – protection of the rights of other persons; however – to their mind – it is not necessary in a democratic society and is disproportionate.

It is pointed out in the claim that Section 13, Paragraph 1, Item 2 of the Assemblage Law, when determining that an application shall not be submitted if the picket is not organized and publicly announced, allows realization of freedom of assembly in cases, when the picket is spontaneous. To their viewpoint organization of spontaneous pickets shall be regarded as an important form of realization of freedom of assembly, in which persons react to a concrete event. When applying Section 12, Paragraph 5 as read in conjunction with Section 13, Paragraph 2, as the result arranging of a spontaneous picket is possible only if it does not disrupt the movement of the pedestrians. The submitter of the claim stresses: as the Satversme and not the Assemblage Law guarantees realization of the freedom of meeting, preference shall be given to the right of arranging spontaneous pickets, without submitting applications and not to the right of the pedestrians to choose the desirable route.

2.6. It is pointed out in the claim that the second sentence of Section 14, Paragraph 6 of the Assemblage Law, which assigns to the organizer of the activity the duty of choosing as many keepers of public order as are necessary to secure a peaceful and orderly activity, complies with the legitimate aim – public safety and protection of interests of other persons. However, to their mind it is not necessary in a democratic society and is disproportionate.

They hold that this restriction assigns to the organizer of the activity much greater responsibility for the security of the activity in case if an information on endangerment has been received. Besides, if the organizer refuses to undertake additional responsibility, the local government may issue a denial (Sections 15, Paragraphs 6 and 7 of the Assemblage Law).

The submitter of the claim expresses the viewpoint that, taking into consideration the fundamental nature of freedom of assembly, this freedom shall not be restricted even in cases, when events, connected with the respective activity, which cannot be controlled by the organizer, may endanger public safety. Besides, the State has not only the negative duty of not interfering with realization of freedom of assembly, but also a positive duty and responsibility of taking care about non-disturbance of the process of the activity. In the USA judicature it is also recognized that requirements with regard to organization of an activity shall not depend on the contents of the activity as well as on the protests of the potential opponents.

2.7. The submitter of the claim holds that the prohibition to issue a notice on agreement of organization of the activity or its denial earlier than 10 days before the beginning of the activity complies with the legitimate aim – protection of the rights of other people, the democratic structure of the State, public safety, welfare and morals; because in case, if the activity is coordinated earlier, circumstances may essentially change and a necessity may arise to revoke the concrete act and pass another administrative act. However, this restriction to their mind is not necessary in a democratic society and is disproportionate, as it noticeably worsens the situation for the person as compared with the previous legal regulation, in accordance with which the application regarding organizing the activity had to be reviewed by the local government official within three days. It is pointed out in the claim that the previous regulation allowed the person to plan his/her activities, connected with the event in due time and ensured an effective possibility to appeal against unfavourable

administrative act; in its turn the regulation in effect does not allow it even in case if the application on organization of the activity has been submitted several months before the concrete date. Such restriction to their mind negatively influences the possibility of realizing freedom of assembly; besides, it increases the risk that security measures shall not be adequately prepared.

The submitter of the claim expresses the viewpoint that the aim of this restriction might be reached by other means, namely, by using the possibility to revoke a legal administrative act in case if circumstances have changed, which is envisaged in Section 85, Paragraph 2 of the Administrative Procedure Law.

2.8. It is pointed out in the claim that the duty to receive a local authority notice, incorporated into Section 16 of the Assemblage Law and the duty of the leader of the activity to present this notice at the request of a local government representative or a police officer, which is included in Section 18, Paragraph 4 of the Law, comply with the legitimate aim – protection of the rights of other persons, the democratic structure of the State, public safety, welfare and morals; however, they are not necessary in a democratic society and are disproportionate.

The submitter of the claim expresses the viewpoint that from Section 103 of the Satversme, if the grammatical, historical, systemic and teleological methods are applied to it, follows only the fact, that precondition of realization of freedom of assembly is informing about the activity (its announcement). As the submitter of the claim points out, till the moment of the Amendments to the Assemblage Law took effect, Section 12, Paragraph 1 of the Assemblage Law determined that for organization of such activities, which comply with the requirements of the law it is not necessary to secure the permission of state or local government institutions. However, the wording in effect of Section 16 of the Assemblage Law - at variance with the Satversme regulation – envisages positive action (permission to hold the activity) of the local authority. Section 116 of the Satversme to their mind may not substitute the regulation of legal relations, included in the core of Section 103 of the Satversme (preliminary announcement of the activity) with another kind of regulation (receiving of the permit).

It is pointed out in the claim that the constitutions of several European Union Member States directly guarantee the right to freedom of assembly without any necessity to receive

permits, but in the normative acts of other states it is usually envisaged that for realization of freedom of assembly it is necessary to inform the local government of police before the activity.

3. The institution, which has passed the impugned act – **the Saeima –**requests the Constitutional Court to declare the claim as ungrounded but the impugned norms – as being in conformity with Section 103 of the Satversme, Section 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter – the Convention) and Section 21 of the International Covenant on Civil and Political Rights (hereinafter – the Covenant).

A viewpoint is expressed in the written reply that freedom of assembly mainly demands from the State non-interference in realization of this freedom. However, taking into consideration the fact that during the time of the assembly not only the participants of the activity, but also other persons may be endangered, besides public order may be disturbed, the State is assigned with a positive duty. Sections 103 and 116 of the Satversme require it and the basis for realization of this positive duty is the Assemblage Law, the aim of which is to guarantee a reasonable balance between the interests of the person and public interests as well as interests of order and security. When elaborating the Assemblage Law the legislator has been guided by considerations of suitableness in order to reach the above aim.

3.1. The Saeima does not agree with the viewpoint of the submitter of the claim that the words ”or other attributes”, which are included in Section 1, Paragraph 4 of the Assemblage Law, violate the fundamental rights, determined in Section 103 of the Satversme. It is pointed out in the written reply that interpretations of the terms, included in the Assemblage Law are relative and their aim is to generally describe the means by which a person may realize the rights, incorporated in Section 103 of the Satversme but the State – the obligations assigned to it.

The Saeima holds that the submitter of the claim narrowly and grammatically interprets Section 1, Paragraph 4 of the Assemblage Law, moreover, separates it from Section 13, Paragraph 1, Item 2, which regulates arranging of unorganised or publicly unannounced pickets. It expresses the viewpoint that groundless is the concern of the submitter of the claim that the interpretation of the picket, which is included in the Assemblage Law, might

on the basis of Section 174^3 of the Latvian Administrative Misdemeanour Code allow ungrounded administrative punishment of a person.

In the written reply is expressed the viewpoint that by incorporating the words ”or other attributes” in Section 1, Paragraph 4 of the Assemblage Law was corrected the inaccuracy, which was included in the Law at the time of elaboration of the Assemblage Law in 1996-1997. The Saeima holds that it would be illogical to understand by the term ”a picket” only an activity, where slogans, streamers or posters are used, if the same result may be reached also with other attributes. If a meeting is organized or publicly announced, then there is no essential importance of the fact in what a way ideas or viewpoints are expressed during the time of the activity. Besides, if the Amendments to Section 1, Paragraph 4 would not have been made and the activity were announced as a picket, then it would be prohibited for the participants to use other ways for expressing their ideas and viewpoints than only slogans, streamers or posters. When elaborating the Amendments the legislator has offered an unclosed interpretation, which much more complies with the aim of the Assemblage Law and allows solving different situations of life.

3.2. As concerns the words ”as well as orally voiced separate slogans or addresses”, included in Section 1, Paragraph 4 of the Assemblage Law, the Saeima points out that the submitter of the claim holds that a picket is the only form in which a person may express ideas and viewpoints, but does not recognize or does not want to recognize the fact, that there exists the right of organizing a meeting – an activity, in which speeches are commonly made and different attributes may be used. In the written reply is expressed the viewpoint that interpretations of a meeting, a procession and a picket are included in Section 1 of the Assemblage Law just for the organizers of the activities to solve the following issues: is it necessary to submit an application on arranging of the activity, what the nature of the activity is going to be, what disturbances to the public order or transport might be created etc. If the person wishes that speeches should be made, it announces a meeting, but if it wishes to express its attitude in another way – a picket or a procession may be organized. Just because the person has made a mistake and announced a picket, the norm of the law shall not be regarded as being at variance with the legal norms of higher legal force.

The Saeima draws the attention to the fact that Section 1, Paragraph 4 of the Assemblage Law ”does not order the participants of a picket to keep silent”, as they may express their attitude in another form, not only in speeches or addresses. In every concrete case it is

assessed whether the picket does not develop into a meeting. The Saeima holds that the submitter of the claim misunderstands the contents of this legal norm and concedes that it might be interpreted erroneously. However, this does not mean that the norm is at variance with the legal norms of higher legal force. In the same way one may not agree with the statement of the submitter of the claim that this legal norm does not allow the organizers of a picket and keepers of public order to carry out their duties, namely, to ensure order during the picket.

3.3. The Saeima holds that the restriction, incorporated in Section 9, Paragraph 1, if it is applied correctly, complies with the principle of proportionality. The legitimate aim of this restriction is to guarantee undisturbed activity of especially important State institutions and prevent the potential endangerment of security. To establish whether the restriction is proportionate one has to ascertain whether this legal norm may be applied in a ”flexible” way, namely, in such a way that if the necessity arises a more lenient measure may be accessible, not only a general prohibition to assemble closer than 50 metres from the respective building.

The Saeima points out that in – for example – the USA and Germany the choice of the place of the activity is restricted. By completely refusing from the principle of the forbidden zones but at the same time envisaging much more extensive freedom of action of the officials often leads to determination that its is allowed to arrange the activity not only 50 metres from certain buildings but at a bigger and unreasonable distance from the buildings. Thus in Latvia attempts were made ”to find a certain balance in this sensitive issue”. The Saeima holds that the second sentence of Section 9, Paragraph 1 of the Assemblage Law ensures this balance. The respective institution may determine the place of organization of the concrete activity, but the Law envisages the maximum distance, which may be determined. Thus according to the viewpoint of the Saeima ”the Law envisages a considerate measure and flexible solution so that – by reaching the legitimate aim - the rights of a person are not groundlessly restricted”.

3.4. The following viewpoint is expressed in the written reply: even if the legal norm, incorporated into Section 12, Paragraph 3, Item 1 of the Assemblage Law is incomplete, as it seems to the submitter of the claim; it does not mean that it is at variance with the legal norms of higher legal force. The notion and the aim of this norm is to establish whether ”the organizer of the activity is able to ensure presence of the keepers of public order and

whether he is convinced that the keeper of public order will agree to carry out the particular duties". As Section 14, Paragraph 1, Item 9 of the Assemblage Law allows to indicate keepers of public order in the application on organization of the activity, with whom no separate written agreement has been concluded, the local governments, especially the Riga City Dome, permit that keepers of public order – physical entities – may sign the application on organization of the activity to be submitted. In its turn, if the keepers of public order are legal persons or groups of persons a written agreement of upkeeping order during the activity is required.

The Saeima stresses that while performing "teleological reduction of the inaccuracy of the respective Law one has to acknowledge that the applicant has in fact been given possibilities of choice". Such has been also the will of the legislator; even though it has not been precisely expressed in the text of the Assemblage Law "this inaccuracy may be eliminated in the process of application".

3.5. The Saeima points out that Section 13, Paragraph 2, if it is correctly interpreted and applied, is not at variance with the legal norms of higher legal force.

The Saeima holds that this impugned norm does not restrict freedom of spontaneous pickets; besides it is necessary for the protection of the rights of other persons. By using reasons of logics and modelling their practical application one may conclude that Section 13, Paragraph 2 of the Assemblage Law cannot be attributed to pickets, which are not organized or publicly announced.

It is pointed out in the written reply that before a spontaneous picket it is not possible to prognosticate either the number of its participants or precise place, time and type of the activity. If such a picket takes place, the police are entitled to determine reasonable restrictions to it, so as to ensure possibilities of peaceful gathering and public order, as well as to terminate the activity, if it does not have the features of a spontaneous picket and may endanger public order. In its turn Section 13, Paragraph 2 of the Assemblage Law "requires the presence of organization element", thus " Section 13, Paragraph 1,Item 2 as well as Paragraph 2 of the same Section cannot be cumulatively applied. These norms exclude one another and do not restrict one another".

The Saeima draws the attention also to the fact that the obligation, included in this impugned norm, is not restriction. The norm assigns the duty of submitting an application on organization of the activity, but does not forbid arranging activities of the certain type. The duty to submit an application on organization of the activity arises only in cases, when the movement of both pedestrians and traffic may be disrupted. Amendments to Section 13, Paragraph 2 have been made only after several cases, when the participants of the activity had essentially endangered the security of the pedestrians and participants of the traffic.

3.6. The Saeima does not agree with the viewpoint of the submitters of the claim that disproportional is the requirement, included in the second sentence of Section 14, Paragraph 6 to ensure that on every hundred participants there are at least four keepers of public order, if an information has been received from a competent institution about the endangerment of peaceful and organized course of the activity. Such mass activities are announced comparatively rarely and the respective decision may be appealed against at the court as a restriction determined for the process of the activity. The organizer of the activity cannot ignore the necessity of guaranteeing security and irresponsibly leave it for police: the duty of participation is important. During the process of elaboration of the impugned norm viewpoints have been expressed that the police may ”secure protection from ”the outside”, but keepers of public order do it “’from the inside” and keepers of public order might ensure ”ties” with the police, whom the participants of the activity may ”regard as a hostile force” and thus preclusion of endangerment of security would be coordinated much better.

The Saeima does not contest he fact that the State has a positive duty of ensuring uninterrupted process of an activity, however, it points out that the prohibition to organize an activity in case, when it is not possible to preclude ”undesirable side effects”; determining another time, place or duration for the activity because of reasons of safety is valid if the loss, which might arise as the result of the activity, would be greater than the benefit. One may not require from the State unreasonable use of resources and force for guaranteeing security of the activity. The Saeima holds that one cannot agree with the submitter of the claim, who perceives the positive duty of the State as an end in itself, but not as a measure, which ensures the protection of vital interests.

3.7. It is pointed out in the written reply that the words ”not earlier than 10 days and ”, which are included in Section 15, Paragraph 4 of the Assemblage Law are not at variance with Section 103 of the Satversme. It stresses that the above restriction refers to adoption of

the decision and not to review of application on organization of the activity. To verify, whether the activity would not endanger public safety or order, the local government addresses the Security Police and the information, furnished by it, is based on the results of operative action,

The Saeima points out that sometimes applications on organization of activities to be held on certain dates are submitted a long time before that, but during the time situation as regards endangerment of public safety and order may certainly change. If we did not have the impugned norm then the decision on coordination of the activity might be adopted without finding out the actual circumstances but that would be at variance with the aim of coordination - to assess endangerment of public safety and order. Thus the term, determined in the impugned norm, is proportionate to the obligations, which the Law assigns to the local government – by knowing the actual circumstances to qualitatively assess and preclude endangerment of public safety and order. This term is not only useful for establishment of the endangerment but also ensures effective and valuable process of reviewing the application on organization of the activity and taking the decision on it. If in separate cases the local government uses the very last hours, envisaged by the law, for taking the decision, then it shall not be regarded as the flaw of the Law, but the issue of application, which is within the competence of the local government.

The Saeima draws the attention to the following circumstance: if the mechanism, offered by the submitter of the claim - in cases of change of actual circumstances to abrogate the administrative act on coordination of the activity – was adopted then, on the basis of Section 85, Paragraph 3 of the Administrative Procedure Law, the local government would have to compensate the losses and personal harm, which had arisen to the addressee of the administrative act as the result of abrogation of the above act. Thus the local government would be assigned with unrealisable duty - already long before the activity to envisage endangerment the activity may cause – and the financial responsibility.

3.8. The Saeima does not agree with the viewpoint of the submitter of the claim that Section 16 of the Assemblage Law is at variance with Section 103 of the Satversme. It is pointed out in the written reply that respective administratively legal relations may be regulated in three ways: freely, by announcing or by receiving a permit. The fact that Section 103 envisages ”the system of announcement”, but Section 16 of the Assemblage Law – ”the system of permits” is just the presumption of the submitter of the claim, which

has been deduced by grammatically interpreting words ”previously announced” incorporated in Section 103 of the Satversme. To the mind of the Saeima the notion and aim of Section 103 of the Satversme is the following: the State shall not protect activities, which are not peaceful and have not been previously announced. The Saeima holds that the above Section does not include a concrete type of administratively legal regulation - neither ”the announcement system” nor ”the system of permits”. Section 103 of the Satversme has been elaborated on the basis of the Assemblage Law, also on the wording of Section 16 and choice of the particular system has been left within the competence of the legislator. Section 11 of the Convention also allows subjecting freedom of meetings to the ”system of permits”.

The Saeima points out that Section 116 of the Satversme permits restriction of the rights, mentioned in Section 103 and the submitter of the claim does not contest the legitimate aim of the above restriction. The fact, that coordination of the activity takes place in the form of a permit does not mean that the local government controls, censors or sanctions the contents of the activity, because ”the permit shall be received not with regard to the viewpoints to be expressed but with regard to the specific place, type and time in which the viewpoints shall be voiced”. Thus the aim of the permit system in the context of freedom of assembly is to balance different freedoms of a person (freedom of expression, freedom to express one’s viewpoint in any form) and public interests (order, safety, rights of other persons).

The Saeima holds: if the local authority might issue only a substantiated refusal and not the notice on organization of the activity, then any control over the conformity of the process of activity with the requirements of the law would depend only on the abilities of the employees of the local governments and law enforcement institutions to react on different events during the activity. Thus the possibility that the local authority and the organizer of the activity might reach the agreement on changing the time, place and the route would be denied; thus every established shortcoming might be averted only during the time and on the place of the process of the activity; or –whenever establishing this shortcoming - the local authority should automatically forbid organization of the activity.

4. The State Human Rights Bureau (hereinafter – SHRB) in its conclusion points out that the greatest part of the impugned norms have been incorporated into the Assemblage Law by the Amendments to this Law. SHRB already during the discussion on the draft Law has objected to determination of disproportionate and additional restrictions to the freedom of assembly as well as has submitted proposals, which were partly accepted at the Saeima

Human Rights and Public Affairs Committee but were rejected at the responsible committee, namely – the Defence and Internal Affairs Committee. Even at the present moment SHRB has forwarded to the Saeima Human Rights and Public Affairs Committee motions on Amendments to the Law, which envisage to change the procedure of organization of activities, substituting the permit system with the announcement system.

SHRB points out that assemblage is one of the ways in which an individual may realize his/her freedom of expression. Both the above rights are fundamental values of a democratic state and together with freedom of association - the most vital political rights. These rights ensure that active civil society may publicly express its viewpoint as well as participate in democratic processes.

Since January 1, 2004 SHRB has received approximately 30 complaints about the restrictions to freedom of association, mainly with regard to issues ”which are topical and widely debated about in public”. When reviewing the complaints SHRB requires explanations also from the responsible officials as well as expresses conclusions to the parties and public viewpoints.

SHRB holds that the legal regulation in effect is incomplete and disproportionately restricts the rights, guaranteed in the Satversme. The most optimal solution of this situation would be to revise it or even elaborate a new law.

4.1. SHRB expresses the viewpoint that the prohibition to orally express addresses and slogans during the picket, which is included in Section 1, Paragraph 4 of the Assemblage Law is disproportionate and groundlessly narrows the understanding of the notion ”a picket”. Such wording of the Law ”lightens” separation of activities, however, it restricts freedom of expression and especially organization of spontaneous pickets. This restriction makes the rights, determined in the Satversme, ineffective and weakens the essence and effect of the picket. The right to draw attention to concrete current events is restricted therefore it is much harder to reach the aim of the picket. Slogans, in difference from speeches and addresses are a spontaneous reaction on happenings, therefore it is difficult to plan and control them.

4.2. SHRB points out that for efficient ensurance of freedom of assembly the place or organizing it is of great importance and very often persons wish just the officials to hear

their viewpoint. The restriction, which is included in Section 9, Paragraph 1 of the Assemblage Law and does not allow organizing activities nearer than 50 metres from certain buildings is disproportionate and essentially restricts the above right. The possibility that the respective officials shall hear the viewpoint –expressed for example in a picket – is diminished. Organization of processions in many places of the Riga centre is not possible in general.

SHRB expresses the viewpoint that it is not clear whether the second sentence of Section 9, Paragraph 1 of the Assemblage Law envisages for a person the right to require that an institution shall appoint for organization of an activity the place closer than 50 metres, mentioned in the first sentence of the same Paragraph. Even if a person would have such subjective rights, it is not clear how to effectively realize them. Thus one cannot hold that this norm can ensure a more lenient application of the above restriction.

4.3. SHRB holds that the requirement of Section 12, Paragraph 3, Item 1 of the Assemblage Law to attach to the application on organization of the activity copies of the agreements, which the organizer of the activity has concluded with keepers of order, is a disproportionate administratively bureaucratic restriction for realization of freedom of assembly. Protection of public safety is sufficiently guaranteed also by norms of other laws, which allow verifying the identity of the keeper of public order.

4.4. It is pointed out in the conclusion of SHRB that the words ”and the pedestrians” included in Section 13, Paragraph 2 of the Assemblage Law is unconformable with Section 103 of the Satversme. The fact, that application on organization of an activity shall be submitted not only if the activity disturbs movement of the transport, but also if it may disturb movement of the pedestrians means that as a matter of fact application shall be submitted about all activities, which may be held in a public place, as they will always disturb the movement of the pedestrians. SHRB regards that the above words of the norm express disproportionate restriction to the right of assembly, as they make organization of spontaneous pickets almost impossible, even though the Law permits it.

4.5. SHRB holds that the second sentence of Section 14, Paragraph 6 creates the obligation for the organizers of the activity to undertake responsibility for the security of the activity themselves even then, if the peaceful process of it is endangered by some external forces or aggressive spokesmen of adverse viewpoints. SHRB stresses that Section 103 of

the Satversme guarantees state protection for freedom of assembly. The fact that other organizations are planning adverse actions cannot serve as the basis for prohibition of realization of the right to peaceful assembly. The State has a positive duty to take care of the security of the activity even then if the ideas, expressed in the activity are unacceptable to a great part of the society. Thus, to the mind of SHRB it is not lawful and proportionate to assign the organizer of the activity with an additional duty and burden, namely, ensurance of the order, if other public members endanger peaceful process of the activity.

4.6. As SHRB points out, the challenged words ” not earlier than 10 days and”, included in Section 15, Paragraph 4 of the Assemblage Law as well as Section 16 and Section 18, Paragraph 4 regulate the procedure under which applications on organization of an activity shall be submitted and reviewed, therefore they shall be assessed as a complex. Receiving of a permit as the precondition for realization of the freedom of assembly has to be considered as ungrounded and disproportionate restriction of freedom of assembly. The permit system, imposed on the freedom of assembly to their mind is ”the heritage of the socialistic system” and similar procedure has been preserved only in Lithuania and Belarus. The procedure, which is based on the following principle: if the organizer of an activity by previously announcing the activity has not received a substantiated refusal it means that organization of the activity has been permitted, would to a greater extent comply with the norms of the Satversme and international legal norms.

5. The Latvian Human Rights Centre (hereinafter – LHRC) in its conclusion points out that during the process of elaboration of the Law it has had objections to many motions and several times the viewpoint of LHRC has been taken into consideration

5.1. LHRC holds that by supplementing Section 1, Paragraph 4 of the Assemblage Law with words ”or other attributes” the range of activities referring to the definition of picket was formally extended; however, the essence of the picket lies not within the attributes used but in expression of a concrete idea. LHRC expresses the viewpoint that the norm in itself is not at variance with the legal norms of higher legal force and concedes that the previous wording technically allowed to circumvent the norm of the Law and evade from the fact that a public activity during which viewpoints and ideas are expressed would be interpreted as a picket.

5.2. LHRC points out that by specifying the definition of a picket and supplementing Section 1, Paragraph 4 of the Assemblage Law with words ”as well are orally voiced

separate slogans or addresses" was narrowed the range of activities, which up to that time were in compliance with the definition of a picket. If slogans are being voiced during the picket, then – in accordance with the wording in effect – the respective activity shall be regarded as a meeting and for organization of it a notice shall be required. Even if voicing of such slogans or addresses has not been planned, but some of the participants of the picket did it then the above participant or the organizer may be administratively punished.

LHRC draws attention to the fact that the aim of the picket is to express viewpoints and ideas and freedom of speech, which includes both – the essence of expression and its display, is necessary for realization of this aim. This freedom is envisaged also in Section 19 of the Assemblage Law, which determines that freedom of speech and language shall be honoured in activities. It is not reasonable to allow expression of a viewpoint in a written form but prohibit expressing it orally. LHRC holds that in a democratic society spontaneous or momentary reaction of the residents to events or their development is an essential function of the picket, but the impugned norm prohibits this reaction. Even practically it is impossible to observe such restriction as "absolute silence". The number of administrative misdemeanour at such activities will increase and not decrease, as the legislator has wanted to achieve.

5.3. For freedom of speech, which is closely connected with freedom of assembly, to be effective it shall be ensured that "the activities are seen and heard by the target audience". In Section 9, Paragraph 1 of the Assemblage Law are specified just those state and local authority institutions about the action or attitude of which it is important for the residents to express their viewpoint. Each institution, which is mentioned in the impugned norm, taking into consideration its physical location, shall separately assess whether the distance of 50 metres from it is proportionate. Other circumstances shall also be taken into consideration. For example, ungrounded is equal regulation of the activities for working days and days off.

LHRC draws the attention also to the fact that Section 9, Paragraph 2 determines the obligation to ensure unhindered access of the pedestrians and motorists to State and local government institutions; thereby such disturbances would not be permissible even if the distance of 50 metres had not been determined.

5.4. LHRC holds that the requirement of Section 12, Paragraph 3, Item 1 of the Assemblage Law to submit the agreement concluded with the keepers of public order is

logical; if the Law envisages that the organizer of the activity is responsible for ensurance of order during the activity, an application for organization of the activity shall be submitted. However, concluding of the agreement is problematic in more aspects than one.

First of all it is additional burden, if the organizer is able to ensure order even without concluding a special contract with the keepers of order. Secondly, even if the agreement is concluded till the moment when the application on organization of an activity is submitted, then till the time when the activity takes place, it may be changed or abrogated. Thirdly, if no notice about organization of the activity has been received from the local authority, then liabilities of the organizer with the keepers of order are still valid.

Thus problematic is the usefulness of the particular requirement, as it limits the range of persons, who are able to efficiently realize their rights to peaceful gathering.

5.5. LHRC points out that the words ”and pedestrians”, which is included in Section 13, Paragraph 2 disproportionately restricts the norm of Section 13, Paragraph 1, Item 2, which determines that an application need not be submitted for spontaneous pickets. For the picket to reach its essential aim it is necessary to take place in a public place, where there are also other people. It is not possible to imagine that the picket absolutely does not disturb the movement of pedestrians. Thus in accordance with the requirements of the impugned norm application shall be submitted for any picket and such a restriction of spontaneous assemblage disproportionately violates freedom of gathering.

5.6. LHRC holds that by the second sentence of Section 14, Paragraph 6 the organizer of the activity is charged with a great burden of responsibility, even though in principle responsibility on up-keeping order is not at variance with freedom of assemblage. From the formulation of Section 103 of the Satversme follows that the democratic state itself is responsible for effective realization of freedom of gathering. If competent State institutions have information about potential disturbances of the activity, which till are not so serious that the activity has to be prohibited, then responsibility for undisturbed process of the activity shall be undertaken by the State. To the mind of the Centre it follows also from Section 3, Paragraph 3 of the Assemblage Law, which determines that the State not only ensures the possibility of gathering but also takes care about undisturbed process of the gathering.

5.7. LHRC points out that the words ” not earlier than 10 days and”, which are incorporated in Section 15, Paragraph 4 on the one hand prohibits the organizer of the activity to plan the potential changes in the process of the activity in due time, if the circumstances have changed. On the other hand, if the circumstances, which might restrict permissibility of the activity, have changed, then to anticipate them more than ten days before the activity is unreal. LHRC holds that any restriction of assemblage, which expresses itself as non-issuance of notice, shall be an exception in every case and shall be based on a concrete legitimate aim and proportionate decision; therefore the period for issuance of the notice before the planned activity, has to be individually assessed. Therefore – to the mind of the Centre – the 10-day period groundlessly restricts freedom of assembly and is not needed. If the circumstances have vitally changed then the institution, which has issued the notice is able to abrogate the previous decision.

5.8. LHRC expresses the viewpoint that Section 16 of the Assemblage Law does not comply with the norms of freedom of assembly incorporated into Section 103 of the Satversme and International Instruments binding on Latvia. The procedure under which no permit is needed would comply with Section 103 of the Satversme. Such regulation was included in Section 12, Paragraph 1 before making the respective Amendments; however, then the Law incorporated contradicting norms. By the Amendments to the Assemblage Law contradictions were averted, however, the legislator – by deleting from the Law the first Paragraph of Section 12 - has narrowed the realization possibilities of the fundamental rights enshrined in Section 103 of the Satversme and its preliminary intention as well.

It is pointed out in the conclusion of LHRC: even if one assumes that the restriction, included in the impugned norm, namely, Section 16 of the Assemblage Law, has a legitimate aim –guaranteeing public safety and public order, such a norm is not needed in a democratic society. Many states do not require any permits for organization of an activity; however, the responsible institutions may determine restrictions in case of necessity, only if they have a narrowly interpreted, legitimate and real basis. Such an interference of the state and local authority in the process of realization of freedom of assembly is much less restricting and sufficient to guarantee public safety and order.

5.9. To the viewpoint of LHRC Section 18, Paragraph 4 charges the organizer of the activity with a disproportional duty and without a legitimate aim restricts his freedom of

action when organizing peaceful meetings. If the notice has been issued then the local authority is evidently informed about the activity and its organizers. Just the local government and not the organizers of the activity shall undertake the responsibility for informing the police and consultations with the police.

The concluding part

6. Section 103 of the Satversme determines:" the State shall protect the freedom of previously announced peaceful meetings, street processions, and pickets".

As freedom of assembly is fixed in the above Section then it means that this freedom is considered as one of the fundamental rights and values of a person in the democratic society. Freedom of assembly is an essential precondition for functioning of a law-governed state.

As freedom of assembly is recognized as a constitutional value, the duty of the state power is to ensure realization of this freedom.

7. Freedom of assembly side by side with freedom of association and freedom of speech belong to the most important political rights of a person.

Section 103 of the Satversme ensures the subjective rights of a person to participate in peaceful processions, meetings and pickets and freely expresses their thoughts and viewpoints. Freedom of assembly furthers expression of political activity of a person in the state.

Freedom of assembly is a vital element of a democratic society, which ensures the public possibility to influence political processes, inter alia, also by criticizing the state power and protesting against the actions of the state. When realizing the rights, envisaged in Section 103 of the Satversme persons may together discuss significant problems, express their support to the policy implemented by the State or to censure it. Freedom of assembly ensures for persons the possibility of informing the whole society about their viewpoint or opinion.

The foreign legal experts, when assessing the regulation of the Assemblage Law, have recognized that the possibilities to effectively use the right to peaceful assembly, as has been

envisaged by Section 103 of the Satversme, allow the public members of a civil society to participate in the policy of the state and in public matters. Besides, this right together with other similar rights (for example, freedom of speech, freedom of press) becomes an instrument, which people may use to express their dissatisfaction with the fact that other fundamental rights of a person – enshrined in the Satversme – are not observed (*sk. Ziņojuma par likumu "Par gājieniem, sapulcēm un piketiem"2. lpp// lietas materiālu 3. sējuma 96.lpp; see The Report on the Law "On Processions, Meetings and Pickets", p. 2// Vol.III, p. 96 of the materials in the matter).*

8. The submitter of the claim requests to assess the compliance of the impugned norms not only with Section 103 of the Satversme but also with International legal norms, binding on Latvia i.e. – Section 11 of the Convention and Section 21 of the Covenant.

8.1. Section 11 of the Convention determines:

"1. 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.

2. 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."

In its turn Section 21 of the Covenant establishes that " the right to 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, the protection of public health or morals or the protection of the rights and freedoms of others".

8.2. The Constitutional Court has repeatedly concluded that the aim of the legislator has not been to contradistinguish the norms of fundamental rights, included in the Satversme, with the international human rights norms. The obligation to make use of international norms for interpretation of the protection of fundamental rights enshrined in the Satversme, follows from Section 89 of the Satversme, which determines that the State

shall recognize and protect fundamental human rights in accordance with this Constitution, laws and international agreements binding on Latvia, i.e. international legal norms, binding on Latvia.

It can be seen from this Section that – when adopting Chapter VIII of the Satversme ”Fundamental Human Rights” the legislator has tried to create harmony of the fundamental norms, included in the Satversme with the international human rights norms but not to contradistinguish them (*sk. Satversmes tiesas 2000. gada 30. augusta sprieduma lietā Nr. 2000-03-01 secinājumu daļas 5. punktu un Satversmes tiesas 2002. gada 17. janvāra sprieduma lietā Nr. 2001-08-01 secinājumu daļas 3. punktu;// see the Constitutional Court January 30, 2000 Judgment in case No. 2000-03-01, Item 5 of the concluding part and the Constitutional Court January 17, 2002 Judgment in case No. 2001-08-01, Item 3 of the concluding part).*

The Convention and the Covenant, as well as the practice of application of both international human rights documents influence the interpretation of included in the Satversme fundamental rights and that of the principle of a law-governed state. International human rights norms, binding on Latvia and the practice of their application in the level of constitutional rights serves as the means of interpretation for determining the contents and the volume of the fundamental rights and the principle of a law-governed state as far as it does not lead to decrease or restriction of the fundamental rights, enshrined in the Satversme (*sk. Satversmes tiesas 2005. gada 13. maija sprieduma lietā Nr. 2004-18-0106 secinājumu daļas 5. punktu;// see the Constitutional Court May 13, 2005 Judgment in case No. 2004-18-0106, Item 5 of the concluding part).*

Thus the conformity of the impugned norms with Section 11 of the Convention and Section 21 of the Covenant shall be analysed as read together with Section 103 of the Satversme.

9. The State may determine the procedure of realization as well as restrictions to the fundamental rights. Thus the State secures use of the respective fundamental right as well as protects the rights of other persons and other constitutional values.

However, arbitrary restriction of the fundamental rights shall not be permitted. They may be restricted only in cases, determined in the Satversme – if the protection of significant public interests requires it and the principle of proportionality has been observed (*sk.*

Satversmes tiesas 2006.gada 11. aprīļa sprieduma lietā Nr. 2005-24-01 8. punktu; // see the Constitutional Court April 11, 2006 Judgment in case No. 2005-24-01, Item 8).

Regardless of the specific importance of freedom of assembly, it is not absolute. Section 116 of the Satversme *expressis verbis* determines that the rights of persons set out in Section 103 of the Satversme may be subject to restrictions in circumstances provided for by law in order to protect the rights of other people, the democratic structure of the State and public safety, welfare and morals.

Thus, freedom of assembly may be restricted if the restrictions have been provided for by the laws, adopted under the certain procedure i.e. to ensure reaching of the legitimate aim and if they are proportionate with this aim.

It means that the State institutions shall as far as possible avoid introducing useless and embarrassing restrictions to freedom of assembly.

This conclusion has been formulated also in the Administrative Case Law: "One of the main aims of freedom of assembly is to freely allow persons publicly and in common express their viewpoint to the society, drawing its attention to separate problems. This is one of the most important freedoms of a person and restrictions to realization of freedom of assembly shall be determined very carefully" (*Administratīvās apgabaltiesas 2004. gada 23. augusta sprieduma lietā Nr. 143/AA751-04/4 16. punkts // Satversmes tiesas lietas Nr. 2005-18-01 materiālu 98. lpp.; The Administrative Regional Court August 23, 2004 Judgment in case No. 143/AA751-04/4, Item 16 // the Constitutional Court materials in the matter No. 2005-18-01, p. 98).*

10. The impugned norms have been incorporated into the Assemblage Law. Both – January 16, 1997 Assemblage Law as well as April 10, 2003, March 18, 2004 and November 2, 2005 Amendments to the Assemblage Law, which refer to the impugned norms have been passed and promulgated under adequate procedure.

Therefore, when assessing every separate impugned norm, it is not necessary to every time verify whether the restriction of fundamental rights, included in it, has been provided for by law, adopted under adequate procedure.

II

11. The legislator has incorporated legal definitions of the notions ”a meeting”, ”a procession” and ”a picket” in Section 1 of the Assemblage Law. They specify the notions used in Section 103 of the Satversme. However, as has been pointed out in the written reply of the Saeima, these definitions are also relative (*sk. lietas materiālu 1. sējuma 44.lpp.// see Vol.I, p. 44 of the materials in the matter).* Therefore precise understanding of the notions ”a meeting”, ”a procession” and ”a picket” may develop only in practice of application of the norms, especially in the practice of administrative courts.

Usually the notions, included in the Satversme are specified in the form of legal definitions with the aim of normative interpretation of the abstract notions so as to lighten the work of appliers of the law.

However, in certain cases it is possible that the legislator, by specifying a notion included in the Satversme in a legislative way incorporates in the definition such provisions, which on their essence restrict the fundamental rights, set out in the Satversme.

12. Section 1, Paragraph 4 of the Assemblage Law determines that ”a picket is an activity during which one or more people express certain ideas or opinions by means of posters, slogans, streamers or other attributes in a public place, but no speeches or orally voiced slogans or addresses are made”.

The words ”and other attributes ” of this norm are challenged. These words were included in the legal definition by November 2, 2005 Amendments to the Assemblage Law.

12.1. Minutes of the Saeima Legal Affairs Commission testify that initially it has been anticipated to define the notion ”a picket” in the following way: ” A picket – an activity during which people, standing in a public place, express their viewpoint, protest or demands by means of posters, slogans or streamers, but no speeches are made (*Latvijas Republikas 6. Saeimas Juridiskās komisijas 1996. gada 12. marta sēdes protocols Nr. 39 // lietas materiālu 2. sējuma 10.lpp.; March 12, 1996 Minutes No. 39 of the Republic of Latvia 6th. Saeima Legal Affairs Committee // Vol.II, p. 10 of the materials in the matter).*

Already when debating on the January 16, 1997 wording of the Assemblage Law at the Saeima Legal Affairs Committee objections to the too narrow definition of the picket were expressed.

Deputy Prime Minister Ziedonis Čevers submitted a motion to specify the definition by deleting from Section 1, Paragraph 4 of the Assemblage Law the words " standing in a public place by means of posters, slogans or streamers" and the words "demands or protest, but no speeches are made" (*lietas materiālu 2. sējuma 52.lpp. // Vol.II, p. 52 of the materials in the matter).* When substantiating this motion at the sitting of the Legal Affairs Committee the advisor to the Deputy Prime Minister Linards Muciņš pointed out that the notion "a picket" in the draft Law has been interpreted too narrowly, namely, the definition "does not include cases, when propagation of viewpoints during the picket is not expressed by means of posters, slogans or streamers, but by other means, for example, by dressing in a specific way, gluing one's mouth etc. (*Latvijas Republikas 6. Saeimas Juridiskās komisijas 1996. gada 29. maija sēdes protocols Nr. 75 // lietas materiālu 2. sējuma 28.lpp; May 29, 1996 Minutes No. 75 of the Republic of Latvia 6th. Saeima Legal Affairs Committee // Vol.II, p.28 of the materials in the matter).* However, this motion was rejected.

12.2. As the result of such the decision of the Committee up to November 2, 2005, when the Amendments to Section 1, Paragraph 4 of the Assemblage Law were adopted, all the attributes, which might be used during the picket were thoroughly mentioned, namely – posters, slogans and streamers. Taking into consideration the fact that for using other attributes there existed a theoretical possibility to punish the participants of the picket for non-observance of the Assemblage Law, the Saeima, by its November 2, 2005 Amendments to the Assemblage Law extended the definition of a picket, declining from an exhaustive explanation. Instead an "open" explanation of the notion has been included in the norm (*sk. lietas materiālu 1. sējuma 65.lpp. // see Vol.!, p. 45 of the materials in the matter).*

LHRC also holds that this Amendment extends the legal definition of a picket and shall not be regarded as a norm, which restricts the fundamental rights of persons determined in the Satversme (*sk. lietas materiālu 1. sējuma 45. lpp. // see Vol.I. p. 65 of the materials in the matter).*

Thus the words "or other attributes", which are included in Section 1, Paragraph 4 of the Assemblage Law comply with Section 103 of the Satversme.

13. The submitter of the claim has contested also the words ”as well as orally voiced slogans or addresses”, which are included in Section 1, Paragraph 4 of the Assemblage Law,

13.1. By November 2, 2005 Amendments i.e. by incorporating in Section 1, Paragraph 4 of the Assemblage Law prohibition to voice slogans and addresses during a picket the legislator has narrowed the notion of a picket as well as has restricted the rights of persons during the picket. As in this case by defining the notion ”a picket” used in Section 103 of the Satversme restriction of the right to assemble has been determined, it is necessary to assess whether such a restriction has a legitimate aim and whether the restriction is proportionate.

13.2. The draft project of the 2005 Amendments to the Assemblage Law testifies that the words ”as well as orally voiced slogans and addresses” have been included in Section 1, Paragraph 4 on the basis of the motion by the deputy Mihails Pietkevičs, which was upheld by the responsible Committee and thus the initial text was specified (*sk. lietas materiālu 3. sējuma 65. lpp. // see Vol.III, p. 65 of the materials in the matter).* When substantiating his motion, the deputy stressed at the sitting of the Defence and Internal Affairs Committee that the essence of a picket does not lie in speaking, because then it is not a picket (*sk. Saeimas Aizsardzības un iekšlietu komisijas 2005. gada 26. oktobra sēdes protokolu Nr. 252; lietas materiālu 3. sējuma 35. lpp. // see the Saeima Defence and Internal Affairs Committee Minutes No. 252 of October 26, 2005 sitting; Vol. III p. 35 of the materials in the matter).*

In the Saeima written reply has been stressed the sense of supplementing of Section 1, Paragraph 4 of the Assemblage Law, namely, to clearly dissociate a picket from another form of realization of assembly freedom – a meeting, during which speeches are made. Dissociation of the forms of realization of assembly freedom is connected with the necessity to explain to the local government officials the nature of the announced activity, as well as the fact whether during the activity sound amplification equipment will be used and what disturbances of transport movement and public safety might arise (*sk. lietas materiālu 1. sējuma 45. lpp. // see Vol. I, p. 45 of the materials in the matter).*

For the restriction of a fundamental right to be justifiable, it shall serve a legitimate aim – to protect other constitutional values (*sk. Satversmes tiesas 2005. gada 22. decembra sprieduma lietā Nr. 2005-19-01 9. punktu // see the Constitutional Court December 22, 2005*

Judgment in case No. 2005-19-01, Item 9). Restrictions to realization of freedom of assembly, inter alia also to freedom of pickets may be determined to protect the rights of other people, the democratic structure of the State, public safety, welfare and morals.

Both – the aim of the legislator when adopting the impugned Amendments to Section 1, Paragraph 4 of the Assemblage Law and the viewpoint, expressed in the Saeima written reply testify that by passing these Amendments the legislator has tried to precisely dissociate a picket from other forms of realization of assembly freedom, especially from a meeting.

13.3. The first sentence of Section 1, Paragraph 2 determines that ” a meeting is organized for the purpose of meeting with people and expressing certain ideas or opinions”. In its turn in Section 1, Paragraph 4 of the Assemblage Law four notions – ”outcries”, ”slogans”, ”addresses” and ”speeches” are used to indicate those oral forms, which are prohibited during pickets. It can be deduced that a picket differs from a meeting in the fact whether it is planned to make speeches during the activity.

The formulation ” expressing certain ideas and opinions”, used in the definition of a meeting cannot be analysed separately from another aim of a meeting, namely, ”for the purpose of meeting with people”. A meeting is such a realization form of freedom of assembly in which people meet to mutually exchange viewpoints and ideas. The sense of a meeting lies in the communication of its participants. In its turn the aim of a picket is to draw the attention of other persons, also State officials, to the idea or opinion of the participants of it. The group of participants may draw the attention of persons, who do not belong to that group, to their ideas both – by using posters, slogans, streamers or other attributes and by verbally voicing concrete information. However, oral information is externally directed, it is addressed to other persons.

Prohibition to use outcries, slogans or addresses during a picket shall be assessed separately with regard to every form of verbal communication.

13.4. Outcries and slogans are a spontaneous reaction to the event, a spontaneous expression of freedom of speech, differing from speeches and addresses, which are prepared before. In the same way by a short and terse outcry or slogan the participants of a picket may draw the attention of the surrounding people to a concrete social problem or express condemnation of developments. Thus the prohibition to use verbally expressed separate

outcries or slogans make the rights, incorporated into the Satversme, ineffective and illusory. Therefore well- grounded is the proposal of the SHRB to dissociate the prohibition to express outcries and slogans from the prohibition to make speeches (*sk. lietas materiālu 1. sējuma 76. lpp. // see Vol. I, p. 46 of the materials in the matter).*

In the Saeima written reply it is also pointed out that that the participants of a picket shall not keep absolute silence, the participants of a picket may also verbally express their attitude (*sk. lietas materiālu 1. sējuma 46. lpp. // see Vol.I, p. 46 of the materials in the matter).* To the viewpoint of the Constitutional Court just slogans are the admissible forms of realization of freedom of speech, when verbal communication is directed to drawing of attention of other persons, but not internal intercourse of the group when debating and discussing a topical problem.

One may agree with the viewpoint, expressed by the submitter of the claim that prohibition to verbally express slogans during the picket does not ensure the protection of any other constitutional values. Verbal expressing of slogans in itself does not endanger the democratic structure of the State, the rights of other persons, public safety, welfare and morals (*sk. lietas materiālu 1. sējuma 3.lpp. // see Vol.I, p. 3 of the materials in the matter*). It in its turn means, that this restriction has no legitimate aim.

Thus the words ”as well as verbally expressed separate outcries, slogans”, incorporated in Section 1, Paragraph 4 of the Assemblage Law do not comply with Section 103 of the Satversme.

14. In the Latvian language each of the notions ” a slogan”, ”an outcry” and ”an address” has its own definite contents. ”A slogan” is “an appeal, summons, in which an idea, an opinion, also a duty, political demand is expressed” (*Latviešu valodas vārdnīca. // The Latvian language dictionary // Rīga: Avots, 2006, p. 607).* In its turn ”an outcry” is ”an appeal, summons; shortly expressed main opinion, idea” (*turpat, 971 lpp. // the same source, p. 971).* In its turn ”an address” is ”a short speech, opening address, by which (somebody) addresses the listeners” (*turpat, 1134. lpp. // the same source, p. 1134).*

14.1. In Latvia freedom of assembly as a cohesive whole in difference from the greatest number of democratic states is not constitutionally protected (*sk., piemēram, Igaunijas Republikas Konstitūcijas 47. panta pirmo daļu, Lietuvas Republikas Konstitūcijas 36. pantu, Polijas Republikas Konstitūcijas 57. pantu, Vācijas Federatīvās Republikas Pamatlikuma 8.*

pantu, Itālijas Republikas Konstitūcijas 17. pantu u.c.// see Section 47, Paragraph 1 of the Republic of Estonia Constitution, Section 36 of the Republic of Lithiania Constitution, Section 57 of the Republic of Poland Constitution, Section 8 of the Federative Republic of Germany Basic Law, Section 17 of the Republic of Italy Constitution etc.). Section 97 of the draft of the Satversme II Part envisaged that the citizens shall have the right to assembly (*sk. Latvijas Satversmes sapulces V sesijas 2. sēdes 1922. gada 18 janvāra stenogrammu; see the Verbatim Report of Latvian Constitutional Assembly January 18, 1922 V session, the second sitting).* In its turn Section 103 of the Satversme envisages the protection of a specific form of freedom of assembly – meetings, processions and pickets. Therefore it is admissible that a separate legal regulation by taking into consideration its specifics is determined for realization of every form of freedom of assembly.

14.2. As making of speeches, namely, inner communication of the assembled persons, is the feature of a meeting, the legislator has well groundedly determined that in case of a picket such inner communication is inadmissible. If the persons want to communicate among themselves and discuss a topical issue, they shall announce a meeting and not a picket. A picket as a realization form of freedom of assembly has its own aims, for reaching of which making of speeches is not necessary.

In difference from ”slogans” and ”outcries” ”addresses” as means of verbal communication cannot be clearly and precisely dissociated from ”speeches”. Addresses to a great extent are a variety of speech (”a short speech”) and they are not directed to drawing of attention of the passers by, but they are more suitable for mutual exchange of viewpoints of the assembled persons. Thus, from the logic of the second sentence of Section 1, Paragraph 2 of the Assemblage Law follows that making addresses, as well as making speeches already at this moment is the feature of a meeting as the realization of the freedom of assembly. Therefore the legislator has reasonably prohibited expressing addresses during the time of a picket.

Thereby the words ”or addresses”, which are included in Section 1, Paragraph 4 of the Assemblage Law comply with Section 103 of the Satversme.

III

15. Section 16 of the Assemblage Law determines that ” An activity shall not be held if the organizer has not received a notice, testifying that the local government has no objections against the activity”. In its turn Section 18, Paragraph 4 of the Assemblage Law envisages: ”The leader of the activity shall have on hand the notice issued by a local government officially testifying that the local government has no objections against the organizing of the activity, and he/she must present this notice at the request of a local government representative or a police officer”.

The submitter of the claim contests compliance of the duty determined in these norms to receive ” a notice, testifying that the local government has no objections against the activity” with Section 103 of the Satversme.

16. For a person to be able to carry out certain activities, inter alia, also to realize the fundamental rights, incorporated into the Constitution, the State may determine both – the duty of previous announcement as well as the duty of receiving a permit from a competent institution for carrying out this or that activity (*sk.: Paine F. J. Vācijas vispārīgās administratīvās tiesības. Vācijas Administratīvā procesa likums. Rīga: Tiesu Namu Aģentūra, 2002, 143. lpp. // see: Paine F.J. General Administrative Law of Germany. Administrative Procedure Law of Germany. Riga: The Agency of Court Buildings, 2002, p. 143).*

Both – the duty of announcing beforehand about carrying out of an activity (the system of announcing) and the duty to receive a permit (system of permits) are restrictions of fundamental rights. Therefore one cannot agree with the conclusion, expressed in the case law of administrative courts that ” by a regulation about the duty to announce an activity to be held in the open the right to assembling is not restricted” (*Administratīvās apgabaltiesas 2004. gada sprieduma lietā Nr. 143/AA858-04/3 13. punkts// lietas materiālu 1. sējuma 145. lpp. ; the Administrative Regional Court 2004 Judgment in case No. 143/AA858-04/3, Item 13 // Vol. I, p. 145 of the materials in the matter).*

17. To assess whether the impugned norms comply with Section 103 of the Satversme, it is necessary to establish what system of realization of assembly freedom is envisaged in the Satversme and what system the Assemblage Law anticipates.

18. Section 103 of the Satversme determines that ”the State shall protect the freedom of previously announced peaceful meetings, street processions and pickets,” i.e. it is possible to realize freedom of assembly by previously announcing the respective activity.

In the Latvian literary language the notion ”announce” means the duty of ”officially announcing, making known (for example the beginning of a certain activity)” (*Latviešu valodas vārdnīca. Rīga : Avots 2006, 847. lpp. //The Latvian Language Dictionary. Riga: Avots, 2006, p. 847).* The duty to previously receive a permit for realization of one's fundamental rights is not included in the above notion.

Thus one may conclude that the Satversme envisages the system of announcing for realization of freedom of assembly. However, the grammatical method of interpretation is just the very first of methods of interpretation and it is not correct to be guided only by the textual sense of a legal norm (*sk. Satversmes tiesas 2005. gada 22. aprīļa lēmuma par tiesvedības izbeigšanu lietā Nr. 2004-25-03 6. punktu // see the Constitutional Court April 22, 2005 Decision on the termination of the proceedings in case No. 2004-25-03, Item 6).* Therefore it is necessary to establish the contents of the notion ”previously announced” by using other methods of interpretation as well.

19. The provision that freedom of assembly may be realized after previous announcement was included in the Latvian constitutional law already before the adoption of Chapter VIII of the Satversme in 1998.

19.1. Already in 1922 the Constitutional Assembly had planned to fix on the constitutional level the guarantees for freedom of assembly. Section 97 of the draft project of the Satversme II Part envisaged: ”The citizens have the right to organize meetings indoors or out and peacefully assemble without weapons if they previously announce about it to the relevant institution”.

When debating on the norm at the Constitutional Assembly the discussion was held about the words ”previously announcing”. The member of the Constitutional Assembly Fēlikss Cielēns proposed to delete the above words and ”introduce in Latvia such practice, such a way of convening meetings, which exists in England. In England there are provisions on meetings, namely, they may be held without any previous announcing or informing the

police or any other State institution (*Latvijas Satversmes sapulces V sesijas 2. sēdes 1922. gada 18. janvāra stenogramma // Verbatim report of the Latvian Constitutional Assembly January 18, 1922 V session, the second sitting).*

In the name of the Commission for Elaboration of the Satversme Jānis Purgals rejected the above motion of F.Cielēns, inter alia, also giving the explanation of the notion ”previously announced”. J. Purgals stressed that the Commission for Elaboration of the Satversme has considered the motion by F.Cielēns and has rejected it as ” at least for the sake of order one should know what kind of a meeting was going to take place, so that it would not disturb traffic and peace and order were ensured” (*Latvijas Satversmes sapulces V sesijas 2. sēdes 1922. gada 18. janvāra stenogramma// Verbatim report of the Latvian Constitutional Assembly January 18, 1922 V session, the second sitting).*

Thus it can be concluded that it was envisaged to determine the system of previous announcing and not the system of permits for realization of the freedom of assembly

19.2. As the Constitutional Assembly did not adopt Part II of the Satversme, the Saeima, wishing to ensure the protection of freedom of assembly passed the Law, which regulates the procedure of realization of the above freedom, in 1923 (*Likums par sapulcēm; The Law on Meetings // Valdības Vēstnesis, July 18, 1923, No. 153).*

The Law on meetings envisaged the system of announcement, but – in specific cases – the system of permits. For denoting the system of announcing the notion ”previous announcing” was used in the text of the Law, in its turn the notion ”permit”, which was used in certain norms, testifies about the existence of the system of permits.

In accordance with a remark to Section 1 of the Law on Meetings, a permit was needed for meetings and processions, organized by foreigners. In the same way a permit was needed for ”meetings in the open air held about one fourth of the kilometre from the place of the Saeima sittings during the time of the sittings (Section 4 of the Law) and for ”processions along the streets and squares” (Section 17 of the Law). In other cases the organized activity had to be previously announced, if only the Law did not determine the opposite, namely, that previous announcing or a permit are not needed (Sections 3 and 19 of the Law).

19.3. Also after the renewal of the State independence the legislator in constitutional acts and their drafts has used the notion ”previously announced”.

The first sentence of Section 46, Paragraph 1, of the 1991 Republic of Latvia draft Fundamental Law for the transitional period determined: ”The State guarantees the freedom of peaceful meetings, rallies, processions and demonstrations”. In order to avoid doubting about the contents of the notion ”previously announced” in the second sentence of Section 46, Paragraph 1 of the draft it was especially stressed: ” For organization of these activities it is not necessary to secure the permission of the State institutions” (*Latvijas Republikas Pamatlikums pārejas periodam // Diena, pielikums ”Likumi, lēmumi, oficiālie dokumenti”, 1991. gada 12. jūlijs, Nr. 26; The Republic of Latvia Fundamental Law for the Transitional Period// July 12, 1991 Supplement to the Newspaper ”Diena” No. 26 - ”The Laws, Decisions and Official Documents”).*

A similar comprehension of freedom of assembly is attested also in December 10, 1991 Constitutional Law ”The Rights and Obligations of a Person and a Citizen” (*sk.: Konstitucionālais likums ”Cilvēka un pilsoņa tiesības un pienākumi”; see: The Constitutional Law ”The Rights and Obligations of a Person and a Citizen”// Latvijas Republikas Augstākās Padomes un Valdības Ziņotājs, January 30, 1992, No. 4).* When the Draft Constituional Law was submitted to the Supreme Council, its Section 32, Paragraph 1 envisaged: ”The State guarantees freedom of previously announced peaceful meetings, rallies, processions and demonstrations. For their organizing no permits of the State institutions are necessary”. On the motion of the reporter during the second reading the second sentence of Section 32, Paragraph 1 was deleted. The reporter Kārlis Liepiņš motivated his motions in the following way: ”It is stated in the first sentence that the State guarantees, and then everything is alright. And even during the hard times several years ago no such a prohibition or permit has been asked” (*Latvijas Republikas Augstākās Padomes 1991. gada 21. novembra sēdes stenogramma // Verbatim Report of the Republic of Latvia Supreme Council November 21, 1991 sitting).* The deputies of the Supreme Council accepted the above motion, and the cited above second sentence of Section 31, Paragraph 1 was not adopted. However, this norm was rejected not because the deputies had accepted the permit system but just for the opposite reason – to the viewpoint of the deputies the words ”previously announced” clearly testified that any system of permits is excluded.

Thus in the context of freedom of assembly the notion ”previously announced” has long-standing traditions and a clearly expressed in the Latvian Constitutional Law contents.

20. In the international norms of human rights binding on Latvia, no choice in favour of the system of announcing or that of permits has been done. Neither Section 11 of the Convention nor Section 21 of the Covenant *expressis verbis* solve this issue, namely, determination of the procedure for realization of freedom of assembly is left to the competence of the Member States.

The European Committee of Human Rights, when interpreting Section 11 of the Convention has concluded that determination of the permit system in itself does not mean violation of the above Section if this system is justifiable [*see: Appl 8191/78, Rassemblement Jurassien Unité v. Switzerland, 17 DR 93 (1979)]*.

In its turn in the practice of application of the Covenant the conclusion has crystallized that the requirement to previously receive a permit does not comply with Section 21 of the Covenant. The Human Rights Committee of the United Nations Organization in its final conclusions has repeatedly pointed out to several states that the permit system unfavourably influences realization of freedom of assembly and has advised to make improvements in this sector [*sk., piemēram, Apvienoto Nāciju Organizācijas Cilvēktiesību komitejas noslēguma secinājumus par Korejas Republikas (A/47/40 (1992) 113, §§517-518), Tanzānijas (A/48/40, vol. I. (1993) 35, §§ 185, 188) un Baltkrievijas (A/53/40, vol.I. (1993) 26, §§ 145, 154) ziņojumus par Paktā paredzēto saistību izpildi // see, for example, final conclusions of the United Nations Organization on the reports of the Republic of Korea (A/47/40 (1992) 113, §§517-518), Tanzania (A/48/40, Vol.I (1993) 35, §§185, 188) and Byelorussia (A/53/40, Vol. I (1998) 26 §§ 145, 154) on execution of liabilities, established in the Covenant).*

The international legal norms binding on Latvia and the practice of their application do not testify about a mandatory duty of the State to refuse from the system of permits in realization of freedom of assembly. In its turn in Section 103 of the Satversme the choice has been made in favour of the system of announcing (*sk. šā sprieduma 19. punktu// see Item 19 of this Judgment).*

The system of permits for realization of freedom of assembly may be introduced only by making amendments to Section 103 of the Satversme. The system of announcing ensures for

a person more extensive possibilities of realization of freedom of assembly than the system of permits. In this case it can be deduced that the Satversme guarantees a more extensive protection of the fundamental right.

21. In the Assemblage Law the obligation of a person to receive a permit for freedom of assembly is not *expressis verbis* established.

The conclusion that the permit is necessary follows from the notion ” a notice testifying that the local government has no objections against the activity”, which is included in Section 16 of the Assemblage Law, as the existence of such a notice is a precondition for realization of freedom of assembly. Also the norms of Chapter III of the Assemblage Law ”Submission of Applications” testify about the system of permits being the precondition for realization of freedom of assembly.

21.1. The fact that the Assemblage Law envisages the system of permits follows also from the debates of the deputies in the Saeima.

Thus, for example, the deputy Pēteris Simsons, when debating on delivering of the deputy Arvīds Ulme for imposing of an administrative punishment, stressed: ”Section 103 of the Satversme clearly and unmistakably tells: ”The State protects the freedom of previously announced peaceful meetings, street processions and pickets””. Did Arvīds announce this procession, this activity? Yes, he announced it only then, when it turned out that the court had cancelled the prohibition to organize a procession of the gays. Thus he exceeded the determined time limit. Here arises a discrepancy between the Satversme and the law. It turns out that the law requires him to receive a permit from the local government” (*Latvijas Republikas 8. Saeimas rudens sesijas otrās sēdes 2005. gada 15. septembra stenogramma// September 15, 2005 Verbatim Report of the second sitting of the 8th. Saeima autumn session).*

Also when discussing November 2, 2005 Amendments to the Assemblage Law several Saeima deputies pointed out that the system of permits is envisaged in the Assemblage Law and it does not comply with Section 103 of the Satversme (*sk. Latvijas Republikas 8. Saeimas rudens sesijas septītās sēdes 2005. gada 13. oktobra stenogrammu// see October 13, 2005 Verbatim Report of the seventh sitting of the 8th. Saeima autumn session).*

21.2. One has to receive a notice, testifying that the local government has no objections against the organization of the activity. Receiving of this notice is a mandatory precondition for organizing the activity. It means that to organize the activity one has to receive the permit. Even though the legislator has not used the notion ” a permit”, however, the essence and legal consequences of ”the notice, testifying that the local government has no objections against organization of the activity” points out that such a notice shall be regarded as a permit.

In the Saeima written reply it is also recognized that the system of permits has been incorporated into the Assemblage Law (*sk. lietas materiālu 1. sējuma 54. lpp. // see Vol. I, p. 54 of the materials in the matter).* Such a conclusion follows also from November 2, 2005 Amendments to the Assemblage Law, when the legislator deleted the first Paragraph of Section 12, which determined: ” if meetings, processions and pickets comply with the requirements of this Law, it is not necessary to secure the permission of state or local government institutions to organize these activities”.

Thus, there is no doubt that the system of permits is incorporated into the Assemblage Law.

22. The Assemblage Law envisages the system of permits for realization of freedom of assembly. In its turn Section 103 of the Satversme anticipates that freedom of assembly shall be realized by previously announcing it, i.e., anticipates the system of announcing.

Both – the system of announcing and the system of permits is a restriction to the right of freedom of assembly. These restrictions are mutually preclusive, namely, they can neither exist side by side nor regulate realization of a fundamental right.

Usually the Constitution leaves it for the legislator to determine the contents and volume of concrete fundamental rights. In this case the fundamental rights are in effect ”according to the standards of the law” and concretisation or restriction of the contents of the fundamental rights depends on the will of the legislator (*sk. Satversmes tiesas 2006. gada 11. aprīļa sprieduma lietā No. 2005-24-01 8. punktu// see the Constitutional Court April 11, 2006 Judgment in case No. 2005-24-01, Item 8).* However, concrete restrictions to fundamental rights may be determined in the Constitution. If such a direct restriction has been incorporated in the Constitution, then the officials, applying the Satversme, may not take the

decision on additional or other restriction of the fundamental right by a general law [*sk.: Plakane I. Pamattiesību ierobežošana Satversmē; Jurista Vārds, 2003. gada 8. aprīlis, nr. 14 (272) // see: Plakane I. Restriction of Fundamental Rights in the Satversme; Name of the Lawyer, April 8, 2003,No. 14 (272)]*.

Such a direct, determined in the Constitution restriction of fundamental rights is the system of announcing concerning realization of freedom of assembly, which is established in Section 103 of the Satversme. If in Section 103 of the Satversme out of the two possible variants (system of announcement or system of permits) the system of announcing has been chosen as a restriction to freedom of assembly then the legislator may not ignore this constitutional restriction and determine restrictions of another type. In this case the legislator has the duty to concretise the constitutional restriction in the law.

Thus, the system of permits, determined in the Assemblage Law does not comply with Section 103 of the Satversme.

23. The system of permits is envisaged not only in the impugned norms, challenged by the submitter of the claim – Sections 16 and 18 (Paragraph 4) of the Assemblage Law. Sections 15 and 17 of the Assemblage Law are also closely connected with the system of permits.

As the system of permits does not comply with Section 103 of the Satversme then all the norms of the Assemblage Law, which form a unified regulation of this system shall be declared as unconformable with Section 103 of the Satversme.

23.1. Section 103 of the Satversme charges the legislator with the duty of passing such norms of the Assemblage Law, which introduce the system of announcement. The aim of this system is to determine to persons, who want to realize freedom of assembly, the duty of previously announcing about it to the responsible institutions, so that they are able to carry out the action programme for ensurance of the process of activities and protect the safety of persons.

One shall take into consideration: the system of announcement does not mean that it is prohibited for local authorities or other state institutions to interfere in realization of freedom of assembly. The legislator shall envisage a reasonable mechanism for the system of

announcement, which in certain cases allows prohibiting the announced activity or discontinuing its process.

When determining this mechanism one shall observe the presumption, recommended in the draft guidelines of the Organization for Security and Cooperation in Europe (hereinafter - OSCE), that in all cases preference shall be given to organization of the activity (*see: Draft OSCE/ODIHR Guidelines for Drafting Laws Pertaining to the Freedom of Assembly// http://www.osce/documents/odihr/2004/10/3776_en.pdf, p. 9).*

23.2. Additionally one shall take into consideration the fact that the duty of previous announcing refers only to processions and meetings. Section 103 of the Satversme has been construed in such a way that the conjunction ”as well as” separates freedom of pickets from freedom of meetings and processions.

The draft of Section 103 of the Satversme in its initial wording anticipated: ”The State shall protect the freedom of previously announced peaceful meetings, rallies and demonstrations”. The responsible Saeima Committee, when reviewing this draft determined to substitute the words ”rallies and demonstrations”, included in Section 103 of the Satversme, by the words ”processions and pickets”. In his turn the deputy Antons Seiksts after that proposed to separate the word pickets from the other forms of realization of freedom of assembly by the conjunction ”as well as”, ”so that one would not understand that every picket shall be announced” (*Latvijas Republikas Satversmes otrās daļas projekta – Par cilvēktiesībām – izstrādes komisijas 1997. gada 22. septembra sēdes protocols Nr. 17; lietas materiālu 3. sējuma 10. lpp. // September 22, 1997 Minutes No. 17 of the Commission for Elaboration of the Second Part of the Republic of Latvia Satversme – On Human Rights; Vol.III, p. 10 of the materials in the matter).*

Thus it can be deduced that Section 103 of the Satversme does not envisage the duty of previously announcing every picket. It shall be taken into consideration when introducing the system of announcement in the Assemblage Law.

IV

24. Section 15, Paragraph 4 of the Assemblage Law determines that ”after the official of the local government has reviewed the application regarding organizing a meeting,

procession or picket it shall not earlier than 10 days and not later than 48 hours before the beginning of the activity carry out one of the following actions: 1) issue a notice, which testifies that the local government has no objections against holding the activity; 2) issue a notice, which testifies that local government has no objections against holding the activity but imposes restrictions on holding the activity; 3) issues a substantiated denial."

24.1. The submitter of the claim has challenged the words "not earlier than 10 days and", which are incorporated into Section 15, Paragraph 4 of the Assemblage Law. However, from the claim follows that the aim of appealing against the above term is to achieve ensuring an efficient court control in case of denial and in case of a favourable court decision – to organize the planned activity in the time and place. For versatile consideration of this argument of the submitter of the claim, it is necessary to assess the term determined for the local government official to take the decision in Section 15, Paragraph 4 of the Assemblage Law.

The rights of persons are restricted by the term in total, as the provision that the decision shall be adopted not later than 48 hours before the planned activity does not ensure effective court protection either.

Extensive action of the local government official essentially inconveniences realization of freedom of assembly. In case of groundless denial the planned activity may not take place as the terms, established in Section 15, Paragraph 4 of the Assemblage Law makes it hard to ensure a court control in due time.

24.2. Section 17, Paragraph 2 of the Assemblage Law determines that the Administrative District Court shall review claims on the decisions by the local government official, which are envisaged in Section 15, Paragraph 4 of the Assemblage Law, within three days from the day of submission of the claim. Section 17, Paragraph 4 of the Assemblage Law determines that the Administrative District Court Judgment shall be immediately executed. .

In the case law of Administrative Courts it is reasonably concluded that the Law determines a shortened term for review of the above claims so as to ensure a due court control, namely, so that after the court decision the person would still have the possibility of organizing a meeting, procession or picket in the preferable time (*sk. Administratīvās rajona tiesas 2006. gada 20, janvāra sprieduma lietā Nr. A42231605 (A669-06/6) 6. punktu; lietas*

materiālu 1. sējuma 161. lpp. // see the Administrative District Court January 20, 2006 Judgment in case No. A42231605 (A669-06/6), Item 6; Vol.I, p. 161 of the materials in the matter).

In the Draft OSCE Guidelines it is especially stressed that just to ensure court control by allowing a person to appeal against the restrictions on its freedom of assembly, is not enough. It is necessary to ensure that the court control is timely, namely, the case shall be reviewed and the court decision announced till the time planned for a meeting, procession or picket and the persons are able to realize freedom of assembly in its preferable dimension, if the court has recognized the imposed restrictions as illegitimate (*sk./see: draft OSCE/ODIHR Guidelines for Drafting Laws Pertaining to the Freedom of Assembly // http://www.osce.org/documents/odihr/2004/10/3776_en.pdf.p.11).*

Thus conformity of the terms, determined in Section 15, Paragraph 4 of the Assemblage Law, with Section 103 of the Satversme, as read together with the first sentence of Section 92 of the Satversme, which envisages the right of a person to fair court, shall be assessed.

24.3. From the Saeima written reply follows that the respective restriction has been determined with the aim of ensuring public safety and order.

To the viewpoint of the Saeima such term is necessary so that the local government official obtains information about the fact whether organization of the activity in a certain place and time would not endanger public order or safety. If the local government official would take the decision before the term, determined in Section 15, Paragraph 4 of the Assemblage Law, then the risk might arise that till the beginning of the activity endangerment of public safety or order changes and these changes might serve as the reason for not issuing the permit (*sk. lietas materiālu 1. sējuma 52. lpp. // see Vol. I, p. 52 of the materials in the matter).*

24.4. In the Saeima written reply has been especially stressed that the term, determined in Section 15, Paragraph 4 of the Assemblage Law ensures efficient and valuable process of reviewing of the claims and taking the decision (*sk. lietas materiālu 1. sējuma 52. lpp. // see Vol.I, p. 52 of the materials in the matter).*

For the court control to be effective, the court judgment, envisaged in Section 17, Paragraph 4 of the Assemblage Law shall be taken at least 24 hours before the beginning of the planned activity. The court shall review the claim within three days from the time of receiving the claim. Additionally, some time is needed for the submitter of the claim in order to get acquainted with the unfavourable decision by the local government official and draw up the claim to the court, as well as – when necessary – to consult with lawyers.

It is possible to establish that the term, determined in Section 15, Paragraph 4, has been constructed in such a way that the right of a private person to address the court is inconvenienced. This to a great extent makes the right to an efficient protection by the court, which is included Assemblage Law - in the Satversme, illusory. Taking into consideration the time, which is necessary for the submitter of the claim to draw up and submit it, the decision by the local government official – to efficiently ensure realization of Section 17 of the shall be taken not later than four days before the beginning of the activity.

24.5. A legal norm cannot be understood without regard for its functioning, which takes place in contact of the existing rights with reality (*sk. Satversmes tiesas 2003. gada 6.oktobra sprieduma lietā Nr. 2003-08-01 secinājumu dalās 4. punktu // see the Constitutional Court October 6, 2003 Judgment in case No. 2003-08-01, Item 4 of the concluding part).* Thus it is necessary to assess application of Section 15, Paragraph 4 in practice.

Several decisions of the Riga Dome (Council) Managing Director, which reflect the practice of application of the norm, have been attached to the materials in the matter. The above practice testifies that local government officials use to take decisions even in such a way that the person has no time for submitting a claim to the court (*sk. Lietas materiālu 1. sējuma 98.- 126.lpp. // see Vol. I pp. 98 – 126 of the materials in the matter).* For example, on March 7, 2006 a person submitted an application to organize a procession on March 16, 2006. On March 14, 2006 the Riga Dome Managing Director took the decision on the denial of approval of this activity (*sk. lietas materiālu 1. sējuma 98. lpp. // see Vol. I, p. 98 of the materials in the matter).* The Administrative District Court, by observing the terms of review of the claim, determined in the Assemblage Law, took the decision on March 22, 2006, i.e., several days after the day when the person had planned to organize the procession (*sk. lietas materiālu 4. sējuma 1. lpp. // see Vol.IV, p. 1 of the materials of the matter).*

24.6. When analysing the term, determined in Section 15, Paragraph 4 of the Assemblage Law, it is possible to conclude that it allows the local government official to prohibit a person to organize an activity in the planned time not only by a substantiated denial (Item 3 of Section 15, Paragraph 4 of the Assemblage Law), but also by ungrounded denial. As the collection of a compensation for violation of fundamental rights of a person does not efficiently function in Latvia, the impugned norm allows the local governments to evade from permitting unwanted activities.

It is not possible to recognize that the term, determined in Section 15, Paragraph 4 of the Assemblage Law, has a legitimate aim. Delay of the court control and taking of decisions, unconformable with the principle of good management is neither in the interests of public order nor in the interests of public safety. The impugned norm has been formulated in such a way that it does not ensure duly and efficient court control.

Thus, the words ”not earlier than 10 days and not later than 48 hours before the beginning of the activity”, which are included in Section 15, Paragraph 4 of the Assemblage Law do not comply with Section 103 of the Satversme as read in conjunction with Section 92 of the Satversme.

V

25. Section 9, Paragraph 1 of the Assemblage Law determines: ”It is prohibited to organize meetings and pickets closer than 50 meters from the residence of the President of State, the Saeima, the Cabinet of Ministers, courts, the Public Procurator’s Offices and the buildings of foreign diplomatic or consular offices. In order to hold meetings and pickets in the vicinity of these buildings, the relevant institutions, except diplomatic and consular offices, may designate special areas closer than 50 meters”.

The submitter of the claim has contested the whole regulation, included in Section 9, Paragraph 1 of the Assemblage Law.

26. One may agree with the viewpoint, expressed in the Saeima written reply, that the aim of the restrictions, determined in Section 9, Paragraph 1 of the Assemblage Law is to guarantee undisturbed action of especially significant State institutions as well as to prevent

potential safety endangerment (*sk. lietas materiālu 1. sējuma 47. lpp. // see Vol.I, p. 47 of the materials in the matter).*

As the ensurance of undisturbed action of the offices and institutions, mentioned in Section 9, Paragraph 1 of the Assemblage Law complies also with interests of other persons as well, the determined restrictions allow simultaneous reaching of two legitimate aims, namely, protect both – the rights of other people and public safety.

27. The principle of proportionality requires observing a reasonable balance between public interests and interests of a person, if the public power restricts the rights and legitimate interests of a person.

To ascertain whether the principle of proportionality has been observed, one has to establish whether the measures, chosen by the legislator are appropriate for reaching the legitimate aim, whether there are not more adequate means for reaching this aim and whether the action of the legislator is appropriate or proportionate. If, when assessing a legal norm, it is recognized that it does not comply even with one of the above criteria, it does not comply also with the principle of proportionality and is illegitimate (*sk. Satversmes tiesas 2002. gada 19. marta sprieduma lietā Nr. 2001-12-02 secinājumu daļas 3.1. punktu // see the Constitutional Court March 19, 2002 Judgment in case No. 2001-12-02, Item 3.1. of the concluding part).*

28. The 50-metre prohibition zone has been determined around both – the state and local government buildings as well as around the buildings of foreign diplomatic or consular offices.

As such a prohibition to organize meetings, processions and pickets closer than 50 meters from foreign diplomatic and consular offices may be a State of Latvia component of international liabilities, then it is necessary to establish the contents of the State of Latvia duty to protect foreign diplomatic and consular offices.

28.1. Section 22, Paragraph 2 of the 1961 Vienna Convention on International Diplomatic Relations anticipates that the ”host state has a specific duty to undertake all the adequate measures to protect premises of the mission from any kind of breaking in or incurring losses and to avert any disturbance of peace of the mission or violation of its respect”.

The duty of similar contents of the host state is established also in 1963 Vienna Convention on International Consular Relations, namely, Section 31, Paragraph 3 of this Convention determines that ”the host state has a specific duty to undertake all the adequate measures to protect the premises of the consular office from any kind of breaking in or incurring losses and to avert any disturbance of peace of the consular office or violation of its respect”.

Latvia has ratified both Vienna Conventions therefore they as the legal norms of International Agreements are binding on Latvia.

28.2. Specific obligations of the State to realize all the necessary actions to protect the premises of foreign diplomatic and consular missions are established in both Vienna Conventions.

In the Draft Convention on Diplomatic Intercourse of the International Law Commission has been pointed out that the state in order to realize the above obligation of protection shall carry out specific activities, which require a more extensive action than the general duty of ensuring order in the state [*sk.//see: draft Articles on Diplomatic Intercourse and Immunities, With Commentaries, (1958) // Yearbook of the International Law Commission, 1958, Vol. II, p. 95, Article 20, Commentary 3]*. Identical text has been included also in Draft Convention on Consular Relations [*Draft articles on Consular Relations, with Commentaries (1961) // Yearbook of the International Law Commission, 1961, Vol. II, p. 109, Article 30, Commentary 3]*.

Reference to the obligation of ”specific protection” was included in the Vienna Convention on the proposal of the European Court of Human Rights justice Sir Gerald Fitzmaurice, in order to separate the special duty of states to protect foreign diplomatic missions from the general duty to protect foreign citizens and their property (*sk.//see: Yearbook of the International Law Commission, 1957, p. 63).*

In legal science it is recognized that the duty ”of carrying out all the adequate activities” is not an absolute obligation (*sk.//see: Denza E. Diplomatic Law. 2nd. Ed. Oxford: Clarendon Press, 1998, p. 139).* Practice of the United States of America, the United Kingdom, Australia, Netherlands and Germany testifies that these states have been able to

balance to a great extent freedom of speech and assembly of persons with the obligation of the state to protect embassies. Discussion in the International Law Commission does not testify about the will to include into the Vienna Conventions an absolute obligation of diplomatic mission protection either. The duty to protect the embassy does not mean isolating it from the expression of the public viewpoint (*sk.//see: ibid, pp.140-145).*

However, it does not mean that in concrete cases protection of diplomatic and consular missions does not assign the state with the duty of restricting freedom of assembly of persons. The recipient state may restrict organization of pickets by persons at the foreign diplomatic and consular missions, if they are too noisy or their content is too insulting (*sk.//see: ibid, p. 145).* Such a decision shall be taken by applying the legal norm.

28.3. The circumstance that the absolute obligation of protecting embassies has not been assigned by the norms of International Agreements does not mean that it does not exist. A legal international duty may arise also from the International Customary Norm (*sk. Satversmes tiesas 2004. gada 26. marta sprieduma lietā Nr. 2003-22-01 11. punktu un Satversmes tiesas 2005. gada 13. maija sprieduma lietā Nr. 2004-18-0106 8.1. – 8.2. punktu// see the Constitutional Court March 26, 2004 Judgment in case No. 2003-22-01, Item 11 and the Constitutional Court May 13, 2005 Judgment in case No. 2004-18-0106, Items 8.1 –8.2).* One shall not exclude the possibility that there exists an International Customary Legal Norm with a similar content, as the norm of an International Agreement, but with a more extensive dimension.

However, it is possible to conclude that in International Customary Law no norm, which assigns the state with the duty of fully isolating foreign diplomatic and consular missions from potential processions, meetings or pickets, has become stable.

First of all the International Court has pointed out that in both Vienna Conventions are codified International Customary Norms [*sk.//see: United States Diplomatic and Consular Staff in Tehran (United States v. Iran), Judgment // I.C.J. Reports 1980, pp. 30-31, para.63]*.

Secondly, legal science and the practice of states testify about the development of the state duty in the opposite direction, namely, in the name of human rights the embassies have to come into contact with the viewpoint, expressed by individuals. With an exception of separate cases, the states have not consistently protested against processions, meetings or

pickets in the vicinity of diplomatic and consular missions (*sk.//see; Denza E. Diplomatic Law. 2nd. ed. Oxford: Clarendon Press, 1998, pp. 139 –145).*

28.4. Thus, in the International Law it is not envisaged to determine protection of foreign diplomatic and consular missions in such an extent, which has been established in Section 9, Paragraph 1 of the Assemblage Law. The more so – analyses of international legal norms testifies that extensive rights to assemble close to foreign diplomatic and consular missions and express their viewpoint have been guaranteed.

Separate restrictions may be determined, however, including inelastic restrictions in the sector of rights shall not do it. Conclusion by foreign experts of human rights gives an example about how it is being done in other states:

”In practice places for holding pickets or meetings are restricted determining that the activity shall take place at a certain distance from the building so as to avert an attack on it. For example, numerous more or less big and extensive demonstrations, in which people protested against the USA policy in South-East Asia, have taken place at the USA embassies. In such cases the police decided to restrict the place of the demonstration, determining a certain distance from the USA Consulate, as it represented the policy against which the demonstration was directed. Such a restriction was lawful, as danger to public safety existed […] On the other hand, if just such a picket would take place close to the Hungarian Consulate it would not endanger this diplomatic mission therefore restriction of the place would not be necessary”’(*Ziņojuma par likumu ”Par gājieniem, sapulcēm un piketiem” 17.-18.lpp; lietas materiālu 3. sējuma 104.lpp. // pp. 17 – 18 of the Report on the Law ”On Meetings, Processions and Pickets”; Vol.III p. 104 of the materials in the matter).*

29. The restrictions, determined in Section 9, Paragraph 1 of the Assemblage Law are appropriate for reaching the legitimate aim. Determining zones around the buildings of State or local government institutions as well as around the buildings of foreign diplomatic and consular missions, in which it is prohibited to hold meetings, processions and pickets, it is possible to ensure undisturbed work of the above institutions as well as to preventively avert potential endangerment of public safety.

However, it is necessary to establish whether the legislator has chosen the most considerate measures for reaching the legitimate aim. Any restriction, determined by the

law, is proportionate only then if there are no other means, which would be as effective and by choosing which the fundamental rights would be restricted in a lesser degree (*sk. Satversmes tiesas 2005. gada 13. maija sprieduma lietā Nr. 2004-18-0106 secinājumu daļas 19. punktu // see the Constitutional Court May 13, 2005 Judgment in case No. 2004-18-0106, Item 19 of the concluding part).*

29.1. Inelastic restrictions, which are determined in legal norms as absolute prohibitions, very rarely are regarded as the most considerate measures. It is hard for the person, who applies the legal norms, to reasonably apply the respective norm under concrete factual circumstances.

The submitter of the claim quite reasonably points out that the determined prohibition ignores the geographical configuration of the buildings of the institutions, mentioned in Section 9, Paragraph 1 of the Assemblage Law. The extensive prohibitions in the very centre of the city essentially restricts the right of the persons to hold meetings, processions and pickets (*sk. lietas materiālu 1. sējuma 3. lpp. // see Vol. I, p. 3 of the materials in the matter).*

29.2. The necessity to determine such an extensive prohibition in Section 9, Paragraph 1 of the Assemblage Law is questionable, as more considerate measures for reaching the legitimate aim of the prohibition are expressed in the same Law.

For example, Section 9, Paragraph 2 of the Assemblage Law determines that during meetings, processions and pickets, pedestrians and motorists must have unhindered access to state and local government institutions when a given activity is held nearby. Besides, it is possible to determine a duty to persons, who organize a meeting, picket or a procession to see to it that the participants of the activity are not too noisy and do not disturb the work of the institutions.

The Experience of the European states testifies that it is necessary to terminate determination of the prohibited zones by law. Such practice is ineffective. Specially oriented legal measures and freedom of action of the police allows in a more flexible way to take care of public safety and simultaneously interfere in a lesser degree in the organized activity (*sk. Ziņojuma pa likumu "Par gājieniem, sapulcēm un piketiem" 18. lpp.; lietas materiālu 3. sējuma 104. lpp. // see p. 18 of the Report on the Law "On Meetings, Processions and Pickets"; Vol.III p. 104 of the materials in the matter).*

29.3. Analyses of international legal norms testify that the state does not have the duty of determining prohibited zones around foreign diplomatic and consular missions. The states may not prohibit holding meetings, processions and pickets at the foreign missions; only these activities shall not be too noisy and aggressive. However, even in these cases – as has been concluded earlier – this issue shall be solved on the level of application of legal norms.

If the duty of the protection of foreign missions does not require such an extensive protection, which is much more extensive than the general duty of the state to guarantee security, then the state may not determine as extensive a protection to institutions of its own. The state has the duty not only to ensure that a meeting, picket or a procession takes place, but also to see to it that freedom of speech and assembly is effective, namely – that the organized activity shall reach the target audience. In a democratic society it is especially important not to isolate state and local government institutions from the society, so that the officials shall have the possibility of finding out and feeling the attitude of the people, especially if the attitude is critical (*sk. lietas materiālu 1. sējuma 66.-67. lpp.// see Vol. I, pp. 66-67 of the materials in the matter).*

Thus it can be concluded that the most considerate measures for reaching the legitimate aim have not been determined in Section 9, Paragraph 1 of the Assemblage Law.

Therefore this norm is unconformable with the principle of proportionality and Section 103 of the Satversme.

VI

30. Section 13, Paragraph 2 of the Assemblage Law envisages: ”In any case, an application shall be submitted if the meeting, procession or picket disrupts the movement of traffic and pedestrians”.

30.1. The submitter of the claim contests the words ”and pedestrians”, which are incorporated into the norm, because he holds that such a restriction disproportionately restricts freedom of spontaneous assembly, namely, the right of persons to assemble without previous announcement in specific circumstances in order to express their viewpoint (*sk. lietas materiālu 1. sējuma 4. lpp. // see Vol. I, p. 4 of the materials in the matter).* The

submitter of the claim substantiates the above conclusion with the fact that Section 13, Paragraph 2 restricts Paragraph 1 of the same Section that enumerates which activities may take place without previous announcement.

One may agree with the viewpoint, expressed in the Saeima written reply that Section 13 of the Assemblage Law does not regulate realization of freedom of spontaneous assembling (*sk. lietas materiālu 1. sējuma 51. lpp. // see Vol.I, p. 51 of the materials in the matter).*

30.2. Under normal circumstances the Saeima requires previous announcement of the planned activity for realization of freedom of assembly. However, there may be situations, when the necessity of announcing the activity delays effective expression of public viewpoint. In such cases persons may not be prohibited to spontaneously assemble and express their viewpoint.

The Federative Republic of Germany Federal Constitutional Court has also concluded that the duty of announcement does not refer to spontaneous assembling, which may take place in a second because of some urgent reason. Section 8 of the German Federative Republic Fundamental Law, namely, the constitutional norm, which guarantees freedom of assembly, protects spontaneous assembling. Normative regulation, which is applied to previously announced activity shall not be attributed to spontaneous assembling unless the aim of the spontaneous activity cannot be reached by the same provisions (*sk.//see BverfGE 69, 315).*

30.3. Regulation of the Assemblage Law refers to freedom of assembly, at the basis of which is the system of permits. It has been already established that this system does not comply with Section 103 of the Satversme and it is necessary to incorporate the system of announcement into the Law. It is necessary that the legislator, when making amendments to the law, shall normatively regulate provisions for spontaneous assembly and elaborates specific procedure for realization of this freedom.

31. In context of both – the system of announcement and the system of permits – the words ”and pedestrians”’, which are included in Section 13, Paragraph 2, have a legitimate aim.

As the activities, connected with freedom of assembly, may disrupt the movement of other persons and endanger traffic, the State experiences the right of envisaging that in the above cases it shall be informed about the potential disturbances. Determination of such previous announcement allows the local government officials to receive information about the planned activity in due time and, if necessary, to use the needed measures for averting of the potential endangerment. Thus it is easier for the State to realize its duties in the sector of freedom of assembly, as the State shall ensure that the persons, who wish to assemble, have an access to the main streets or other public places and therefore in certain cases traffic shall be routed around other streets (*sk. Ziņojuma par likumu "Par gājieniem, sapulcēm un piketiem" 17. – 18. lpp. ; lietas materiālu 3. sējuma 99. lpp. // see pp. 17-18 of the Report on the Law "On Meetings, Processions and Pickets"; Vol. III, p. 99 of the materials in the matter).* However, for the State to cope with this duty it is first of all necessary that the persons, responsible for security, are informed in due time.

Thus, the impugned norm allows protecting the rights of other people and public safety.

32. When assessing the conformity of the restriction, included in Section 13, Paragraph 2 of the Assemblage Law, one may conclude that it is suitable for reaching of the legitimate aim. Previous announcement about potential disturbance of the movement of traffic and the pedestrians allows the local government to prepare to it and – when necessary – to carry out specific actions to guarantee both – safety of the pedestrians and the possibility of undisturbed movement and the process of the announced activity.

The necessity to previously announce such an activity can be regarded as a considerate and proportional measure, because the persons shall announce the respective activity only in case if the disturbance of movement of pedestrians is prognosticated. One may agree with the viewpoint, expressed in the Saeima written reply that in this case the legislator has not referred to the necessity of previous announcing about such activities, which might hypothetically or unessentially disturb the movement of the pedestrians. The Saeima reasonably points out that the duty of announcement sets in only in the cases, when the participants of the activity are planning to block the pavements or stand across them in such a way that the possibility of the pedestrians to move along them is essentially prevented or they are endangered as the participants of traffic (*sk. lietas materiālu 1. sējuma 51. lpp. // see Vol.I, p. 51 of the materials in the matter).*

Even in the above case the law does not envisage that the announced activity shall not take place because it disturbs the movement of the pedestrians. The fact that the persons have to announce the planned activity does not mean that because of the above reason local government officials will be able to prohibit the announced activity. The local government shall assess the furnished information and carry out reasonable activities to ensure an undisturbed freedom of assembly as well as safety of pedestrians and participants of the traffic.

In the case law of Germany it is recognized that the institutions of power shall put up with any disturbance of traffic, which it is not possible to avoid when realizing freedom of assembly. If protesting is envisaged to take place in the centre, then it is not possible to make the procession move through outskirts, so that it does not disrupt the movement of traffic. The protection of freedom of assembly shall not be given preference only in cases, when the aim of assembling is to disrupt traffic and not to express ideas. However, it does not exclude the possibility of symbolical blocking of the traffic for some minutes so as to for example protest against the pollution caused by transport (*sk. Ziņojuma par likumu "Par gājieniem, sapulcēm un piketiem" 17. –18. lpp. ; lietas materiālu 3. sējuma 104. lpp. // see pp. 17 –18 of the Report on the Law "On Meetings, Processions and Pickets"; Item III, p. 104 of the materials in the matter).* In Latvia the above conclusions shall be taken into consideration only in cases, when the planned activity might disrupt both – the movement of traffic and the pedestrians.

The words "and pedestrians", included in Section 13, Paragraph 2 of the Assemblage Law comply with the principle of proportionality.

Thus the words "and pedestrians", which are incorporated into Section 13, Paragraph 2 of the Assemblage Law comply with Section 103 of the Satversme.

VII

33. Item 1 of Section 12, Paragraph 3 of the Assemblage Law determines that copies of the agreements, which the organizer of the activity has concluded with keepers of public order - persons, who are responsible for public order and safety during the activity, shall be attached to the application (presenting the originals).

The submitter of the claim contests the duty, included in this norm of attaching copies of agreements with keepers of public order to the application.

33.1. One may agree with the viewpoint, expressed by the submitter of the claim that public safety might be the legitimate aim of the norm; namely, that on the basis of the impugned norm the local government official may preventively make certain about the fact that order shall be ensured at the activity. However, in this case it is necessary to take into consideration also other norms of the Assemblage Law, which are directed to reaching of the same aim.

Section 14, Paragraph 1, Item 9 of the Assemblage Law envisages that keepers of public order shall be included in the application. In accordance with Section 14, Paragraph 2 of the Assemblage Law information of certain contents – name, surname, personal identification code and place of residence – about the above keepers of order shall be indicated in the application. Thus requirements of Section 14, Paragraph 1, Item 9 allow achieving the same aim for reaching of which Section 12, Paragraph 3, Item 1 has been passed.

33.2. When determining restrictions to fundamental rights of a person in order to protect other constitutional values, the legislator has to choose just one – the most suitable and effective restriction. In this case the legislator has envisaged two different restrictions to reach one and the same legitimate aim – the duty to indicate keepers of public order in the application and the duty of attaching written copies of the agreements to the application. As the duty of indicating keepers of public order in the application already ensures reaching of the legitimate aim, then the additional requirement to conclude written agreements with the keepers of public order and submit their copies to the local government official has no legitimate aim.

33.3. One has to especially take into consideration that the impugned norm does not allow concluding oral agreement with the keepers of public order. If the system of permits is in effect then an incomplete application, to which are not attached all the needed documents may serve as the basis for refusal of coordinating the activity and realizing the freedom of assembly. Therefore such additional duty, which duplicates a similar duty of a person already determined in the Assemblage Law, shall be assessed as a formal hindrance, the real aim of which is to prevent announcement of the activity and give the local government official the possibility to refuse organization of the activity because of formal reasons,

namely, just because the submitted application does not comply with the requirements of the Law.

Thus, the words ”keepers of public order”, which are included In Section 12, Paragraph 3, Item 9 of the Assemblage Law do not comply with Section 103 of the Satversme.

VIII

34. The second sentence of Section 14, Paragraph 6 of the Assemblage Law envisages; ”If and information has been received from a competent institution that a peaceful and orderly process of the activity is endangered, the respective local government may require that the organizer shall ensure that there are not less than four keepers of public order on every hundred participants”.

34.1. The precondition of the additional duty, which the State may assign to the organizer, determined in the norm, is the information from the competent institution that peaceful and orderly process of the activity is endangered. Such a formulation of the norm, enables the local government to require determination of additional number of keepers of public order both – in cases, when the participants of the activity endanger peaceful and orderly process of the activity and also in cases, when the activity is endangered by third persons turning against the participants.

34.2. One may agree with the fact, mentioned in the Saeima written reply, that the duty of keepers of public order to a great extent is confined with maintaining order ”from the inside” (*sk. lietas materiālu 1. sējuma 50. lpp. // see Vol.I, p. 50 of the materials in the matter).* However, the impugned norm refers also to those cases, when peaceful and undisturbed process is endangered from the outside. Thus it is possible that after receiving the conclusion of the competent institutions local government on the basis of the above norm does not ensure extra protection and inform the police as well as other security services but requires the organizer to find more keepers of public order and avert endangerment of undisturbed process of the activity.

Such unclear and to be misconstrued formulation of the norm not only prevents reaching the legitimate aim but also potentially creates a situation, when safety of other persons and

the society may not be protected but be even more endangered. The impugned norm assigns the organizer of the activity with the duty of ensuring undisturbed process of the activity even in cases, when it is endangered by the third persons, which turn against the participants of the activity and the ideas, expressed by them.

The unclear formulation of the norm may serve as the reason for substantial endangerment of public safety, as it allows the State to put the duty of guaranteeing security of the activity on the organizer, by requiring that he/she shall invite more keepers of public order.

34.3. The notion ”protect” used in Section 103 of the Satversme requires not only non-interference of the State in realization of this right but also the protection of realization of this activity. It means that the State has the duty to ensure that public buildings, streets and squares are accessible to persons, who want to organize meetings, processions or pickets as well as to ensure that persons, who participate in such activities, are protected. From Section 103 of the Satversme follow the subjective rights of a person to require that the meeting, picket or procession, which has been announced under the procedure, established by law, shall take place and be protected also from opponents of the respective activity. Thus, one may agree with the viewpoint, expressed by LHRC that a democratic state is responsible for effective realization of freedom of assembly, determined in the Constitution (*sk. lietas materiālu 1. sējuma 68. lpp. // see Vol.I, p. 68 of the materials in the matter).*

The State, when protecting freedom of assembly may not assess concrete activities on their contents. State protection to concrete activities may not be differentiated on the basis of conformity of the ideas, expressed in the activities with the viewpoint of the State or a certain part of the society. The great importance of freedom of assembly in a democratic society is hidden in the circumstance that freedom of assembly is an effective instrument, which the minority may use for expressing its viewpoint.

As freedom of assembly usually serves for public expression of interests and viewpoints of the minority, the obligation of the state in this case is to be tolerant and not to suppress the expression of this viewpoint by the mechanisms at its disposal as long as it shall be regarded as admissible in the democratic society. The fact that the state protects expression of a viewpoint does not mean that the state holds the same viewpoint or recognizes

correctness of this viewpoint, but just means that the state protects the rights of its residents to publicly express its viewpoint and draw the attention of the society to a concrete issue.

34.4. For the protection of freedom of assembly the state is entitled to require that the persons, who want to make use of this freedom, shall participate in the protection of the organized activity. However, determination of collaboration duty shall be reasonable. If too great a responsibility before the activity, during it or even after the activity is laid on the organizer of the activity and the keepers of public order then at other time these persons will abstain from using their rights, fearing from the potential punishment and additional responsibilities (*sk. Ziņojuma par likumu "Par gājieniem, sapulcēm un piketiem" 17. –18. lpp. ; lietas materiālu 3. sējuma 102. lpp. // see pp. 17 –18 of the Report on the Law "On Meetings, Processions and Pickets"; Vol. III, p. 102 of the materials in the matter).*

The requirement to appoint extra keepers of public order in all the cases, when peaceful process of the activity is endangered, exceeds the extent of the collaboration duty of a person. As such a requirement does not guarantee public safety, but quite to the contrary provokes conflicts and potential disorder among the persons voicing different viewpoints, one shall conclude that the norm has no legitimate aim, for reaching of which the respective restriction has been determined.

Thus, the second sentence of Section 14, Paragraph 6 of the Assemblage Law does not comply with Section 103 of the Satversme.

IX

35. In accordance with Section 32, Paragraph 3 of the Constitutional Court Law legal norms, which the Constitutional Court has declared as unconformable with the legal norms of higher force, shall be regarded as null and void as of the day of publishing the Constitutional Court Judgment, unless the Constitutional Court has ruled otherwise.

35.1. As the system of permits, determined in the Assemblage Law does not comply with Section 103 of the Satversme and as the Law does not regulate the procedure of realization of freedom of spontaneous assembly the Constitutional Court holds that for elimination of the above defects a term till June 1, 2007 shall be determined.

35.2. In order not to create for persons violation of fundamental rights determined in the Satversme by application of the norms of the Assemblage Law till June 1, 2007, the institutions of State Administration and courts shall apply the above norms in accordance with Section 103 of the Satversme and international legal norms binding on Latvia.

Sections 16 and 18 become null and void at the time of announcement of the Constitutional Court Judgment. In its turn other norms of Chapter III of the Assemblage Law, which envisage the system of permits, till June 1, 2007 shall be applied by institutions of the State Administration and courts by observing provisions of Section 103 of the Satversme.

The operative part

On the basis of Sections 30 –32 of the Constitutional Court Law the Constitutional Court

hereby rules:

1. To declare words ” or other attributes” and ”or addresses”, which are incorporated into Section 1, Paragraph 4 of the Law ”On Meetings, Processions and Pickets” as well as the words ”and pedestrians”, included in Section 13, Paragraph 3 as conformable with Section 103 of the Republic of Latvia Satversme, Section 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and Section 21 of the International Covenant on Civil and Political Rights.

2. To declare the words ”as well as verbally expressed separate slogans, exclamations”, which are included in Section 1, Paragraph 4; Paragraph 1 of Section 9; the words ”keepers of public order”, which are included in Section 12, Paragraph 3, Item 1; the second sentence of Section 14, Paragraph 6 and Paragraph 4 of Section 18 of the Law ”On Meetings, Processions and Pickets” as unconformable with Section 103 of the Republic of Latvia Satversme, Section 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms as well as with Section 21 of the International Covenant on Civil and Political Rights and null and void as of the moment of publishing of the Judgment.

3. To declare the words ”not earlier than 10 days and not later than 48 hours before the beginning of the activity”, which are incorporated into Section 15, Paragraph 4 of the Law ”On Meetings, Processions and Pickets” as unconformable with

Section 103 of the Republic of Latvia Satversme if being read in conjunction with Section 92 of the Republic of Latvia Satversme and null and void from the moment of publishing of the Judgment.

4. To declare Sections 15 and 17 of the Law ”On Meetings, Processions and Pickets” as unconformable with Section 103 of the Republic of Latvia Satversme, Section 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and Section 21 of the International Covenant on Civil and Political Rights and null and void from June 1, 2007.

5. To determine that till June 1, 2007 the norms of Chapter III of the Law ”On Meetings, Processions and Pickets” shall be applied in accordance with Section 103 of the Republic of Latvia Satversme.

The Judgment is final and allowing of no appeal.

The Judgment takes effect as of the day of its publishing.

The Chairman of the Court session A.Endziņš