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Ms Ana PASTOR JULIÁN

President of the Congress of Deputies of Spain

Mr Pío GARCÍA ESCUDERO

President of the Spanish Senate

Strasbourg, 20 November 2018

Dear Presidents,

I welcome the resumption by the Congress of Deputies of the procedure of review of the 2015 Law on Citizens' Safety. I use this opportunity to express my concerns about the reported negative impact this law has had on the enjoyment of human rights, in particular the rights to freedom of expression and freedom of peaceful assembly. Therefore, I believe that it is of the utmost importance to ensure that the review eliminates provisions that have the potential to undermine human rights protection in Spain.

Hereby, I wish to share with you my views on some aspects of the Law that I find most problematic from the point of view of freedom of expression and freedom of peaceful assembly. In addition, I would also like to comment on the special provisions regarding foreigners entering Ceuta and Melilla.

Firstly, the broad and imprecise wording of the Law as a whole gives a wide margin of discretion to law enforcement forces in interpreting it and thus allows for potentially disproportionate and arbitrary limitations to the exercise of the rights to freedom of expression and freedom of peaceful assembly, as protected under the European Convention on Human Rights (ECHR). This has also resulted in sanctions being imposed on unclear grounds, as reported by the national ombudsman (*Defensor del Pueblo*). Furthermore, it has also been reported that the administrative nature of sanctions makes it difficult to appeal them. Therefore, I encourage the Parliament to ensure that the law be reviewed so as to limit possibilities for arbitrary and disproportionate application. This is all the more important as Spain lacks a strong and independent police complaints mechanism covering all law enforcement officials.

Regarding provisions which can undermine freedom of expression, I would like to single out the possibility provided under Article 36§23 to sanction -as a serious offence- the non-authorized filming of law enforcement forces. I am seriously concerned that journalists have been among those sanctioned in virtue of this provision. Moreover, I find it disturbing that according to figures provided by the Ministry of Interior, in 2017 alone, 21122 sanctions have been imposed on grounds of lack of respect of or consideration for police officers (provided for in Article 37§4 of the law). Both articles can easily be interpreted in an arbitrary manner and thus have a chilling effect on freedom of expression.

I am also informed that since the entry into force of the Law, a large number of fines, sometimes heavy, have been imposed on persons taking part in peaceful demonstrations and other public gatherings. In 2013, before the entry into force of the Law, my Office had already expressed concerns regarding the growing practice of imposing administrative sanctions on demonstrators. As highlighted in 2018 by the UN Special Representative on the rights to freedom of peaceful assembly and association, increased fines regarding the organisation of and participation in peaceful assemblies can be considered as "intrusive restrictions that exceed the criteria of necessity and proportionality."

I find it particularly problematic that sanctions can be imposed on persons convoking non-notified demonstrations. As stated in the OSCE/ODIHR-Venice Commission Guidelines on Freedom of Peaceful Assembly, it is not necessary under international human rights law for domestic legislation to require advance notification of an assembly. The lack of such a notification is not sufficient in itself to justify an infringement of the demonstrators' freedom of assembly and should therefore not be sanctioned. Furthermore, other provisions of the Law, such as the possibility of sanctioning "minor disruptions" in a demonstration or a meeting (Article 37§3), the "occupation" of public space "against the law" (Article 37§7) or resistance or disobedience to police officers (Article 36§6) can lead to disproportionate restrictions to the right to freedom of peaceful assembly. Regarding the latter article, I note with concern the very high number of sanctions imposed on this ground (13 033 in 2017), many of which have reportedly been imposed in the context of demonstrations.

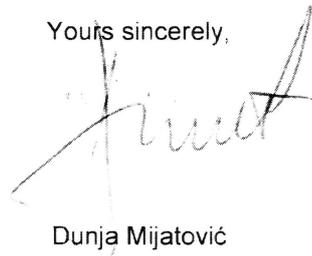
In addition, I am worried about the possibility provided by the law to impose high fines in case of public disorders occurring in the context of demonstrations carried out in the vicinity of the Congress, Senate and other elected bodies, even though they are not in sitting (Art. 36§2). I wish to stress that, in view of the symbolic nature of legislative bodies and their relevance for the democratic functioning of society, it is of particular importance to protect freedom of peaceful assembly close to such institutions.

I call on the Spanish Parliament to ensure that the review of the Law on Citizens' Safety eliminates all possibilities of disproportionate interference with the rights to freedom of expression and freedom of peaceful assembly and results in a legal framework which better protects the exercise of these rights, in line with the relevant international human rights standards. It is also essential to ensure the availability of effective remedies for persons who consider that their rights to freedom of expression and freedom of peaceful assembly have been violated.

Let me conclude by addressing the part of the Law introducing special provisions regarding foreigners entering Ceuta and Melilla. These amendments to the Aliens' Act fail to provide clear guarantees against *refoulement* and collective expulsions as well as adequate safeguards for the right of every person to seek asylum, irrespective of the way they reach Spanish territory. I therefore strongly recommend that an obligation be imposed on the authorities to provide without delay the *Guardia Civil* with clear and mandatory guidance on how to act in compliance with international human rights standards when intercepting migrants at the borders of Ceuta and Melilla. Such guidance should comprise an explicit prohibition of summary and collective expulsions and of *refoulement*. It should also highlight procedural guarantees that must be respected, including the right to be identified, to have one's international protection needs assessed, to have access to an interpreter, a lawyer and medical assistance as appropriate and to an effective remedy to challenge any violation of the ECHR of which the persons concerned could allege to be the victims.

I would be grateful if you could ensure that all members of the Congress of Deputies and of the Senate receive a copy of this letter.

Yours sincerely,



Dunja Mijatović