

Ref: CommHR/DM/sf 005-2022

Mr José Luis ÁBALOS MECO

President of the Interior Committee of the Congress of Deputies of Spain

Ms Ana Meritxell BATET LAMAÑA

President of the Congress of Deputies of Spain

Mr Ander GIL GARCÍA

President of the Senate of Spain

Strasbourg, 8 February 2022

Dear Presidents,

I am writing to you concerning the resumption by the Congress of Deputies of the review of the 2015 Law on Citizens' Safety (hereinafter: "the Law"). As Council of Europe Commissioner for Human Rights, my mandate is to foster the effective observance of human rights in all 47 member states of the Council of Europe. To this end, an important part of my work is to engage in dialogue with the governments and parliaments of member states, and to assist them in addressing possible shortcomings in their laws or practices in line with their human rights obligations.

In my [letter](#) of November 2018 to the then Presidents of the Congress of Deputies and the Senate, I already expressed my concerns about the negative impact this Law has had on the enjoyment of certain human rights in Spain. Since then, I have continued to receive worrying reports on the implementation of the Law which confirm these concerns.

I therefore welcome the current review procedure which should be used as an opportunity to bring the Law fully in line with European and international human rights standards, as also recommended by, *inter alia*, the national ombudsman (*Defensor del Pueblo*), Spanish civil society, and international human rights bodies, including my Office, as well as more recently, the Venice Commission in its [Opinion](#) of March 2021 and the UN Special Rapporteurs in their [Joint Communication](#) of April 2021. I note with interest that a number of the proposed amendments seem to address some of the human rights issues raised so far. However, I am concerned that the current review does not include changes to the provisions of the Law that have had the most harmful impact on the enjoyment of the rights to freedom of expression and freedom of peaceful assembly on the one hand, and the right to seek asylum and the prohibition of *refoulement* on the other hand.

In particular, the current reform does not fully address the concerns I expressed in 2018 about the broad and imprecise wording of the Law as a whole, which continues to give a wide margin of discretion to law enforcement in interpreting it and allows for its potential disproportionate and arbitrary application. This has continued to lead to the imposition of sanctions on unclear grounds, undermining the exercise of the rights to freedom of expression and freedom of peaceful assembly as protected by the European Convention on Human Rights. In addition, it has also been reported that the administrative nature of these sanctions continues to make it difficult to appeal them. In its 2021 Opinion, the Venice Commission recommended ensuring that judicial review of individual complaints about potential police abuses is accessible and effective. In addition, the overall accountability framework of law enforcement officials should be strengthened, including with a view to ensuring adequate oversight of the use of coercive powers and imposed sanctions, in line with the recommendations made by the Venice Commission in its 2021 Opinion and by my Office (see the 2013 [report](#) following my predecessor's visit to Spain).

Moreover, I was informed that the reform does not amend the provisions regulating sanctions on grounds such as resistance or disobedience to police officers (Article 36§6) and lack of respect or consideration for police officers (Article 37§4). Reportedly, since the adoption of the Law in 2015, a high number of sanctions have been imposed on these two grounds, many of these in the context of peaceful demonstrations and gatherings. This is alarming and I reiterate my call to Parliamentarians to review the Law in order to provide clarity and foreseeability, ensure legal certainty and avoid an arbitrary and disproportionate application that could lead to a chilling effect on the exercise of the freedoms of expression and assembly in Spain.

In addition, it appears that the organisers of demonstrations could still be sanctioned if a disturbance of public order occurs during demonstrations. This seems to be contrary to the case-law of the European Court of Human Rights and the OSCE/ODIHR-Venice Commission [Guidelines](#) on Freedom of Peaceful Assembly, which stipulate that the organisers of an assembly cannot be held responsible for the actions of other participants if they did not participate explicitly or implicitly in such acts.

As concerns the part of the Law introducing special provisions regarding non-nationals entering Ceuta and Melilla, I was also informed that, regrettably, the current reform does not introduce clear guarantees against *refoulement*, including the right to apply for asylum, or against collective expulsions, nor does it uphold the right to effective remedies, irrespective of the way persons reach Spanish territory. As already stated in 2018, I recommend that an obligation be imposed on the authorities to rapidly provide law enforcement officials 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.

Against this background, I call on Parliamentarians to take the opportunity of the review of the Citizens' Security Law to bring it in line with Spain's human rights obligations, including under the European Convention on Human Rights, and ensure that the changes to the law result in a legal framework that better protects the exercise of human rights in Spain.

I stand ready to provide my advice and I look forward to continuing a constructive dialogue with you.

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,

A handwritten signature in black ink, appearing to read 'Dunja Mijatović', with a large, stylized initial 'D'.

Dunja Mijatović