

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



CORTES GENERALES

Excma. Sra. Dunja Mijatović
Comisaria de Derechos Humanos
del Consejo de Europa

Madrid, 10 de febrero de 2022

Estimada Comisaria,

En respuesta a su carta del pasado día 8 de febrero, en la que nos expone una serie de preocupaciones en relación con la Ley de Seguridad Ciudadana actualmente vigente en España, es un honor para nosotros informarle de que, desde nuestra responsabilidad institucional como presidentes del Congreso de los Diputados y del Senado, y dentro del máximo respeto a la labor realizada por la Comisaria de Derechos Humanos del Consejo de Europa, hemos dado traslado de sus alegaciones a las respectivas Comisiones de Interior de las Cámaras, para que sean objeto de estudio y consideración por los integrantes de las mismas.

Tal y como usted expone en la carta que amablemente nos dirige, desde el firme convencimiento de la vigencia del compromiso de nuestro país con el mejor cumplimiento de las normas internacionales suscritas por España y desde la voluntad del máximo respeto a los derechos humanos, el Gobierno ha abierto un procedimiento de revisión de la Ley, que se encuentra actualmente en tramitación en la Comisión de Interior del Congreso de los Diputados, en fase de estudio de las enmiendas presentadas, que constituye el ejercicio de las competencias que la Constitución Española atribuye a las Cortes Generales en cuanto representantes de la soberanía nacional. Estamos convencidos de que en el curso del debate podrán ser tenidas en cuenta y valoradas convenientemente las reflexiones realizadas por el Comisario de Derechos Humanos del Consejo de Europa en su informe de 2013, por la Comisión de Venecia en su dictamen de marzo de 2021 y los Relatores especiales de Naciones Unidas en su Comunicación conjunta de abril de 2021, así como por el Defensor del Pueblo español y la sociedad civil española. Como usted señala, se trata de un proceso de revisión profundo que constituye una oportunidad para valorar la adecuación de la Ley a las recomendaciones recibidas desde distintas instancias internacionales y nacionales, y que será seguido con mucho interés desde las presidencias de nuestras respectivas Cámaras parlamentarias.



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Por ello, es de nuestro mutuo interés el mantenimiento de un diálogo abierto con el Consejo de Europa, y quedamos a su entera disposición para cualquier aclaración que precise en el futuro, por el cauce que estime más conveniente, dentro del respeto a nuestra posición institucional.

Sin más, esperando poder saludarle personalmente de nuevo en una futura ocasión, aprovechamos la ocasión para trasladarle el testimonio de nuestra mayor estima y consideración por la labor que realiza su institución.

Atentamente,

Meritxell Batet Lamaña
Presidenta del Congreso de los Diputados

Ander Gil García
Presidente del Senado



CORTES GENERALES

Rt. Hon. Dunja Mijatović
Commissioner for Human Rights
Council of Europe

Madrid, 10 February, 2022

Dear Commissioner,

In reply to your letter dated last February 8, whereby you convey several concerns regarding the Law on Citizens' Safety currently in force in Spain, it is an honour for us to inform you that, pursuant to our institutional responsibility as Speakers of the Congress of Deputies and of the Senate, and within the full respect for the work conducted by the Human Rights Commissioner of the Council of Europe, we have conveyed your remarks to the Home Affairs Committees of both Chambers, so that they can be duly considered and analyzed by their members.

As you explain in your kind letter, in accordance with the full compliance of our country's commitment with the best observance of the international standards subscribed by Spain and absolute respect for human rights, the Government has opened a review procedure for this Law, which is currently under consideration by the Home Affairs Committee of the Congress of Deputies, being tabled amendments considered at this stage, according to the competences entrusted by the Spanish Constitution to the *Cortes Generales* as representative of national sovereignty. We are convinced that the reflections made by the Human Rights Commissioner of the Council of Europe in his report of 2013, those of the Venice Commission in its opinion of March 2021, those of the UN Special Rapporteurs in their Joint Communication of April 2021, as well as those of the Spanish Ombudsperson and civil society, shall be duly taken into account and assessed within this discussion. As you point out, this is an in-depth review process which offers an opportunity to assess this Law's adequacy to the recommendations made by several international and national bodies, and which shall be followed with the greatest interest by the Presidencies of our respective parliamentary Chambers.

Thus, it is in our mutual interest to hold an open dialogue with the Council of Europe and therefore we remain at your absolute disposal for any clarification you may need in the future, through the channel you find most convenient and within the respect for our institutional position.



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Hoping to greet you in person again soon, let us avail of this occasion to convey the expression of our highest consideration and esteem for the task performed by your institution.

Cordially yours,

Meritxell Batet Lamaña
Speaker of the Congress of Deputies

Ander Gil García
Speaker of the Senate