



Mr. Luis Aznar Fernández  
Spokesperson Popular Group (*Grupo Popular*)  
Commission of the Interior  
Senate

Dear Sir,

The undersigned organizations are writing to urge you and your parliamentary group to vote against the draft Law on Public Security (*Ley Orgánica de Seguridad Ciudadana*). Should the proposed law be passed, it will create undue restrictions to the rights of freedom of assembly and freedom of expression, and it will fail to implement necessary safeguards against the use of ethnic profiling by police officers.

### **Undue restrictions to freedom of assembly**

We are concerned that the public space will no longer be a space for political participation. This is in breach of international human rights standards<sup>1</sup>. Should the draft law be approved, it will impose fines to different types of peaceful demonstrations, such as the “occupation of any property, house, or building” (article 37.7), or even the “demonstrations in front of the headquarters of the Congress of Deputies, the Senate and the legislative assemblies of the autonomous communities” (article 36.2), which, according to the UN Special Rapporteur on

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<sup>1</sup> See OSCE – ODHIR, Guidelines on Freedom of Peaceful Assembly and Venice Commission, 2012 second edition, Section A.3.2.

freedom of peaceful assembly constitutes a disproportionate restriction to freedom of assembly<sup>2</sup>.

Another extremely worrying aspect of the draft law is that it provides for the imposition of fines in cases of spontaneous peaceful protest, which is contrary to applicable international human rights standards<sup>3</sup>. Articles 37.1 and 35.1 of the draft law allow fines in cases where there has not been a formal notification to the authorities.

The right to freedom of assembly can only be restricted in specific cases, for example, involving danger or violence<sup>4</sup>. Thus, the above-mentioned infractions are unjustified. Furthermore, a new infraction included in article 37.3, imposes a fine for the “failure to comply with the restrictions to pedestrian circulation or the itinerary of a public event, assembly or demonstration, if minor disturbances are provoked”. If clear and serious danger for persons or goods is nonexistent, then the limitation of a fundamental right such as the freedom of assembly is not justified.

The UN Special Rapporteur on freedom of peaceful assembly has expressed deep concern about the proposed law and the disproportionate and excessive restrictions to the right to peaceful assembly and has called upon the Spanish authorities to ensure that any restrictions to the free exercise of the right to freedom of peaceful assembly are in compliance with obligations under international human rights law<sup>5</sup>.

### **Disproportionate limitations to freedom of expression**

The proposed law would also introduce excessive and unjustified restrictions to the right to freedom of expression. The draft law, if approved, will penalize the “unauthorized use of images or personal or professional data of the authorities or law enforcement officers” (article 36.26), which, in addition to constituting a breach of freedom of expression, leads to the impunity of the police. These images and video recordings, however, are in many cases the only evidence available to denounce police abuses in demonstrations. The draft law also criminalizes the “lack of regard for law enforcement officers” (article 37.4), which could lead to the imposition of fines for expressing critical opinions regarding police activities<sup>6</sup>.

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<sup>2</sup> See Report of the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association to the Human Rights Council, Doc. ONU A/HRC/23/39, 24th April 2013, parr. 66.

<sup>3</sup> See OSCE – ODHIR, Guidelines on Freedom of Peaceful Assembly and Venice Commission, *op. cit.*, parr. 118.

<sup>4</sup> See, *inter alia*, Judgment of the European Court of Human Rights in the Case *Oya Ataman v. Turkey*, Application 74552/01, 5 December 2006, parr. 41.

<sup>5</sup> See Report of the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, observations on communications transmitted to governments and replies received, A/HRC/26/29/Add.1, June 2014, parrs. 418-420.

<sup>6</sup> See judgment of the European Court of Human Rights, case *Thorgeir Thorgeirsson v. Island*, application 13778/88, 25 June 1992, parr. 66: the Court established that the insults directed to police officers constitute a legitimate exercise of freedom of expression.

## **Lack of safeguards against ethnic profiling**

Although the proposed law introduces an express prohibition of discrimination in police stops and searches (articles 16.1 and 20.3), it does not implement any of the measures to prevent ethnic profiling recommended by international human rights bodies. First, the draft law does not establish a concrete definition and prohibition of bias based profiling police activities<sup>7</sup>, even though it is a pervasive problem in Spain<sup>8</sup>. Second, the draft law does not establish clear and concrete guidelines, such as the existence of a real and reasonable suspicion, on the use of police stops and searches<sup>9</sup>, nor other measures to document stops and prevent police discrimination (stop forms)<sup>10</sup>. Finally, the draft law does not envisage the establishment of an independent oversight and complaints mechanism to control police activity, even though several human rights institutions have recommended such a body<sup>11</sup>.

For all these reasons, we urge you and the popular parliamentary group to vote against the proposed draft law on Public Security.

Best regards,

Rights International Spain

The Association for the Defense of Human Rights in Romania – the Helsinki Committee

Polish Helsinki Foundation for Human Rights

Centre for Peace Studies (Croatia)

Italian Coalition on Civil Liberties and Rights (CILD)

The League of Human Rights (LIGA; Czech Republic)

Bulgarian Helsinki Committee (BCH)

Belgian League of Human Rights

Associazione Antigone (Italy)

Human Rights Monitoring Institute (Lithuania)

Civil Rights Defenders (Sweden)

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<sup>7</sup> Many international bodies have urged Spain to establish a clear legal standard against ethnic profiling, such as the European Commission against Racism and Intolerance (ECRI) and the UN Special Rapporteur on Racism or the UN CERD Committee.

<sup>8</sup> Several institutions have noted the pervasive problem of the use of ethnic profiling by Spanish police officers. See, *inter alia*, the Spanish Ombudsperson (*Defensora del Pueblo*), 2013 Annual Report, pages 225 and 226; UN Special Rapporteur on Racism, 2013 Visit to Spain Report (Doc. A/HRC/23/56/Add.2), par. 51 and 52, and CoE Committee of Ministers, CM/ResCMN(2013)4, 10<sup>th</sup> July 2013.

<sup>9</sup> See Judgment of the European Court of Human Rights, case *Gusinskiy v. Russia*, Application 70276/01, 19 May 2004, par. 54: “the requirement that the suspicion must be based on reasonable grounds forms an essential part of the safeguard against arbitrary arrest and detention”.

<sup>10</sup> See UN Special Rapporteur on Racism, 2013 Visit to Spain Report (Doc. A/HRC/23/56/Add.2), par. 53.

<sup>11</sup> The UN Special Rapporteur on Racism, the Spanish Ombudsperson (*Defensora del Pueblo*) and the CoE Human Rights Council –*inter alia*- have urged Spain to establish an independent oversight mechanism to monitor police activities.