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EURO-MEDITERRANEAN HUMAN RIGHTS NETWORK
RÉSEAU EURO-MÉDITERRANÉEN DES DROITS DE L'HOMME
الشبكة الأوروبية - المتوسطية لحقوق الإنسان

SODEPAU



Asociación Pro Derechos Humanos
de España



Mr Frans Timmermans

First Vice-President of the European Commission, EU Commissioner in charge of Better Regulation, Interinstitutional Relations, the Rule of Law and the Charter of Fundamental Rights

Mr Dimitris Avramopoulos

EU Commissioner in charge of Migration, Home Affairs and Citizenship

Ms Věra Jourová

EU Commissioner in charge of Justice, Consumers and Gender Equality

12 February 2015

Re: Spain's Basic Law for the Protection of Public Security, a threat to the rights of assembly and asylum

Dear Vice-President,
Dear Commissioners,

The undersigned organisations are writing to you to express their grave concern over the adoption of the **Basic Law for the Protection of Public Security** (Ley Orgánica para la Protección de la Seguridad Ciudadana) by the plenary of the Congress of Deputies on 11 December 2014. This law, currently awaiting final approval in the Senate prior to its final review by the Congress of Deputies, would introduce unnecessary and disproportionate restrictions on the right to peaceful assembly in Spain and would legalise the practice of summary returns to Morocco from Spain's enclaves in North Africa.

The bill, also called the "gag law," was adopted despite vigorous rejection by all the opposition parties and civil society organisations, which denounced the direct threat that the law poses to the right to peaceful assembly, and despite the opposition of 82% of the Spanish public opinion, according to recent polls. It is part of a series of other restrictive measures, such as the reform of the Penal Code and the Free Legal Assistance Act, aiming at limiting the exercise of the **right to peaceful assembly in Spain**.

The Basic Law for the Protection of Public Security introduces new offences and administrative sanctions, some of which are very severe, targeting actions related to social protests. For example, fines of up to €600 can be imposed on individuals for organising public meetings and demonstrations without prior notification (Article 37.1), making spontaneous gatherings impossible regardless of their peaceful nature. Peaceful assemblies in the vicinity of the Congress, the Senate or the legislative assemblies of the Autonomous Regions will be considered as a “serious offence” punishable by a fine of up to €30,000 should they seriously disturb public order (Article 36.2). International human rights law allows for limitations to the right to peaceful assembly to ensure public order but any such restrictions must meet a strict test of necessity and proportionality. Meetings or demonstrations not previously declared in facilities where basic community services are provided, including nuclear power plants, transport infrastructures such as airports, train stations and ports, and telecommunications infrastructures could be fined up to €600,000 (Article 35.1).

Spain’s new public security law also provides for fines of up to €30,000 for disseminating photographs of police officers and state security bodies that are deemed to endanger them or the success of their operations (Article 36.26). This could hinder the documentation and reporting of abuses committed by law enforcement personnel and reinforce the climate of impunity. Disobeying and resisting authorities, as well as refusing to disband meetings and demonstrations may also be fined up to €30,000 (Articles 36.6 and 36.7). Showing disrespect for police officers could be fined up to €600 (Article 37.4).

This new law comes in response to the growing wave of protests demanding direct citizen participation in public affairs and involvement in decisions taken in response to the economic and financial crisis that has gripped the country since 2008. Under the pretext of improving public safety, the law aims at dissuading citizens from expressing publicly their concerns and muzzling criticism by criminalising new forms of collective action and expression that have developed in recent years, including '*escraches*' (“demonstrations aiming at public denunciations”), sit-ins, “occupying” public spaces, peaceful “surroundings” of parliaments and “concerts of pots and pans.”

Our organisations are also deeply concerned about an amendment to the new law presented at the last minute by the government that would modify Organic Law 4/2000 on the rights and freedoms of foreigners in Spain and their integration (Additional Disposition 10). This amendment would legalise the practice of **summary returns** resorted to in Ceuta and Melilla, whereby migrants who manage to cross the Spanish-Moroccan border will be immediately sent back. This new provision significantly restricts the right to seek asylum and violates the principle of *non-refoulement* and the prohibition of collective expulsions. It exposes migrants to serious risk of torture and ill-treatment as it would *de facto* deny them the possibility of filing a complaint in case of abuses perpetrated by law enforcement personnel.

In view of the above, several announced provisions of the Basic Law for the Protection of Public Security would not be compatible with Articles 13 and 21 of the Spanish Constitution, European Union law, including the EU Charter of Fundamental Rights, and international human rights law. This includes the Convention relating to the Status of Refugees of 1951, the International Covenant on Civil and Political Rights, Articles 12.1, 18 and 19 of the Charter of Fundamental Rights of the European Union, Article 3 and 11 of the European Convention on Human Rights and Article 4 of its Protocol No 4.

Several actors of the international community have already expressed concerns about Spain’s new public security law and the impact it could have on the rights to peaceful assembly and asylum. In his last report to the 26th regular session of the UN Human Rights Council in June 2014, the UN Special Rapporteur on the

rights to freedom of peaceful assembly and association, Mr Maina Kiai, considered that both the Basic Law for the Protection of Public Security and the reform of the Penal Code “point to a violation of the very essence of the right to demonstrate by criminalizing a wide range of behaviours inherent to the exercise of this fundamental right, causing a major limitation of the exercise thereof.”¹ The Council of Europe’s Commissioner for Human Rights, Mr Nils Muiznieks, has also emphasized the threat that the law poses for the exercise of the right to peaceful assembly and has called for removal of the prior authorisation requirement, the classification of demonstrations around Congress or the regional assemblies as serious offences and the prohibition of recording images of law enforcement personnel in the exercise of their duties from the final version. In an article published on Human Rights Day, the Commissioner also noted that the proposal to legalise automatic and collective expulsions of migrants was “unjust and illegal” under international law.²

During Spain’s second Universal Periodic Review that took place in January 2015, several States including EU Member States called on the Spanish government to ensure the full enjoyment of the right to peaceful assembly and access to effective asylum procedures and refrain from adopting any laws that would limit the exercise of these rights. On 24 October 2014, the then-Commissioner for Home Affairs Cecilia Malmström addressed a letter to Spain’s Interior Minister Jorge Fernández Díaz, expressing concern over this proposed amendment to legalise summary expulsions as well as the use of excessive force at the enclave borders.³

In line with these previous initiatives, we urge you to call on the Spanish government to modify the bill in accordance with international and European standards concerning the rights to assembly and asylum, and take any other initiative to prevent the adoption of a law that would breach such standards.

Thank you for your consideration.

ACSUR-Las Segovias - Asociación para la Cooperación en el Sur
Asociación Pro Derechos Humanos de Andalucía (APDHA)
Asociación Pro Derechos Humanos de España (APDHE)
Euro-Mediterranean Human Rights Network (EMHRN)
European Association for the Defence of Human Rights (AEDH)
Federación de Asociaciones de Defensa y Promoción de los Derechos Humanos
FIDH (International Federation for Human Rights)
Institut de Drets Humans de Catalunya (IDHC)
SODEPAU - Solidaritat, Desenvolupament i Pau
World Organisation Against Torture (OMCT)

CC:
Heads of Cabinet
DG Home - Spain, migration and fundamental rights
DG Justice – Fundamental Rights Unit

¹ See Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Observations on Communications to Governments and Replies Received 2013-14, HRC 26th, 10 June 2014, A/HRC/26/29/Add.1, para 415.

² See Nils Muiznieks “España no puede legalizar lo que es ilegal,” *Huffington Post*, 10 December 2014, available at: http://www.huffingtonpost.es/nils-muiznieks/espana-no-puede-legalizar_b_6294882.html

³ See « Brussels accuses Spain of violating EU border laws in Ceuta and Melilla,” *El País*, 31 October 2014, available at: http://elpais.com/m/elpais/2014/10/31/inenglish/1414750844_552185.html

FREMP members
Director of the Fundamental Rights Agency of the European Union