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1755/2012/MPL/BG

Warsaw, 17th July 2012

Mr. Maina Kiai

United Nations Special Rapporteur
on the rights to freedom of peaceful assembly
and of association
Palais des Nations
CH-1211 Geneva 10
Switzerland

Your Excellency,

The Helsinki Foundation for Human Rights (hereinafter referred to as the "HFHR"), with its seat in Warsaw, Poland, at 11 Zgoda Street, is a non-governmental organization established in 1989 to promote human rights and the rule of law, as well as to contribute to the development of an open society in Poland. The HFHR undertakes legal actions in the public interest, including the representation of parties and preparation of legal submissions to national and international courts and tribunals, as well as interventions regarding the implementation of human rights standards. The HFHR is a member of the Human Rights House Network. Our lawyers had the pleasure to meet with you and discuss the situation in Poland in February 2012 in Tbilisi.

Inspired by the meeting earlier this year, we would like to draw your attention to the amendments of the Polish Law on Assemblies of 1990, adopted recently by the Polish Parliament. The draft amendments were proposed by the President of Poland as a result of the events that took place in Warsaw on 11 November 2011, when a number of assemblies turned into regular riots and police forces had to intervene. The amendments were adopted by the Lower Chamber of the Parliament (*Sejm*) on 28 June 2012. Currently, they are the subject of consideration by the Higher Chamber of the Parliament (*Senat*).

A number of domestic non-governmental organizations, as well as respectable international organizations (such as OSCE Office for Democratic Institutions and Human Rights), during the entire legislative process indicated that particular provisions of drafted amendments may seriously endanger the freedom of assembly in Poland. On 12 June 2012, 32 Polish non-governmental organizations addressed an Open Letter to the Parliament's Speaker, Ms Ewa Kopacz, highlighting the need to review the law, enact changes in conformity with

international standards and to abandon the works on the Presidential draft law¹. Currently, the above mentioned Open Letter is supported by 167 organizations and over 1100 individuals. Despite the protest, the draft was proceeded with by the Parliament without taking into account the arguments expressed in the Open Letter.

We would like to emphasize the major human rights doubts concerning this draft.

1. Amendments to the Law on Assemblies adopted in June 2012 provide that the minimal time frame required for submitting notification will be extended from 3 to 6 days before the date of the assembly. Such an amendment undermines the possibility to react quickly and operatively to important public issues and to present someone's views in public sphere. According to the OSCE/ODHIR Note on the Draft Law, “the advance notification period (...) should be as short as possible because timely access to the target audience is often of great importance where public advocacy is concerned.”²

The drafters of the amendments and the government argued that such an extension of the time needed for notification is required by the judgement of the European Court of Human Rights in the case *Bączkowski v. Poland* (application no. 1543/06). According to the standard set by the judgment, a **requirement for the authority to assess the motion for organizing an assembly before the date of the planned assembly should be introduced to the law**. In order to implement this judgement in the Polish legal system a mechanism for effective remedy in the case of banning the assembly by the public authorities needs to be established. Partially, an attempt to introduce such a mechanism was made in the amended Article 9 of the Draft Law, which establishes time limits for administrative authority to examine the appeal from the decision banning the assembly. It does not however provide any guarantees to initiate before the date of the assembly any proceedings before the independent court and to receive a final verdict in the case. It should be noted that according to the OSCE-ODIHR Guidelines on Freedom of Peaceful Assembly (2nd Edition) “a final ruling, or at least relief through an injunction, should (...) be given prior to the notified date of the assembly.” Term “final ruling” should not be limited to the “final decision” issued by the administrative authority.

Situation when, firstly, the deadline for submitting the motion of notification was prolonged from 3 to 6 days before the date when the assembly is scheduled, and secondly, there is no guarantee to receive a final ruling in the case, will definitely aggravate the status of so the called **spontaneous assemblies**. As OSCE-ODHIR stated in its Note on the Draft Law, spontaneous assemblies “ought to be considered as a feature of a healthy democracy and as such the authorities should protect” them “so long as [they are] peaceful in nature”, even if they are not notified. The lack of any proposals dealing with this issue in the last few years shows that there is no political will to regulate this aspect of freedom of assembly. The work on amendments to the Law on Assemblies was a good and unique opportunity to discuss this issue and adopt an adequate regulation which would regulate the protection of spontaneous assemblies. However, neither the Presidential draft nor amendments proposed in the

¹ The statement is available at: <http://www.hfhr.pl/list-otwarty-32-organizacji-pozarzadowych-w-sprawie-ustawy-o-zgromadzeniach/>

² OSCE-ODIHR Note on the Draft Law amending the law on assemblies of Poland (Opinion-Nr.: FOA – POL/207/2012 (YA)) of 21 May 2012, point 14.

Sejm touched upon this issue. As a result, the time for advance notice of the assembly was prolonged to 6 days and there is no other opportunity to organize legally an assembly.

2. Moreover, the statute introduced a collision norm applicable in the case of the so called simultaneous assemblies, when two assemblies are planned to be organized in the same place and at the same time. According to drafted Article 7a (1) if it is not possible to separate them or for them to take place in such a way that their conduct does not endanger life or health of persons or property to a large extent, **the municipality immediately summons the organizer of the assembly for which the notification was provided later to amend the time and place of the assembly** or the walking route of the participants.

First of all, **this norm clearly weakens the right to counter-demonstrate**. As OSCE-ODIHR found in its Note on the Draft Law amending the law on assemblies of Poland of 21 May 2012, granting exclusive right to use the venue to the first (earlier) organiser “may encourage malicious pre-emption of the venue in question by, for instance, counter-demonstrators who can find out in advance about the plans to organise an assembly which has not been officially notified yet.”

Furthermore, in our opinion, **such a provision is superfluous** since the Law on Assemblies already provides that the municipal authority shall prohibit a public assembly if the organisation of that assembly may pose a threat to the life or health of individuals or to property of considerable value. Thus, there is no need to set the organizer of a counter-demonstration *a priori* in a worse position.

By introducing such a regulation, the State creates a **mechanism which does not fulfill the State's positive obligation to facilitate assemblies, in particular those that are simultaneous**. According to OSCE-ODIHR Guidelines on Freedom of Peaceful Assembly (2nd Edition), “the State should always seek to facilitate and protect public assemblies at the organizer’s preferred location, and should also ensure that efforts to disseminate information to publicize forthcoming assemblies are not impeded.”³ Thus in the case of two or more simultaneous assemblies “it is the state’s positive obligation to prevent such a disruption and provide adequate policing to facilitate counter-demonstrations within sight and sound of one another.”

3. Furthermore, the amendments adopted on 28 June 2012 introduce a set of penalties which can be imposed on persons who lead the assembly, as well as on its participants. The draft law provides a **fine (up to 7,000 PLN, approx. 2,000 EUR)** if the organiser does not manage to maintain public order. Such high fines do not exist in the Code of minor offences (which should be amended accordingly). The draft law also introduces the possibility of a **fine (up to 10,000 PLN, approx. 2,500 EUR)** if someone does not comply with the recommendations of the leader of the assembly. This regulation does not give sufficient clarity as to the circumstances of the infringement, giving the assembly leader a large margin of appreciation. As OSCE-ODHIR found in its Note on the Draft Law, “the role of the assembly organiser is not similar to that of a law enforcement officer and the law can require only that s/he makes reasonable efforts to ensure the peaceful nature of the assembly by refraining

³ Point 2.2 of the Guidelines.


from violence and appealing to assembly participants to refrain from violence but it can not require fulfilling the functions of the law enforcement.”

Article 13b of the Draft Law addressed to the participants of the assemblies who failed to obey the recommendations of the leader of the assembly seems to be particularly dangerous. The possible fine of up to 10,000 PLN (approx. 2,500 EUR) may become a source of chilling effect for potential supporters of the views presented at the assembly who, because of such a high potential fine, may abstain from taking active part in the assembly. Besides, in the case of Article 13b, a prohibited behaviour refers to situations when a participant does not follow the recommendations of a private person, who leads the assembly. Imposing a public sanction (fine up to 10,000PLN) in such a situation does not seem to be a proportionate or adequate measure. Furthermore, already existing laws prohibit disorderly conduct, violence, and as such should be sufficient tool for this purpose.

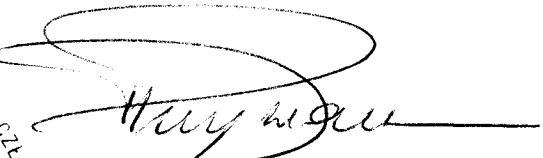
All those problems were analyzed in the OSCE-ODIHR Note on the Draft Law, the Open Letter of 12 June 2012 as well as in submissions presented during the legislative watch by the Helsinki Foundation for Human Rights and other NGOs. They were however not taken into account during the parliamentary debate on the draft. The draft will be now discussed in the Higher Chamber of the Polish Parliament (*Senat*). The experience with the debate in the Lower Chamber may indicate that also the Higher Chamber will not examine the draft sufficiently and the amendments with the above mentioned constitutional shortcomings will become a binding law.

The HFHR would like to kindly ask the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association to take the appropriate measures in accordance with the resolution of the Human Rights Council 15/21. In particular, we would like to encourage the UN Special Rapporteur to examine the impact of the above amendments on the freedom of assembly in Poland, and address a recommendation to the Government of Poland to influence the legislative authorities in order to prevent the adoption of the above mentioned amendments.

Please accept assurances
of our highest consideration,


Adam Bodnar, Ph.D
Vice-President of the Board




Danuta Przywara
President of the Board

Attachments:

Note on the Draft Law amending the law on assemblies of Poland (Opinion-Nr.: FOA – POL/207/2012 (YA)) of 21 May 2012

Open Letter to the Parliament's Speaker of 12 June 2012 [Polish and English version]