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REFERENCE: Assembly and Association (2010-1)

23 July 2012

Dear Mr. Bogdan Michał Borusewicz,

I have the honour to address you in my capacity as United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association pursuant to Human Rights Council resolution 15/21.

Human Rights Council resolution 15/21 mandated me to report on the enjoyment of the rights to freedom of peaceful assembly and of association in all parts of the world. In this connection I am writing in relation to proposed amendments made to the 1990 Law on Assemblies, which are currently being discussed by the Higher Chamber of the Parliament after they were reportedly adopted by the Lower chamber of the Parliament, on 28 June 2012.

I am aware that some of these amendments have been introduced in order to implement a decision of the European Court of Human Rights in the case of *Baczkowski and other v. Poland*. Yet I believe the proposed measures may not suffice to ensure compliance with the ruling of this august body.

According to the information I have received, the time frame to submit notification for holding an assembly will be, if these amendments were passed, extended from 3 to 6 days. Such a provision would not be in compliance with international standards related to fundamental freedoms, and in particular with a number of good practices I have identified in my first thematic report, which was presented to the Human Rights Council on 20 June 2012, available at http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-27_en.pdf. In this report, I specifically highlighted that “a notification [in sight of holding an assembly] should be subject to ... a maximum of, for example, 48 hours prior to the day the assembly is planned to take place” (paragraph 28 of the report A/HRC/20/27).

I believe a shorter period for notification is necessary. This is all the more true as the proposed amendment, as well as the requirement for re-submission of notification due to introduction of changes to it, as proposed in Article 7a paragraph 3, may prevent the holding of spontaneous assemblies, which is essential to ensure the respect of two key principles related to the right of peaceful assembly: the presumption in favour of holding assemblies (See recommendation para. 88 of my thematic report A/HRC/20/27) and the obligation for States to facilitate assemblies (See recommendation para. 89 of the same report A/HRC/20/27), which are both absent from the proposed amendments.

I was informed that the proposal to extend the time frame to submit a notification was notably motivated by the will of the Government to provide for effective legal remedies in case an assembly is prohibited. In this regard I therefore suggest that additional measures should be taken to ensure prompt responses from the judiciary, rather than imposing additional conditions on this fundamental right.

Furthermore, some of the proposed amendments would prevent facilitating the holding of simultaneous assemblies. According to the information received, assemblies organized by two or more organizers at the same time, in places or walking routes which are identical or partially coinciding can take place “if it is possible to separate them”. Such a provision would prevent the holding of simultaneous assemblies, including the holding of peaceful counter-demonstrations, which is essential to ensure that everyone’s voice is heard (paras. 30 and 92 of my thematic report A/HRC/20/27).


In this regard, the reasons that could be used to prohibit a public assembly may be written in broad terms as they would also apply to organizers of an assembly, for which the notification was provided later, did not make the change of the time or place or the walking route in due time, despite the summoning mentioned in proposed article 7a para. 1. In my thematic report, I echoed a recommendation of the OSCE/Venice Commission namely that “[p]rohibition [of an assembly] should be a measure of last resort and the authorities may prohibit a peaceful assembly only when a less restrictive response would not achieve the legitimate aim(s) pursued by the authorities” (para. 39).

Finally, I would like to make reference to proposed Chapter 2a of the law, which would provide a fine of up to 7.000 PLN (about 2.000€) on organizers who would fail to fulfill duties according to the amendments and a fine up to 10,000 PLN (about 2,500€) for anyone who does not comply with the orders of the leader of an assembly. Such a provision is not in conformity with international standards related to freedom of peaceful assembly as it may allow for the criminalization of organizers whose intentions and behaviour were peaceful and would further deter individuals from exercising their right to hold assemblies.

In light of the above, I would like to appeal to you that the proposed amendments are further reviewed and modified before they are adopted.

I remain at your disposal, though Mr. Pol Planas from the Office of the High Commissioner for Human Rights (pplanas@ohchr.org ; +41 22 917 96 57) for any further question you may have or for any technical assistance you may deem relevant.

Please accept, dear Mr. Bogdan Michał Borusewicz, the assurances of my highest consideration.



Maina Kiai
Special Rapporteur on the rights to freedom of
peaceful assembly and of association