



Warsaw, 27 December 2016

Mr Gianni Buquicchio
The President of the Venice Commission
Council of Europe

Subject: violation of the rule of law and deprivation of rights acquired by functionaries of uniformed services of the Republic of Poland.

Dear Commission President,

Knowing Your determination in the activities for human rights protection and basic freedoms, we call for your assistance in protection against extremely detrimental legal solutions which are being introduced to Parliament by Poland's current government, in the passed bill on retirement benefits for functionaries of uniformed services:

- A change of the Act on retirement benefits for functionaries of Police, The Internal Security Agency, Foreign Intelligence Agency, The Military Counterintelligence Service, Military Intelligence Service, Central Anti-Corruption Bureau, Border Guard, Government Protection Bureau, The State Fire Service and their families (annex no 1).

This bill provides for deprivation of retirement entitlements acquired with dignity for the service after 1990, that is after Poland regained full sovereignty.

We wish to emphasize that the bill concerns police officers and functionaries of other services who have been positively verified and since 1990, after subsequent employment, have been faithfully serving the motherland for another 26 years, often risking their lives.

The bill is a complete denial of the commitments made by Poland's government and unprecedented disregard for the rule of the state continuity after 1990. It is also clearly in contradiction with the ruling of the Constitutional Tribunal of 2010, in the case K6/09, which concluded that: *"Each functionary of security authorities of the Polish People's Republic who has been employed in newly created security police services has, fully guaranteed, equal rights, the same as those functionaries who are employed in those services for the first time since the second half of the year 1990, including equal rights to use privileged retirement benefits"* (point 10.4.2, page 83 of the ruling)... *"The service in the organs of sovereign Poland after 1990 is treated equally, no matter if a given functionary formerly served in security authorities of the Polish People's Republic or not (point 11.4, page 88 of the ruling) (annex no 2)*

According to the passed bill anyone who even for one day before 1990 worked or studied in the so-called „bodies of the totalitarian state” (a definition arbitrarily created by the authors of the bill) shall be deprived of the right to a police pension, no matter what his/her

merits and accomplishments and years of service for free Poland are. It means that one day of service or studies in the indicated units invalidates, for example, a 26-year service.

Corresponding, unfounded and illegal restrictions shall include those who are entitled to invalidity and survivors benefits. According to our assessment, the act will comprise at least 200,000 pensioners of different services and their families, including those who receive pensions and survivors' pensions and even those whose disability has occurred while conducting their professional duties.

In the deepest conviction of the Federation of Associations of Uniformed Services of the Republic of Poland, the Independent Trade Union of Policemen (annex no 4,5) and other organizations, the passed bill of such a draconian and nonsense act violates the fundamental constitutional principles, such as protection of acquired rights, non-retroactivity of law, trust to the state, failure to apply the principle of collective responsibility and is fundamentally of an oppressive character. The unconcealed aim of activities of the current government are „budget savings” which do not take into account the fate of people and resulting in family tragedies.

We are aware that what concerns police pensioners may soon concern any professional group whose members worked before 1990. It was shown by introducing to the parliament, on 2 December 2016, an identical draft of the bill concerning change of the Act on retirement benefits for soldiers of their families. (annex no 3)

We know that the realization of unrealistic election promises requires money. But it may not be a justification for illegal deprivation of entitled pensions from members of our society, in this case functionaries of uniformed services and soldiers, widows and children orphaned by the deceased functionaries and police pensioners.

Your authority and position in the European Commission, and well-known commitment to compliance with democratic principles of the state of law, allow to hope for assistance and support in protection of our inalienable rights.

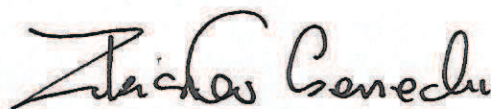
We are aware that we have chosen the way to raise the issue and to formulate a request does not meet the accepted standards of conduct. We are forced to do that because of the current situation in our country, and particularly by the fact that the Constitutional Tribunal has been incapacitated by a difficult situation in the judiciary. We lack any bodies of legal protection in Poland at which we could effectively pursue our rights.

Let our excuse be the aiming of the Federation of Associations of Uniformed Services to ensure tens of thousands of retired functionaries of uniformed services, soldiers and their families an opportunity of dignified lives.

The federation would be grateful if you, using Your position and authority, could take action aiming to respect the rule of law by the Polish authorities, in accordance with the Constitution of the Republic of Poland and values by which the European Union is guided.

Counting on your favor and understanding, please accept the assurance of our highest consideration.

Yours sincerely,



Zdzisław Czarnecki
President
of the Federation of Associations of Uniformed Services
of Republic of Poland

Annexes:

1. Annex no 1. A passed bill of 16 December 2016 concerning a change of the Act on retirement benefits for functionaries of Police, The Internal Security Agency, Foreign Intelligence Agency, The Military Counterintelligence Service, Military Intelligence Service, Central Anti-Corruption Bureau, Border Guard, Government Protection Bureau, The State Fire Service and their families ((parliamentary printed matter no 1061.)
2. Annex no 2. The extract of the justification of the judgment of the Constitutional Tribunal of 24 February 2010, File reference K 6/09 - OTK ZU no 2A/2010, item 15.
3. Annex no 3. A draft of the bill concerning A change of the Act on retirement benefits for soldiers of their families. (parliamentary printed matter no 1105).
4. Annex no 4. The position of the Independent Trade Union of Policemen on 15 December 2016.
5. Annex no 5. The position of the Federation of Associations of Uniformed Services of the Republic of Poland of 25 November 2016 on the draft bill concerning a change of the Act on retirement benefits for functionaries of Police, The Internal Security Agency, Foreign Intelligence Agency, The Military Counterintelligence Service, Military Intelligence Service, Central Anti-Corruption Bureau, Border Guard, Government Protection Bureau, The State Fire Service and their families .