

BARTOSZ KOŁACZKOWSKI

## The new notion and classification of assemblies in Polish law

### Introduction

Freedom of assembly is one of the fundamental political freedoms which needs to undergo administrative limitation, due to the necessary concern for public order and security. Assemblies are a basic institution in democratic states, facilitating the implementation of the right to social criticism. Beyond doubt, the freedom to organize assemblies contributes to the protection of the rights of various minorities, among other things, and to stabilisation by revealing the sources of social discontent and unrest.<sup>1</sup> Freedom of assembly is extremely important for the formation of a society based on the principles of pluralism and tolerance; therefore, it is an essential task of the public authorities to shape the legal regulations to provide effective means of protecting this freedom.<sup>2</sup>

In Polish law, the freedom of assembly is guaranteed in the Constitution of the Republic of Poland (Konstytucja RP) of 2 April 1997,<sup>3</sup> whereas the basis of the administrative limitation of this freedom is found mostly in the Act of 24 July 2015 on the Law

1 V. the Statement of Reasons for the Judgement of the Constitutional Tribunal of 18 January 2006 (K 21/05; Dz.U. no. 17 item 141).

2 V, e.g., the Judgement of the European Court of Human Rights of 3 May 2007 in the case of Bączkowski and Others v. Poland (Application no. 1543/06), or the Judgement of the Voivodeship Administrative Court (WSA) in Poznań of 14 December 2005 (IV SA/Po 983/05; LEX no. 174377).

3 Dz.U. no. 78 item 483 with am. According to the Article 57 of the Constitution: “The freedom of peaceful assembly and participation in such assemblies shall be ensured to everyone. Limitations upon such freedoms may be imposed by statute”. Thus, the freedom of gathering together should be considered as a freedom which can only be limited by a statute and which is available not only to Polish citizens but to foreigners as well. Moreover, the constitution recognises the freedom of assembly as inherent and inalienable. The regulation on the freedom of assembly is therefore declaratory. V, e.g., A. Wróbel, *Wolność zgromadzania się*, [in] *Wolności i prawa polityczne*, ed. W. Skrzydło, Kraków 2002, p. 11. Sokolewicz and Skrzydło also discuss more broadly the interpretation of Article 57 of the Constitution: W. Sokolewicz, *Wolności i prawa polityczne*, [in] *Konstytucja RP. Komentarz (cz. IV)*, ed. L. Garlicki, Warszawa 2005, pp. 1–33; W.

of Assemblies,<sup>4</sup> which on 14 October 2015 replaced the Act of 5 July 1990 on the Law of Assemblies,<sup>5</sup> which had been in force for 25 years. The new law on assemblies introduced a number of entirely new solutions, which can be considered as very important. The new way of defining an assembly as well as introducing new kinds and divisions of these forms of social activity are noteworthy. Therefore, the aim of the discussion in this paper is the analysis and evaluation of the new regulation on assembly. To fulfil this goal, further discussion will be divided into two parts: the analysis of the notion of assembly will be taken up in the first, while in the second one the discussed matter will be the classification of assemblies.

### The notion of assembly

The main issue associated with virtually any institution of administrative law is how to define it and, in particular, the question of its legal definition – provided it has been created. Such a definition was formulated both in the previous Act of 1990 and in the legislation currently in force. Before the new law came into force, an assembly was considered to be: “a gathering of at least 15 people, convened in order to confer over an issue or with an aim to express jointly their position” [Article 1(2) of the Act of 5 July 1990]. Criticism of this definition, for being overly narrow and for arbitrarily setting the number of participants, was relatively common.<sup>6</sup> The epitome of this criticism is found in the reflections in the Application of the Ombudsman of 4 March 2013<sup>7</sup> and in the Judgment of the Constitutional Tribunal of 18 September 2014, which was in part the result of the former.<sup>8</sup> The Ombudsman emphasized, among other things, the arbitrary nature in which the minimum number of people whose gathering was treated as an assembly was defined. The Tribunal agreed with the Ombudsman’s objections and declared the placing of the number in the definition of assembly as unconstitutional. The statement of reasons stressed, e.g., that “the statutory definition of assembly as a gathering comprised of at least 15 people introduces a structural component not provided in the Constitution. Peaceful gatherings, whose number of participants does not meet this criterion, are also

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Skrzydło, *Komentarz do art. 57 Konstytucji Rzeczypospolitej Polskiej*, [in] W. Skrzydło, *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, Kraków 2002, p. 68.

4 Prawo o zgromadzeniach; Dz.U. item 1485.

5 Consolidated text, Dz.U. 2013 item 397 with am.

6 V. more: B. Kołaczkowski, *Kształtowanie się regulacji prawnych zgromadzeń w Polsce oraz w wybranych krajach o anglosaskiej tradycji prawnej*, Warszawa 2014, pp. 86–88.

7 Application RPO714908I/12/ST/KM; the application is available at the Polish Ombudsman’s official website: [https://www.rpo.gov.pl/sites/default/files/Wniosek\\_do\\_TK\\_04032013.pdf](https://www.rpo.gov.pl/sites/default/files/Wniosek_do_TK_04032013.pdf) [access: 30.01.2016].

8 Dz.U. item 1327.

public assemblies.” According to the tribunal, “adopting the premise of the number of participants is not a necessary limitation in a democratic state.”

The above concerns were taken into account, and the new act refrained from setting the minimum number of participants of assembly. Currently, an assembly is “a gathering of people in open space available to people not specified by name in a specific location, convened in order to confer over an issue or with an aim to express jointly their position” [Article 3(1) of the Law of Assemblies Act].<sup>9</sup> Unfortunately, another component of the definition of assembly, just as questionable as the number of participants – defining the goal of the assembly – was not abandoned. This component is fiercely criticised by the author of this paper. For it is not possible to precisely state the range of acceptable aims which make gatherings into assemblies under the Act.<sup>10</sup> It is equally important that in the light of the case-law no public authority in Poland has the power to evaluate the aims specified in the notification of the assembly and issue decisions forbidding it on such a basis anyway. Such an evaluation “directly violates the essence of the freedom and political right, guaranteed by the Constitution, to organize and participate in peaceful assemblies.”<sup>11</sup> As can be seen, indicating the aim of an assembly in its definition is both unnecessary and illogical. It is also worth pointing out that the aim of an assembly is irrelevant from the perspective of the guarantees of the freedom of assembly in the majority of the legal systems analysed by the author.<sup>12</sup>

## Classification of assemblies

The most accurate division of assemblies seems to be based on the form of decision of a public authority regarding the possibility of organising the assembly. In Polish law this division is quite complicated, particularly following the far-reaching changes introduced by the new Law of Assemblies Act. It is now possible to distinguish:

- assemblies which require only notice and the silent acceptance of the public authority competent to accept it;
- spontaneous assemblies which do not require notice;
- assemblies which require obtaining prior authorisation;

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<sup>9</sup> Ustawa Prawo o zgromadzeniach.

<sup>10</sup> Perhaps the greatest issue is the answer to the question of whether discussion of private matters can be the aim of an assembly. Literary sources say that in spite of an assembly being public, private matters fall within the range of aims of assembly. V, e.g., H.E. Zadrożniak, *Zgromadzenia publiczne jako forma udziału obywateli w życiu społecznym*, “Samorząd Terytorialny” 2009, no. 5, p. 64. V. more: B. Kołaczkowski, *op. cit.*, pp. 87–88.

<sup>11</sup> Judgement of the WSA in Warsaw of 5 October 2010 (VII SA/Wa 1856/10, Lex no. 760065).

<sup>12</sup> The countries where the aim of an assembly is not relevant include the United Kingdom, the USA, or India (more in: B. Kołaczkowski, *op. cit.*, p. 242 ff.).

- assemblies in the case of which it is necessary to agree upon the time and place of the assembly with the road operator.

A very important division, and entirely new in Poland, is the additional distinction of assemblies which only require notice into assemblies associated with possible obstructions of the traffic flow and assemblies which do not cause such obstructions, especially changes in the organisation of traffic; in the latter case, it is not possible to issue a decision prohibiting such an assembly.

#### **Ad. A) Assemblies which only require notice**

The most basic assemblies in Poland are the assemblies which only require notice. Therefore, in the case of these assemblies, the administrative limitation is reduced to silent acceptance or, possibly, issuing a decision which prohibits the given assembly.<sup>13</sup> In the light of Article 7(1) of the Law of Assemblies Act, the organiser of an assembly shall notify the communal authorities of an intent to organise an assembly in such a way that the notification should arrive at the authority, as a rule, no earlier than 30 days and no later than 6 day before the planned assembly date. It is worth noting that before the new act came into force, an assembly had to be reported no later than 3 workdays and no earlier than 30 days before the assembly date [Article 7(1) of the Act of 5 July 1990]. Another significant change is the introduction of the so-called simplified procedure (Article 21–26 of the Law of Assemblies Act), which comes down to the fact that, among other things, if the organiser considers that the planned assembly will not lead to an obstruction of the traffic flow or, in particular, lead to changes in its organisation, the organiser notifies not the head of the commune (mayor or city president) – as is the case with the assemblies reported under the general rules – but the appropriate communal (municipal) crisis management centre or, if the latter has not been established, the voivodeship crisis management centre no earlier than 30 days and no later than 3 days before the planned assembly date [Article 21 and Article 22(1) of the Act]. This novelty is fundamentally important, since assemblies are differentiated here by the criterion of specific use of a public road. It has to be stressed that placing assemblies within the groups associated or not associated with a specific use of a road has many more significant consequences than just the time frame within which it has to be reported: for the possibility of issuing a decision prohibiting the assembly has been withdrawn unless the assembly is tied to

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<sup>13</sup> As stressed in the case-law, the “subjection [of assemblies – B.K.] to an authorisation procedure does not normally encroach upon the essence of the right.” Decision of the European Court of Human Rights of 10 October 1979 in the case of *Rassemblement Jurassien and Unité Jurassienne v. Switzerland* (Application no. 8191/78).

obstructions in the traffic flow. Currently, such a decision can be issued only in the case of assemblies which may cause disruptions of the traffic flow.<sup>14</sup>

#### **Ad. B) Spontaneous assemblies which do not require a notice**

Spontaneous assemblies are an entirely new type of assembly in Poland. This form of exercising the freedom of assembly is extremely important, since spontaneity is sometimes the only guarantee of successful criticism, protest, or actively drawing the attention of the public to a given issue.<sup>15</sup> It is worth mentioning that while the Act of 1990 did not regulate such assemblies, and therefore they were not an “officially” recognised category of assemblies, it had previously been inferred from the case-law that spontaneous assemblies could not be considered illegal.<sup>16</sup> Moreover, the lack of appropriate regulation was contrary to the guidelines of the Office for Democratic Institutions and Human Rights of the Organisation of Security and Cooperation in Europe and the European Commission for Democracy through Law of the Council of Europe on the freedom of peaceful assemblies of 2007.<sup>17</sup>

The introduction of the category of spontaneous assemblies was part of the “amendment package” brought by the Law of Assemblies Act of 2015. This act contains not only provisions directly limiting such assemblies but also a definition of a spontaneous assembly. Thus, in line with the wording of Article 3(2) of the new Law of Assemblies Act, a spontaneous assembly is “an assembly taking place in connection with a sudden event in the public sphere which could not be predicted earlier, and when holding it at another time would be inappropriate or of little significance from the perspective of the public debate.” As can be seen, a spontaneous assembly must be connected to “an event in the public sphere,” therefore the so-called “flash mobs” – crowds in public places where people unknown to one another gather in order to perform a short happening or event – cannot be considered as spontaneous assemblies. Again, there is some doubt here regarding the scope of the definition. While this time it involves the definition of

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14 The decision prohibiting an assembly is issued no later than 96 hours before the planned assembly date when, among other things, the aim of the assembly disrupts peacefulness, or when holding the assembly may endanger the life or health of people, or property in significant quantities, including when the danger has not been alleviated in the case of competing assemblies (Article 14 of the Law of Assemblies Act of 2015).

15 A. Bodnar, M. Ziółkowski, “Zgromadzenia spontaniczne”, *Państwo i Prawo* 2008, no. 5, p. 41.

16 Cf., e.g., the Judgement of the European Court of Human Rights of 17 July 2007 in the case of Bukta and Others v. Hungary (Application no. 25691/04), or the Judgement of the Polish Constitutional Tribunal of 10 July 2008 (P15/08; Dz.U. no. 131 item 838).

17 ODIHR – Venice Commission Guidelines on Freedom of Peaceful Assembly; the complete English 2nd edition of the document can be found online: [http://www.hrea.org/erc/Library/display\\_doc.php?url=http%3A%2F%2Fwww.osce.org%2Ffiles%2Fdocuments%2F4%2F0%2F73405.pdf&external=N](http://www.hrea.org/erc/Library/display_doc.php?url=http%3A%2F%2Fwww.osce.org%2Ffiles%2Fdocuments%2F4%2F0%2F73405.pdf&external=N) [access: 30.01.2016]; further: guidelines of the Office for Democratic Institutions.

spontaneous assembly, the doubt is of similar nature and concerns the “persistence” of the legislator in stressing the aim of the assembly.

The prize for recognising spontaneous assemblies as legal is the increased control over this form of social activity, necessary to ensure safety and public order. Namely, it is the officer directing the police operations and not a delegated representative of the authorities who can dissolve the assembly, which drastically simplifies matters. The police officer can dissolve a spontaneous assembly [Article 28(1) of the Law of Assemblies Act]:

- when the course of the assembly endangers the life or health of people, large quantities of property, or causes a significant threat to safety or public order;
- when the assembly causes significant threat to the safety or order of traffic on a public road;
- when the participants of the assembly disturb other assemblies (Article 27 of the Act of 2015).

It is worth noting that the new legislation does not include any regulations regarding the organiser or leader of an assembly. It is understandable, however, as the lack of organiser and leader is a constitutive component of a spontaneous assembly.<sup>18</sup>

#### **Ad. C) Assemblies which require obtaining prior authorisation**

There are locations where the administrative limitation of assemblies has to be particularly thorough and this is expressed through the necessity of obtaining permission for an assembly. It is due to the unique character of such locations or the necessity of particular concern for safety and public order. Currently in Poland, assemblies organised at the sites of the so-called Monuments of the Holocaust and at the premises of higher education institutions require permission.

In line with the wording of Article 1(1) of the Act of 7 May on the Protection of the Areas of the Former Nazi Extermination Camps,<sup>19</sup> the areas of the former Nazi extermination camps were recognised as Monuments of the Holocaust. The following locations are now Monuments of the Holocaust:

- The Monument to Martyrdom in Oświęcim,
- The Monument to Martyrdom in Majdanek,
- The “Stutthof” Museum in Sztutowo,
- The Gross-Rosen Museum in Rogoźnica,
- The Mausoleum of Struggle and Martyrdom in Treblinka,
- The Museum of the former Extermination Camp in Chełmno-on-Ner,

<sup>18</sup> V. the ruling of the Federal Constitutional Court of Germany of 14 May 1985 in the Brokdorf case (1 BvR 233, 341/81; as quoted in: A. Bodnar, M. Ziółkowski, *op. cit.*, p. 38).

<sup>19</sup> Ustawa o ochronie terenów byłych hitlerowskich obozów zagłady; consolidated text Dz.U. 2015 item 2120.

- The Museum of the former Extermination Camp in Sobibór,
- The former Extermination Camp in Bełżec.

The depth of the administrative limitation of assemblies in the area of Monuments of the Holocaust is expressed, above all, in the obligation to obtain permission from the voivode to organise an assembly. Such permission is issued in the form of an administrative decision (Article 7 of the Act on the Protection of the Areas of the former Nazi Extermination Camps<sup>20</sup>). Also, the application for permission for assembly has to be filed much earlier than in the case of a notification (for assemblies organised at other locations). Such an application is filed no later than 30 days before the date of the assembly, while an application which is submitted late is left unprocessed, which the voivode declares as a decision [Article 7(2) of the Act]. The aforementioned application should contain information similar to the notification of an assembly at another location [Article 7(3) of the Act]. Since 14 October 2015, this application should also include the written permission of the entity holding the legal right to property in the area of the Monument of the Holocaust, or in its protection zone for holding the assembly on that property [Article 7(3A) of the Act (added by Article 31 pt. 1 of the new Law of Assemblies Act)]. The legislator also defined the specific circumstances which justify issuing the decision denying permission for an assembly in the area of a Monument of the Holocaust [Article 7(4) of the Act]. Some of the circumstances are the same as the circumstances justifying issuing a decision prohibiting an assembly at other locations; however, the legislator formulates additional circumstances related to the character of the place where the assembly is planned: there is a possibility of denying permission for an assembly if “the aim of or holding the assembly might infringe upon the dignity or character of a Monument of the Holocaust,” and also when the entity holding the rights to a property in the area of the Monument of the Holocaust or in its protection zone did not agree to an assembly on that property. As can be seen, the first of these circumstances is quite evaluative: the authority freely evaluates the actual state of affairs and, in a great number of circumstances, has the opportunity to deny the decision permitting the assembly. The scope of freedom of decision attributed to the voivode is incomparably greater than in the case when the potential decision is issued on the basis of general provisions.<sup>21</sup> It is also worth adding here that a decision to dissolve an assembly issued by the voivode’s representative delegated to the assembly is equally evaluative: such a decision can be issued, e.g., when the course of the assembly might infringe upon the dignity or character of a Monument of the Holocaust [Article 7(9) of the Act].

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<sup>20</sup> Ustawa o ochronie terenów byłych hitlerowskich obozów zagłady.

<sup>21</sup> For more on the evaluative character of the circumstances justifying the issuing of decisions which justify denying permission for an assembly in a Monument of the Holocaust area: B. Kołaczkowski, *op. cit.*, pp. 187–190.

As mentioned before, assemblies on the premises of higher education institutions also require permission. The organisation of such assemblies is regulated by the provisions of the Law on Higher Education Act of 27 July 2005.<sup>22</sup> The pertinent regulation is found in Article 230(1) of the Act. It gives the right to organise assemblies at the premises of the higher education institution to its employees, doctoral students, and students. Therefore, holding an assembly in line with the law requires previous permission from the rector; the rector is required to issue a decision forbidding an assembly or to refuse permission for an assembly “if the aims or programme of the assembly violate provisions of the law” [Article 230(3)]. The rector also has similar security competencies to communal authorities, regarding the participants of a public assembly. Just like the head of a commune (mayor, or city president), the rector can delegate to the assembly his representative who, having notified the organisers, dissolves the assembly if its progress is in contravention of the law [Article 230(7)]. It should be added that the organisers are required to notify the rector of their intent to organise an assembly at least 24 hours before the beginning of the assembly; however, in situations justified by the “urgency of the situation”, the rector may receive notice delivered within a shorter period [Article 230(2)].<sup>23</sup>

#### **Ad. D) Assemblies in the case of which it is necessary to agree upon the time and place of the assembly with the road operator**

Agreement as a form of limitation of assemblies appears in Poland in the context of religious assemblies taking place on public roads. The organisation of religious assemblies is mostly regulated by the Act of 17 May 1989 on the relations between State and the Catholic Church in the Republic of Poland.<sup>24</sup> The regulations related to the public exercise of worship are contained in numerous laws which define the relations between the state and other churches and religious organisations too, yet their content is similar to the solutions adopted in the Act on the relations between State and the Catholic Church in the Republic of Poland.<sup>25</sup> Namely, under Article 15(2)(2) of the Act on the relations

22 Prawo o szkolnictwie wyższym; consolidated text: Dz.U. 2012 item 572 with am.

23 More about assemblies in the area of extermination camps: B. Kołaczkowski, *op. cit.*, pp. 185–190.

24 Ustawa o stosunku Państwa do Kościoła katolickiego w Rzeczypospolitej Polskiej; consolidated text: Dz.U. 2013 item 1169 with am.

25 Cf. Article 13 of the Act of 4 July 1991 on the relations between State and the Polish Autocephalous Orthodox Church (Polish ustawa o stosunku Państwa do Polskiego Autokefalicznego Kościoła Prawosławnego; consolidated text: Dz.U. 2014 item 1726); Article 11 of the Act of 30 June 1995 on the relations between State and the Evangelical-Methodist Church in the Republic of Poland (Polish ustawa o stosunku Państwa do Kościoła Ewangelicko-Methodystycznego w Rzeczypospolitej Polskiej; consolidated text Dz.U. 2014 item 1712); Article 10 of the Act of 30 June 1995 on the relations between State and the Christian Baptist Church in the Republic of Poland (Polish ustawa o stosunku Państwa do Kościoła Chrześcijańskich Baptistów w Rzeczypospolitej Polskiej; consolidated text Dz.U. 2015 item 169); Article 10 of the Act of 30 June 1995 on the relations between State and the Seventh-Day Adventists Church in



between State and the Catholic Church in the Republic of Poland: “public exercise of worship on public roads, squares, and in public service buildings are subject to agreement with the appropriate supervising authority or one authorised to administrate them.” This provision is further developed in art. 16, stating that the organisation of processions, pilgrimages, and other religious events on public roads requires an agreement with the appropriate governmental or local authorities regarding traffic security. Whereas funeral processions can be held “according to the local custom.” It is worth noting here that the first sentence of Article 15(2) introduces a general rule according to which public exercise of worship does not require any notice. Therefore, it can be considered that religious assemblies, unless they take place on roads or in public squares, do not require notice and thus are not subjected to any limitation.

It should be added that the legal status of churches and other religious organisations, not regulated by separate laws, is still shaped by the provisions of the Act of 17 May 1989 on the Guarantees for the Freedom of Conscience and Religion.<sup>26</sup> As provided by Article 19(2)(14) of the Act, these communities may establish: “organisations to carry out activities for religious formation, public cult, and prevention of social pathologies and their consequences.” Most interestingly, the provisions of the Law of Assemblies Act are applied to these organisations “only in the scope of gatherings on public roads, squares and in public service buildings” [Article 29(1) of the Act], therefore they do not have to agree on the time and place of the assembly with the appropriate authority, and are not required to notify in the case of organising assemblies in other locations.

## Conclusion

The administrative law regulation of assemblies in Poland was significantly modified by the Act of 25 July 2015 on the Law of Assemblies coming into force. As mentioned in

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the Republic of Poland (Polish *ustawa o stosunku Państwa do Kościoła Adwentystów Dnia Siódmego w Rzeczypospolitej Polskiej*; consolidated text Dz.U. 2014 item 1889); Article 9 of the Act of 30 June 1995 on the relations between State and the Polish-Catholic Church in the Republic of Poland (Polish *ustawa o stosunku Państwa do Kościoła Polskokatolickiego w Rzeczypospolitej Polskiej*; consolidated text Dz.U. 2014 item 1599); Article 8 of the Act of 20 February 1997 on the relations between State and the Catholic Mariavite Church in the Republic of Poland (Polish *ustawa o stosunku Państwa do Kościoła Katolickiego Mariawitów w Rzeczypospolitej Polskiej*; consolidated text Dz.U. 2015 item 44); Article 8 of the Act of 20 February 1997 on the relations between State and the Old-Catholic Mariavite Church in the Republic of Poland (Polish *ustawa o stosunku Państwa do Kościoła Starokatolickiego Mariawitów w Rzeczypospolitej Polskiej*; consolidated text Dz.U. 2015 item 14); Article 11 of the Act of 20 February 1997 on the relations between State and the Pentecosta Church in the Republic of Poland (Polish *ustawa o stosunku Państwa do Kościoła Zielonoświątkowego w Rzeczypospolitej Polskiej*; consolidated text Dz.U. 2015 item 13);

<sup>26</sup> Consolidated text Dz.U. 2005 no. 231 item 1965 with am.

the introduction, the changes involved, among other things, the notion and classification of assemblies. Alas, the evaluation of the introduced changes is deeply ambivalent: some of them can be considered as very good, while others give rise to serious doubts. That is, in defining the assembly, the legislator was right to refrain from specifying the minimum of participants. Still, however, the statutory notion of assembly includes the dubious aim component, absent from the legislations of other countries, which even has to be specified in the notification of an assembly, a requirement that not only excessively restricts the freedom of assemblies but – as has been shown in this paper – is illogical as well.

An equally equivocal evaluation seems appropriate in the case of the new classification of assemblies. Namely, the distinction in the depth of administrative limitation introduced by the new law (in the group of assemblies which only require notification) depending on the location where the assembly takes place should be generally considered as positive. Currently, this regulation is less severe in the case of assemblies which do not disrupt road traffic in any way and, in particular, do not require changes in its organisation. There is another concern here, however, namely that the changes may have gone too far: for, in the case of assemblies not associated with any specific use of a public road, the possibility of issuing a decision prohibiting the assembly has been entirely eliminated. Regardless of the general caveat associated with the question of whether the state should withdraw to such an extent from a regulation ensuring public safety and order, as a result of this change, the limitations regarding counter-protests were deemed unreasonable. Indeed, it is not currently possible to prevent the organisation of competing assemblies, unless they are to be held on roads.

Beyond any doubt, the inclusion of spontaneous assemblies into the list of legally regulated assemblies should be considered as positive. The lack of provisions for this category of assemblies in the previous Law of Assemblies Act was unfathomable, not only since the legality of such assemblies was stressed in the case-law, but also due to the long-standing discrepancy between the Polish regulations and the guidelines of the Office for Democratic Institutions on the freedom of peaceful assemblies of 2007.

In summarising the paper, it might also be worth expressing a number of detailed reflections on the issue, only rarely analysed in Polish sources, of assemblies which require obtaining prior permission (assemblies in the areas of Monuments of the Holocaust and in the premises of higher education institutions) as well as those where agreement with the operator of the road regarding the time and place of the assembly is necessary (some of the religious assemblies). To wit, it must be stressed that the regulation of assemblies in the areas of Monuments of the Holocaust is much stricter than the regulation in general. First of all, the limitation of assemblies in these particular locations takes the form of the aforementioned permission; moreover, the scope of the discretion of the authority regarding issuing the decision to deny such permission is much broader than is the case of issuing a decision prohibiting an assembly elsewhere. This strengthening of regulation,

however, is justified: beyond doubt, the obligation to maintain the dignity of the scenes of the greatest crimes is more important than the freedom of assembly. Conversely, what draws attention in the evaluation of the current regulation of assemblies in the premises of higher education institutions is the lack of precise regulation.<sup>27</sup> The biggest point of concern, however, is currently the legal regulation of religious assemblies. The distinction in the legal situation (regarding the ability to exercise the freedom of assembly) between the religious communities whose activities are not regulated by separate statutes and the situation of the churches and religious organisations for which such acts have been adopted should be deemed unacceptable. In fact, the churches and religious organisations whose legal status is based solely on the Act on the Guarantees for the Freedom of Conscience and Religion are in a privileged position: their assemblies are not subject to the general regulation of the Law of Assemblies Act. These entities are only limited in organising assemblies in the case of assemblies on roads, in which case they are only required to notify, whereas other religious organisations have to reach an agreement with the appropriate authority in the case of assemblies on roads.<sup>28</sup>

It should be stressed in conclusion that, unfortunately, the changes introduced in 2015 did not improve the general chaos in both the definition and classification of assemblies. An opportunity has been lost for a unification of regulations pertaining to all assemblies in a single act of law while eliminating at the same time the unnecessary category of assemblies which require agreement with an appropriate authority regarding the time and place of assembly. Moreover, the changes introduced in 2015 seem to be ill-considered and inconsistent. This indicates possible further changes in the administrative limitation of assemblies in the near future. One can only hope that these changes will be adequately prepared and may eliminate the errors mentioned in this paper.

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<sup>27</sup> V. more: B. Kończakowski, *op. cit.*, pp. 183–184, 235.

<sup>28</sup> *Ibidem*, pp. 224–225, 240–241.

Zadrozniak H.E., *Zgromadzenia publiczne jako forma udziału obywateli w życiu społecznym*, „Samorząd Terytorialny” 2009, no. 5.

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Act of 17 May 1989 on the relations between State and the Catholic Church in the Republic of Poland (ustawa o stosunku Państwa do Kościoła katolickiego w Rzeczypospolitej Polskiej; consolidated text: Dz.U. 2013 item 1169 with am.).

Act of 5 July 1990 on the Law of Assemblies (Prawo o zgromadzeniach; consolidated text: Dz.U. 2013 item 397 with am.).

Act of 4 July 1991 on the relations between State and the Polish Autocephalous Orthodox Church (ustawa o stosunku Państwa do Polskiego Autokefalicznego Kościoła Prawosławnego; consolidated text: Dz.U. 2014 item 1726).

Act of 30 June 1995 on the relations between State and the Christian Baptist Church in the Republic of Poland (ustawa o stosunku Państwa do Kościoła Chrześcijan Baptystów w Rzeczypospolitej Polskiej; consolidated text: Dz.U. 2015 item 169).

Act of 30 June 1995 on the relations between State and the Evangelical-Methodist Church in the Republic of Poland (ustawa o stosunku Państwa do Kościoła Ewangelicko-Methodystycznego w Rzeczypospolitej Polskiej; consolidated text: Dz.U. 2014 item 1712).

Act of 30 June 1995 on the relations between State and the Polish-Catholic Church in the Republic of Poland (ustawa o stosunku Państwa do Kościoła Polskokatolickiego w Rzeczypospolitej Polskiej; consolidated text: Dz.U. 2014 item 1599).

Act of 30 June 1995 on the relations between State and the Seventh-Day Adventists Church in the Republic of Poland (ustawa o stosunku Państwa do Kościoła Adwentystów Dnia Siódmego w Rzeczypospolitej Polskiej; consolidated text: Dz.U. 2014, item 1889).

Act of 20 February 1997 on the relations between State and the Catholic Mariavite Church in the Republic of Poland (ustawa o stosunku Państwa do Kościoła Katolickiego Mariawitów w Rzeczypospolitej Polskiej; consolidated text: Dz.U. 2015 item 44).

Act of 20 February 1997 on the relations between State and the Old-Catholic Mariavite Church in the Republic of Poland (ustawa o stosunku Państwa do Kościoła Starokatolickiego Mariawitów w Rzeczypospolitej Polskiej; consolidated text: Dz.U. 2015 item 14).

Act of 20 February 1997 on the relations between State and the Pentecosta Church in the Republic of Poland (ustawa o stosunku Państwa do Kościoła Zielonoświątkowego w Rzeczypospolitej Polskiej; consolidated text: Dz.U. 2015 item 13).

- Act of 7 May 1999 on the Protection of the Areas of the Former Nazi Extermination Camps (ustawa o ochronie terenów byłych hitlerowskich obozów zagłady; consolidated text: Dz.U. 2015 item 2120).
- Act of 24 July 2015 on the Law of Assemblies (Prawo o zgromadzeniach; Dz.U. item 1485).
- Constitution of the Republic of Poland of 2 April 1997 (Konstytucja RP; Dz.U. no. 78 item 483 with am.).
- Guidelines of the Office for Democratic Institutions and Human Rights of the Organisation of Security and Cooperation in Europe and the European Commission for Democracy through Law of the Council of Europe on the freedom of peaceful assemblies (Venice Commission Guidelines on Freedom of Peaceful Assembly).
- Judgement of the Polish Constitutional Tribunal of 18 January 2006 (Dz.U. no. 17 item 141).
- Judgement of the Polish Constitutional Tribunal of 10 July 2008 (Dz.U. no. 131 item 838).
- Judgement of the Polish Constitutional Tribunal of 18 September 2014 (Dz.U. item 1327).
- Judgement of the European Court of Human Rights of 10 October 1979 in the case of *Rassemblement Jurassien and Unité Jurassienne v. Switzerland* (Application no. 8191/78).
- Judgement of the European Court of Human Rights of 17 July 2007 in the case of *Bukta and Others v. Hungary* (Application no. 25691/04).
- Judgement of the European Court of Human Rights of 3 May 2007 in the case of *Bączkowski and Others v. Poland* (Application no. 1543/06).
- Judgement of the Voivodeship Administrative Court (WSA) in Poznań of 14 December 2005 (IV SA/Po 983/05; LEX no. 174377).
- Judgement of the Voivodeship Administrative Court (WSA) in Warsaw of 5 October 2010 (VII SA/Wa 1856/10, LEX no. 760065).
- Law on Higher Education Act of 27 July 2005 (Prawo o szkolnictwie wyższym; consolidated text: Dz.U. 2012 item 572 with am.).
- Ruling of the Federal Constitutional Court of Germany of 14 May 1985 in the *Brokdorf* case (1 BvR 233, 341/81).

## SUMMARY

### **The new notion and classification of assemblies in Polish law**

The topic of this paper is the issue of the notion and classification of assemblies in Polish law, while its direct aim is to analyse and evaluate the regulations of the above issue after

the changes introduced by the Act of 24 July 2015 on the Law of Assemblies (Dz.U. item 1485). The discussion is divided into two parts: the first is devoted to the investigation of the very notion of assembly, the second to the analysis of the topic of classification of assemblies – from the perspective of the form of decision of an administrative authority regarding the permissibility of holding the assembly. Following this criterion, assemblies are divided into ones which only require notification and the silent acceptance of the administrative organ, spontaneous assemblies which do not require notification, assemblies which require prior permission, and finally assemblies in the case of which it is necessary to agree on the time and place of holding the assembly with the operator of the road.

Keywords: Assembly, Holocaust Monument, religion, regulation

BARTOSZ KOŁACZKOWSKI, The Jacob of Paradies University, Department of Administration and National Security, Teatralna 25, 66-400 Gorzów Wielkopolsk, Republic of Poland, Adam Mickiewicz University Poznań, Faculty of Law and Administration, al. Niepodległości 53, 61-714 Poznań, Republic of Poland, e-mail: bkola@amu.edu.pl.