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THE CONSTITUTIONAL RIGHT TO ORGANIZE SAFE AND PEACEFUL ASSEMBLIES IN POLAND AND UKRAINE – A COMPARATIVE ANALYSIS

Abstract

The organization of peaceful assemblies is a constitutional right granted to individuals located both in the territory of the Republic of Poland and in Ukraine. This is an important right because it provides the society with the possibility of actual participation in public life by expressing its views or manifesting a specific position. The study was devoted to a comparative analysis of the constitutional regulations on the organization of assemblies in Poland and Ukraine. It was also assumed that the ordering services of assemblies play an important role for the safe and peaceful conduct of assemblies and constitute an example of security privatization in this area.

Keywords: Constitution, assemblies, security, law

Introduction

Assemblies are a manifestation of social activity and the involvement of individuals in the current affairs of the state. All kinds of public undertakings in the form of demonstrations, pickets or other activities that fall within the scope of the normative regime of assemblies are to be of a peaceful nature. Their course should also be safe for both participants of these events and outsiders in the vicinity of the organized project. And although ensuring security for units located in a given country is the responsibility of a given country, as a result of the progressing privatization of the security sphere in various areas of public life, also ensuring protection during these projects requires the involvement of private persons – in this case – mainly law enforcement services. The

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security services are the people that the organizer of the meeting dedicates to ensure the safe course of the meeting¹. The research objective of this study is to carry out a comparative analysis of the constitutional normative solutions regarding the right to organize safe and peaceful assemblies both in the territory of the Republic of Poland and in Ukraine.

Legal basis for the organization of assemblies in the Republic of Poland

The right to organize peaceful assemblies is an example of political freedoms and rights, the implementation of which by an individual in a democratic state ruled by law should be guaranteed by public authorities². Such a solution was included in the *Constitution of the Republic of Poland* of April 2, 1997³ in Art. 57, stating that everyone is guaranteed the freedom to organize and participate in peaceful assemblies, and any restrictions on this freedom may be specified by statute. Currently, therefore, the organization of assemblies in Poland takes place on the basis of the Act of July 24, 2015, *Law on Assemblies*⁴.

An assembly has a legal definition and means a grouping of people in an open space accessible to unnamed persons in a specific place in order to hold a joint session or to jointly express a position on public matters⁵. On the other hand, the right to organize this type of project is vested in individuals who have full legal capacity. In the light of domestic law, such capacity is granted to persons aged 18 and free from a ruling on incapacitation. In addition, persons who are carrying weapons, explosives, pyrotechnic products or other dangerous materials or tools with them cannot participate in the assembly⁶.

It is worth noting that currently electronic means of communication also allow participation in the assembly, but in the remote formula,

¹ See: S. Grabowska, *Cywilne organy ochrony prawa – urzędy*, [in:] *Organy i korporacje ochrony prawa*, ed. S. Sagan, Warszawa 2001, pp. 264–276.

² See: M. Jurgilewicz, J. Itrich-Drabarek, A. Misiuk, *Problem bezpieczeństwa w wybranych polskich konstytucjach*, „Przegląd Prawa Konstytucyjnego”, 2021, No. 4, pp. 347-358.

³ Konstytucja Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r. (Dz.U. 1997, No. 78, item 483).

⁴ Ustawa z dnia 24 lipca 2015 r. – Prawo o zgromadzeniach (Dz.U. 2019, item. 631), hereinafter referred to as upz.)

⁵ *Zarys nauki o prawie i wiedzy o bezpieczeństwie*, ed. M. Jurgilewicz [et al.], Rzeszów 2020, pp. 129-131.

⁶ See: art. 4 ust. 2 upz.

which is particularly justified during a pandemic. The condition for recognizing such a form as an assembly is the possibility of identification and participation of individuals with other participants of the assembly, and consequently the possibility of expressing the views expressed. Therefore, the purpose of the assembly should concern joint deliberations or expressing a position, and the participants of the assembly are required to have a sense of community between them, a certain psychological connection. Such a situation makes it possible to distinguish an assembly from a crowd, which is a crime under the Act of June 6, 1997, *Penal Code*⁷.

In the Republic of Poland, the unit has the right to organize various types of assemblies which, despite the differences between them, especially regarding the method of their notification, have a common - peaceful and safe purpose for their conduct. It is therefore possible to organize gatherings that can be ordinary (classic), simplified (not obstructing road traffic), cyclical or spontaneous⁸.

When organizing an ordinary assembly, its organizer is obliged to notify the commune authority of such intention that the message reaches the authority not earlier than 30 days and not later than 6 days before the planned date of the ordinary assembly. On the other hand, the commune authority, receiving the notification in question, immediately provides information on the place and date of this undertaking on the website of the subject in the Public Information Bulletin (BIP). The notification may be sent in writing, by fax, orally for the record or by electronic means of communication, and its registration takes into account the date, hour and minute, which in fact determine the order in which they are submitted. On the other hand, the commune authority provides information on the e-mail address and fax number to which notifications about the intention to organize an assembly are sent on the website of the BIP. In the notification of the intention to organize the meeting, the organizer is obliged to provide his and the meeting chairman's data, i.e. name and surname, PESEL number or type and number of an identity document (in the case of a person without a PESEL number), corre-

⁷ Ustawa z dnia 6 czerwca 1997 r. – Kodeks karny (Dz.U. 2020, item 1444). See: M. Jurgilewicz, *Wolność zgromadzeń w Polsce – uwarunkowania administracyjnoprawne*, [in:] *Bezpieczeństwo zgromadzeń i imprez masowych w Polsce. Teoria i praktyka*, ed. M. Jurgilewicz, Warszawa 2021, p. 48; J. Blicharz, *Prywatyzacja przestrzeni publicznej a wolność zgromadzeń*, [in:] *Przestrzeń w prawie administracyjnym*, ed. J. Zimmermann, Warszawa 2013, pp. 265–266; S. Gajewski, A. Jakubowski, *Prawo o zgromadzeniach. Komentarz*, Warszawa 2018, pp. 13–14.

⁸ M. Jurgilewicz, *Bezpieczeństwo zgromadzeń w Polsce. Zarys problematyki*, Warszawa 2020, pp. 15-16.

spondence address, e-mail address and telephone number – enabling contact with him (if the organizer of the assembly is a legal person or other organization - its name and address are provided, as well as the name and surname of the person submitting the notification on behalf of the organizer of the meeting, their PESEL number or the type and number of the identity document in the case of a person without a PESEL number, correspondence address, e-mail address and telephone number enabling contact with this person). In addition, the purpose of the meeting should be specified, including the indication of public matters to be covered by the meeting and the date, time and place of the meeting, the expected duration, the expected number of participants and the possible route of passage with an indication of the place of the meeting. What, in turn, proves the privatization of security in this type of undertaking is the optional provision by the organizer of information on measures to ensure the peaceful course of the assembly, if planned. In practice, these are dedicated security services to ensure the safe and peaceful course of the assembly. The notification is also accompanied by a written consent to assume the duties of the chairman, if appointed, as well as a photo of the organizer or chairman of the meeting, if appointed⁹.

On the other hand, the commune authority is obliged to issue a decision on a possible ban on the assembly no later than 96 hours before the planned date of the event, when its purpose violates the freedom of peaceful assembly, the assembly takes place with the participation of armed persons, the rules of organizing the assembly or its purpose or holding violate penal regulations, or the holding of an assembly may threaten the life or health of people or property to a significant extent, or an ordinary assembly is to be held in a place and time where a cyclical assembly takes place. An appeal against such a decision shall be submitted directly to the district court having jurisdiction over the seat of the commune authority that issued it within 24 hours of making it available in the BIP, which does not suspend the execution of this decision. The district court sets the date of the hearing in this respect, about which it notifies the organizer and the commune authority, and any appeal, if it has been lodged, is considered immediately in non-litigious proceedings, but not later than within 24 hours of its filing¹⁰.

An ordinary assembly should be conducted in a peaceful and safe manner, which is ensured by the participation of Police officers and dedicated security services in this undertaking. The ordinary meeting is chaired by the chairman, who is the organizer or a person acting on his

⁹ *Ibidem*, pp. 21-24.

¹⁰ See: art. 14 upz.

behalf, if he has given his consent in writing to accept these obligations, if the organizer is a legal person or another organization. The organizer and the chairman are obliged to ensure the course of this undertaking in accordance with the provisions of law and in such a way as to prevent possible damage caused by the participants of the meeting or any other kind of dangers. For this purpose, the organizer and the chairman shall take the measures provided for in the act, and during the assembly the chairman is obliged to remain in contact with the representative of the commune authority or the police officers in the event of their arrival at the place of the event. Additionally, the chairman is required to have an ID with him during the meeting so that it is easy to distinguish other persons from the person managing the meeting. On the other hand, if a participant in the meeting violates the provisions of the act or prevents or tries to frustrate the meeting, then the chairman has the right to demand that such person leave the meeting. In the event of failure to comply with such a request, the chairman may ask for help from the Police or the municipal (city) guard for an appropriate intervention. In turn, the dissolution of the assembly takes place when its participants do not obey its orders or its course violates criminal provisions or laws. The police officer also has the right to ask the representative of the commune authority to dissolve the assembly in the event of the above-mentioned circumstances. In practice, the dissolution of the assembly in this way takes place by issuing an oral decision subject to immediate execution, which is preceded by a two-time warning of the participants about the possibility of its dissolution, and then announced to the chairman or publicly participants if it is impossible to contact the chairman. The decision is delivered to the organizer in writing within 72 hours of taking it.

In turn, the organizer of the assembly has the right to appeal against the decision on its dissolution to the district court competent for the seat of the commune authority within 7 days from the date of dissolution of the assembly, and the district court examines the appeal no later than within 30 days from the date of receipt of the appeal. The decision of the regional court may be appealed against to the court of appeal within 5 days from the date of service of the decision¹¹.

Pursuant to the *Act – Law on Assemblies*, it is possible to organize other types than ordinary assemblies, as mentioned above. First, then, you can organize a simplified assembly. It will take place when it will not cause any difficulties in road traffic, in particular, it will not change its organization. It is enough then to notify the competent communal (municipal) crisis management center, and if it has not been established

¹¹ M. Jurgilewicz, *Bezpieczeństwo zgromadzeń...*, pp. 33-35.

in the commune - the voivodeship crisis management center should be notified not earlier than 30 days and not later than 2 days before the planned date of the assembly. The course of a simplified assembly should be peaceful and, above all, safe for its participants and third parties, thus its organizer is obliged to have distinguishing elements in a visible place at all times, indicating that he / she performs his function, because it is him who, in fact, rests safe the course of the assembly. This type of assembly, like other assemblies, may be dissolved by a representative of a commune authority, if its course poses a threat to the life or health of people or to property to a significant extent, poses a significant threat to the safety or order of traffic on public roads, or violates the provisions of the *Act - Law on Assemblies* or criminal provisions, and the organizer who has been informed by the representative of the commune authority about the necessity to dissolve the assembly, does not do so. Similarly, a Police officer has the right to ask a representative of a commune authority to dissolve a simplified assembly in the event of circumstances threatening its safe conduct¹². Another type – a cyclical assembly - is an event that is organized by the same organizer in the same place or on the same route at least 4 times a year according to a prepared schedule or at least once a year on state and national holidays, and of this kind the events took place in the last 3 years, even if not in the form of assemblies, and were intended in particular to celebrate events significant and important for the history of the Republic of Poland. When organizing a cyclical assembly, the organizer asks the voivode for consent to this undertaking, and such an application is submitted to the voivode no later than 7 days before the planned date of the first assembly cycle. The decision to organize a cyclical assembly is issued by the voivode no later than 5 days before the planned date of the first assembly cycle, taking into account, in particular, the fact that the applicant organizes assemblies earlier and the purpose of the cyclical assembly. Simultaneously with the issuance of the decision on consent to the cyclical organization of assemblies, the voivode provides information on the place and dates of cyclically organized assemblies on the BIP website and informs the commune authority where the cyclical assembly is to be held about the decision¹³.

Moreover, it is possible to organize a spontaneous assembly. This type of assembly does not require notification or consent of an administrative body, as it takes place in connection with a sudden and unforeseeable event related to the public sphere, the holding of which on a differ-

¹² *Ibidem*, p. 36.

¹³ *Ibidem*, pp. 31-32.

ent date would be pointless or insignificant from the point of view of the public debate. The course and method of solving both cyclical and spontaneous assemblies take place on the same terms as other types of assemblies, i.e. ordinary or simplified assemblies¹⁴.

Organization of assemblies in the light of the Constitution of Ukraine

The Constitution of Ukraine was adopted at the fifth session of the Supreme Council on June 28, 1996¹⁵ (hereinafter referred to as the UK Constitution). Pursuant to Art. 1 of the Constitution of the UK Ukraine is a sovereign and independent, democratic, social state ruled by law, and given the content of Chapter II, the catalog of civil rights and liberties formulated there is to make the democratic system of the state more realistic. And so, when it comes to the rights set out in the UK Constitution, this catalog is similar to the catalog of rights and freedoms set out in the Polish constitution. Therefore, the fundamental rights include, among others: freedom to develop one's personality (Article 23), the right to life (Article 27), the right to respect for one's dignity (Article 28), the right to personal inviolability (Article 29), the right to inviolability of the home (art. 30), or the right to freedom of thought and speech (art. 35), or the right to freely choose one's worldview and religion (art. 35).

In Ukraine, the legislator also ensured the right to organize assemblies. Due to the fact that in Ukraine there is no normative act analogous to the *Act – Law on Assemblies*, the organization of assemblies is therefore carried out in accordance with the constitutional regulations in this regard and taking into account the judicature of the courts. And so, according to Art. 39 of the Constitution of the UK, citizens of Ukraine have the right to organize peaceful assemblies. These are assemblies in which participants are not allowed to carry weapons. This prohibition, as well as the law itself included in this part of the constitution, also applies to meetings, processions and demonstrations, the conducts of which are notified in advance to the bodies of executive authority or local self-government bodies. On the other hand, any restrictions on the exercise of the right to assembly

¹⁴ See: A. Bodnar, M. Ziółkowski, *Zgromadzenia spontaniczne*, „Państwo i Prawo”, 2008, No. 5, pp. 49-50.

¹⁵ *Konstitucija Ukraini prijnata ma pjatij sesii Verchovni Radi Ukraini 28 cervnja 1996 r. Uriadowyj Kurier*, No. 129-130, July 13, 1996. See: *Konstytucja Ukrainy*, tłum. E. Toczek, Warszawa 1999.

may be imposed by courts, in accordance with the law, and only in the interests of national security and social order – in order to prevent disturbances or crimes, to protect the health of the population or to defend the rights and freedoms of other people.

It should be emphasized that in the case of an assembly that will, for example, run through the territory of several regions or the city of Kiev, its organizer should submit a written notification to each regional body of state administration and the state and city administration of Kiev. On the other hand, due to the fact that Ukraine has not introduced a normative act specifying the exact date on which the notification of the meeting should be made, therefore the decision no. 1-30/2001N4-rp/2001 of the Constitutional Court of Ukraine is an essential indication for the organizer of the meetings. According to that act, the authorities should be informed in good time. It would therefore be any reasonable time before the event, even notification of the authorities of the assembly could be made several hours before the event. However, in accordance with the decree of the Supreme Soviet of the USSR “On the procedure for organizing and holding meetings, rallies, marches and demonstrations in the USSR”, the authorities must be notified 10 days before the assembly (point 2 of the decree)¹⁶.

The above-mentioned solutions are similar to Polish regulations, where consent to the organization of an assembly may be refused if the purpose or holding of the assembly would violate criminal provisions or the undertaking would pose a threat to human life or health. Such solutions are dictated by the need to maintain the desired level of security and public order, as a value of a higher rank for the state than some individual freedoms, such as the right to assembly. It is also important that the assembly that is to be held cannot be conducted with the participation of armed persons, because such units would pose a real threat to other participants of the assembly and third parties, the more that during such events the assembled people demonstrate different positions, often in an expressive way, which often implies differences between individuals.

¹⁶ See more: B. Kołaczkowski, K. Sobolieva, *The administrative limitation of assemblies in Ukraine and Poland in the light of the international law regulations – some remarks on the Ukrainian road to democracy*, “*Studia Prawa Publicznego*”, 2016, No. 3, p. 42. See: Decision of the Constitutional Court of Ukraine in the case of the constitutional petition of the Ministry of Internal Affairs of Ukraine concerning official interpretation of provision of Article 39 of the Constitution of Ukraine about advance notification of executive power or local authorities on holding meetings, rallies, marches and demonstrations (case of advance notification of peaceful assembly) Kyiv, April 19, 2001 Case N 1–30/2001 N 4-rp/2001.

Conclusion

When comparing the constitutional solutions dealing with the problem of organizing assemblies, both in the Republic of Poland and in Ukraine they are to be peaceful, and especially free from the participation of armed persons. The appropriate local administration authorities should be notified about the organization of assemblies, and the lack of consent in this regard may be mainly dictated by ensuring the safety and public order, or the protection of life and health of individuals. These are solutions that are to make the safe course of this type of events real. Importantly, however, both in terms of national and Ukrainian legislation, little space is devoted to the security services, which are to ensure the safe conduct of assemblies in a realistic way. It seems that at present, with the established tradition of a democratic state ruled by law, such as Poland and Ukraine, the involvement of law enforcement services in securing assemblies should be the duty of organizer of this type of undertaking, the more that the process of privatization of security also affects this sphere of public life.

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**Konstytucyjne prawo do organizowania bezpiecznych i pokojowych zgromadzeń
w Polsce i na Ukrainie – analiza porównawcza**

Streszczenie

Organizacja pokojowych zgromadzeń stanowi konstytucyjne prawo przyznane jednostkom znajdującym się zarówno na terenie Rzeczypospolitej Polskiej, jak również na Ukrainie. Jest to istotne uprawnienie, ponieważ zapewnia społeczeństwu możliwość faktycznego udziału w życiu publicznym poprzez wyrażenie swoich poglądów, czy zmanifestowanie konkretnego stanowiska. Opracowanie zostało poświęcone analizie porównawczej konstytucyjnych regulacji dotyczących organizacji zgromadzeń w Polsce i na Ukrainie. Przyjęto także założenie, że służby porządkowe zgromadzeń pełnią ważną funkcję dla bezpiecznego i pokojowego przebiegu zgromadzeń oraz stanowią przykład prywatyzacji bezpieczeństwa w tym obszarze.

Słowa kluczowe: Konstytucja, zgromadzenia, bezpieczeństwo, prawo