

Ewa Kubas

Uniwersytet Rzeszowski
ORCID: 0000-0003-1952-3875

THE PRINCIPLE OF DEMOCRACY AND SOLIDARITY AND PUBLIC COLLECTIONS

Introduction

According to the Art. 2 of the Constitution of the Republic of Poland of 2 April 1997¹, the Republic of Poland is a democratic state ruled by law, implementing the principles of social justice. The principle of democracy indicated in this provision, which applies to both the state system and interpersonal relations, is therefore essential for the process of organizing and conducting public collections, which constitute the implementation of social solidarity resulting from democracy.

The principle of democracy

The term “democracy” comes from ancient Greece and is a combination of two words *demos* (people) and *kratos* (power, governance)². “Athenian democracy was characterized by universal devotion to the principle of civic virtues: devotion to the affairs of the republican policies and subordinating private life to political issues and the common good”³. The basic principles of democracy were: freedom, understood as freedom of action within the limits of the law, and in particular the possibility of expressing one’s opinion on political matters; equality of rights, i.e. the equal weight of every vote, access to offices and equal treatment in court as well as the rule of law, i.e. obedience to authority and enacted laws⁴.

¹ Dz.U. 1997, no. 78, item 483 as amended.

² J. Miklaszewska, *Demokracja – dzieje pojęcia* [in:] *Oblicza demokracji*, ed. R. Legutko, J. Kleczkowski, Kraków 2002, p. 11.

³ D. Held, *Modele demokracji*, Kraków 2010, p. 17.

⁴ *Historia myśli ustrojowej i społecznej*, eds. I. Barwicka-Tylek, J. Malczewski, M. Jaskólski, Warszawa 2014, p. 40.

Currently, this principle is considered a form of a political system of a state that respects the will of the majority of citizens as the source of power⁵, granting a number of rights and freedoms that it guarantees and is their synonym. Democracy is also understood as a socio-economic system ensuring the universal and equal participation of citizens in property, making decisions relating to the common good of the whole society⁶ as well as access to cultural goods, education, health protection, life, etc.⁷

Democracy primarily refers to the form of exercising power in the state. According to the Art. 4 of the Constitution of the Republic of Poland, the supreme authority in the Republic of Poland belongs to the Nation and it is exercised by representatives or directly. In this case, the Nation means all citizens of the Republic of Poland, regardless of ethnic affiliation, while its sovereignty should be understood as “subordination of all organs of public authority to the will of all citizens. None of these organs may exercise power in the name and interest of any person, social group, organization or party, but only on behalf of, with the authority and in the interest of the entire Nation”⁸. This provision also indicated that power may be exercised in the form of direct democracy, which is reserved to the resolution of matters of special national or local importance by means of a referendum⁹. The essential form of exercising power by the Nation, however, is the indirect form, carried out by elected deputies and senators sitting in the Parliament and Senate, who, under the Art. 104 and 108 of the Polish Constitution, were recognized directly as representatives of the Nation¹⁰.

A state in which sovereignty belongs to the Nation must also guarantee citizens the existence of rights and freedoms which will create conditions for them to actively participate in public life, ensure security, and enable political, economic and social activity. It is more important because the growing social awareness causes a constant increase in the interest of citizens in the implementation of public affairs that affect their functioning within the state or a specific community (e.g. municipalities)¹¹. The principle of democracy results in a number of human

⁵ E. Ura, *Prawo administracyjne*, Warszawa 2015, p. 94.

⁶ K. Krajewski, *Etyczne podstawy demokracji*, „Ethos” 1999, nr 1–2(45–46), p. 185.

⁷ K. Krzywińska, *E-referendum jako innowacyjna forma demokracji bezpośredniej na przykładzie Szwajcarii* [in:] *Człowiek – gospodarka – praca – rozwój. Perspektywa lokalna i globalna*, ed. D. Jegorow, Chełm 2013, p. 30.

⁸ P. Winczorek, *Komentarz do Konstytucji Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r.*, Warszawa 2000, p. 16.

⁹ The Act of 15 September 2000 on the local referendum (Dz.U. 2019, item 741), the Act of 14 March 2003 on the nationwide referendum (Dz.U. 2019, item 1444 as amended).

¹⁰ W. Skrzydło, *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, Warszawa 2013, p. 19.

¹¹ M. Jabłoński, *Rola i znaczenie instytucji demokracji bezpośredniej we współczesnym państwie* [in:] *Instytucje demokracji bezpośredniej w praktyce*, eds. O. Hołub, M. Jabłoński, M. Radajewski, Warszawa 2016, p. 14.

and civil rights and freedoms, important from the point of view of organizing and carrying out public collections, which are inseparable from the human being and belonging to a specific country. Democracy is therefore a synonym and guarantor of human and citizen rights and freedoms, such as, for example, freedom (Art. 31), equality (Art. 32 and 33), personal freedoms and rights (Art. 38–56), political freedoms and rights (Art. 57–63), economic, social and cultural freedoms and rights (Art. 64–76). In order to guarantee the rights and freedoms in Art. 77–80, measures to protect freedoms and rights are also indicated.

Taking into account the principles of organizing and conducting public collections, the freedom of association is of great importance, as it is closely related to the organization and conduct of public collections. Associations have various organizational and legal forms. These are, among others associations or foundations that have the option of organizing public collections, pursuant to the provisions of the Act of 14 March 2014 on the principles of conducting public collections¹². The income from these collections is allocated to the implementation of public goals indicated by these associations. Although the provisions of the Constitution of the Republic of Poland do not directly refer to the freedom to organize public collections, it results from the freedom of association and the Act of 14 March 2014 on the principles of conducting public collections which defines public collection. According to the Art. 1 of the act, public fundraising should be understood as collecting donations in cash or other things in a public place for a specific, lawful purpose within the scope of public tasks referred to in the Art. 4 sec. 1 of the Act of 24 April 2003 on Public Benefit and Volunteer Work¹³ and for religious purposes.

The principle of solidarity

One of the foundations of democracy, which is closely related to the organization and conduct of public collections, is the principle of solidarity. *Solidarity* comes from the Latin word *solidum*, meaning concentration. *Solidare* means to thicken, unite, so the principle of solidarity means connections between people who need each other more and more¹⁴. According to this principle, one should take care of other people and their needs through actions for specific people or through social activity aimed at institutional care for others¹⁵. This principle can be considered in several aspects: legal and economic, community, mutual and as a moral obligation. It is often associated with helping the excluded and is based on charity activities

¹² Dz.U. 2020, item 1672.

¹³ Dz.U. 2020, item 1057.

¹⁴ A. Pułło, *Idea solidarności w systemie zasad konstytucyjnych*, „Gdańskie Studia Prawnicze” 2015, vol. XXXIII, p. 335.

¹⁵ K. Krajewski, *Etyczne podstawy...*, p. 188.

carried out as part of cooperation between various entities¹⁶. Taking into account the legal and economic aspect, it was mentioned in the preamble to the EU Charter of Fundamental Rights, which indicated that “aware of its spiritual-religious and moral heritage, the Union is built on the indivisible, universal values of human dignity, freedom, equality and solidarity; it is based on the principles of democracy and the rule of law”¹⁷. Solidarity has also been identified as one of the European values in Title IV of the Charter, where reference is made to the guarantee of social and economic rights. A reference to this principle is included in the preamble to the Constitution of the Republic of Poland, where the constitution-maker indicated that “we are establishing the Constitution of the Republic of Poland as fundamental rights for the state, based on respect for freedom and justice, cooperation between authorities, social dialogue and the principle of subsidiarity strengthening the rights of citizens and their communities” and in the Art. 20 of this act, according to which the social market economy based on the freedom of economic activity, private property and solidarity, dialogue and cooperation of social partners is the basis of the economic system of the Republic of Poland. According to the judgment of the Constitutional Tribunal of 30 January 2001, “social market economy, referred to the Art. 20 of the Constitution, is based on solidarity, dialogue and cooperation of social partners, which implies the concept of balancing the interests of market participants and, at the same time, respecting their autonomy, creating a constitutional guarantee of the negotiating manner of resolving disputes, enabling the overcoming of tensions and conflicts in the management process. The sources of the above values should be sought in the social philosophy known as social solidarity. According to the views of its representatives, social life is based on interdependence and joint responsibility of all its participants. Solidarity proclaims compliance and commonality of interests of all individuals and social groups within a given community, as well as the obligation to participate in burdens for the benefit of society. It presupposes mutual understanding between individuals, social groups and the state”¹⁸.

Moreover, the principle of solidarity was expressed in the Act of 27 August 2004 on health care services financed from public funds¹⁹, ensuring equal access to benefits regardless of the amount of the premium paid. In the preamble to the Act of 14 December 2016 Educational Law²⁰ it was emphasized that “the school should provide each student with the conditions necessary for his development, prepare him to fulfill family and civic obligations based on the principles of solidarity, democracy, tolerance, justice and freedom”. Also in the Act of 13

¹⁶ D. Dobrzański, *Zasada solidarności. Studium z filozofii społecznej*, Poznań 2013, p. 95–111.

¹⁷ Journal of Laws UE C. 303 of 14 December 2007, p. 1.

¹⁸ File reference number K 17/00, Lex no. 46003.

¹⁹ Dz.U. 2019, item 1373 as amended.

²⁰ Dz.U. 2019, item 1148 as amended.

October 1998 on the social insurance system²¹ it has been pointed out that a feature of social security systems is the existence of solidarity²². Social solidarity is also visible in the Art. 1 of the act on the principles of conducting public collections, in which it was emphasized that public collections are organized for a legitimate purpose that is in the sphere of public tasks or for a religious purpose, but not in the private interest. Moreover, the funds obtained as a result of the conducted public fundraising come from members of the public who deem the specific goal worthy of support.

The principle of solidarity can also be considered in the aspect of community, understood as a permanent community. As part of it, there are relationships that are repeatable and therefore the entities that make up this community have a sense of security and have the right to receive support in a difficult life situation²³. According to E. Olejniczak-Szałowska, this community is characterized by a significant degree of social integration, the ability to self-organize in order to implement common assumptions and the existence of a common social awareness²⁴. Therefore, members of society form a community whose members can create associations whose aim is to support its members: the needy, the poor, the sick, the lonely, the homeless²⁵. Community support may be shown, inter alia, in the form of public collections, which gather donations for a specific purpose, which may be to help members of this community who are in need.

Solidarity is also reciprocal, which means that “someone who has been shown a courtesy (even unexpected or even undesirable) will feel a kind of obligation to reciprocate it”²⁶. The preamble to the Constitution of the Republic of Poland mentions “the obligation of solidarity with others”. Therefore, “a person can also expect solidarity from others if he finds himself in unfavorable situations in life”²⁷. Public collections can also be considered in the context of reciprocity. In the case of collecting funds constituting aid for the beneficiary, it can be expected, in line with this rule, that in the event of the necessity to provide assistance to another person, he will feel obliged to offer it.

Another aspect of social solidarity is related to the principle of reciprocity – the moral nature of a commitment to act or a declaration to take such action²⁸.

²¹ Dz.U. 2019, item 300 as amended.

²² K. Ślebza, *Aksjologiczne podstawy prawa ubezpieczeń społecznych ze szczególnym uwzględnieniem solidarności i sprawiedliwości – przyczynek do dyskusji*, https://prawo.amu.edu.pl/data/assets/pdf_file/0004/173497/Aksjologiczne_wersja_28_03.pdf (11.11.2019), p. 8–9.

²³ D. Dobrzański, *Zasada solidarności...*, p. 100.

²⁴ E. Olejniczak-Szałowska, *Członkostwo wspólnoty samorządowej*, „Samorząd Terytorialny” 1996, nr 5, p. 4.

²⁵ K. Krajewski, *Etyczne podstawy...* p. 188.

²⁶ D. Doliński, *Wpływ społeczny a jakość życia*, „Psychologia Jakości Życia” 2002, nr 1, p. 44.

²⁷ M. Mędrala, *Spoleczny charakter świadczeń w polskim prawie pracy*, WKP 2020.

²⁸ D. Dobrzański, *Zasada solidarności...*, p. 105.

It results from belonging to a larger group, e.g. a nation or state, and the related commitment to cooperation, rematch or help provided to others, e.g. in the form of donation to a public fundraiser. Exclusion is also an inherent feature of solidarity, because being in solidarity with someone results in opposition to someone else²⁹. It is visible in the case of supporting certain social groups, constituting the so-called social margin, which may meet with widespread criticism. Solidarity is very often associated with charity, an example of which is the organization and participation in public collections, as well as donating money for a public or religious purpose. “Charity” means caring, which is equated with generosity towards the poor and those in need³⁰. Solidarity is also associated with the cooperation of various entities, e.g. non-governmental organizations, public administration bodies, natural persons, aiming to achieve the set goals. Only actions undertaken in cooperation with others are effective³¹ and the task of the state is not only to care for the creation of conditions enabling the satisfaction of citizens’ needs, but also to promote solidarity in all its aspects.

Conclusion

Democracy is considered to be the system that is most conducive to the creation of trust, and at the same time needs the trust of citizens³². Therefore, the principle of social solidarity resulting from the principle of democratism, which is the basis of the Polish legal order, is so important. It was referred to in the preamble and in the Art. 20 of the Polish Constitution, pointing out that this principle is a pillar of the free market economy and an important element of the civil society³³. It assumes solidarity with another person and the support of others who need help. The organization and conduct of public collections are an excellent example of social solidarity, which, according to L. Kołakowski, means that “we are united by a common fate in which each of us participates and that the very idea of humanity makes sense not only as a zoological category, but also a moral one³⁴. The existence of this principle, therefore, indicates a moral obligation for members of society to support, e.g. in the form of a specific amount of money or gifts in kind for a specific public purpose for those in need.

²⁹ *Ibidem*, p. 106.

³⁰ M. Nuzhat, *Defining „Charity” and „Charitable Purposes” in the United Kingdom*, „The International Journal of Not-for-Profit Law” 2008, vol. 11, issue 1, p. 36.

³¹ D. Dobrzański, *Zasada solidarności...*, p. 110–111.

³² P. Sztompka, *Zaufanie. Fundament społeczeństwa*, Kraków 2007, p. 343.

³³ L. Garlicki, M. Zubik, komentarz do art. 20 Konstytucji RP [in:] *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, t. I, eds. L. Garlicki, M. Zubik, Lex 2016.

³⁴ L. Kołakowski, *Moje słuszne poglądy na wszystko*, Kraków 1999, p. 216.

Bibliography

- Dobrzański D., *Zasada solidarności. Studium z filozofii społecznej*, Poznań 2013.
- Doliński D., *Wpływ społeczny a jakość życia*, „Psychologia Jakości Życia” 2002, nr 1.
- Garlicki L., Zubik M., komentarz do art. 20 Konstytucji RP [in:] *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, t. I, eds. L. Garlicki, M. Zubik, Lex 2016.
- Held D., *Modele demokracji*, Kraków 2010.
- Historia myśli ustrojowej i społecznej*, eds. I. Barwicka-Tylek, J. Malczewski, M. Jaskólski, Warszawa 2014.
- Jabłoński M., *Rola i znaczenie instytucji demokracji bezpośredniej we współczesnym państwie* [in:] *Instytucje demokracji bezpośredniej w praktyce*, eds. O. Hołub, M. Jabłoński, M. Radajewski, Warszawa 2016.
- Kołąkowski L., *Moje słuszne poglądy na wszystko*, Kraków 1999.
- Krajewski K., *Etyczne podstawy demokracji*, „Ethos” 1999, nr 1–2(4–46).
- Krzywińska K., *E-referendum jako innowacyjna forma demokracji bezpośredniej na przykładzie Szwajcarii* [in:] *Człowiek – gospodarka – praca – rozwój. Perspektywa lokalna i globalna*, ed. D. Jegorow, Chełm 2013.
- Mędrała M., *Spółeczny charakter świadczeń w polskim prawie pracy*, WKP 2020.
- Miklaszewska J., *Demokracja – dzieje pojęcia* [in:] *Oblicza demokracji*, eds. R. Legutko, J. Kleczkowski, Kraków 2002.
- Nuzhat M., *Defining „Charity” and „Charitable Purposes” in the United Kingdom*, „The International Journal of Not-for-Profit Law” 2008, vol. 11, issue 1.
- Olejniczak-Szałowska E., *Członkostwo wspólnoty samorządowej*, „Samorząd Terytorialny” 1996, nr 5.
- Puño A., *Idea solidarności w systemie zasad konstytucyjnych*, „Gdańskie Studia Prawnicze” 2015, vol. XXXIII.
- Skrzydło W., *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, Warszawa 2013.
- Sztompka P., *Zaufanie. Fundament społeczeństwa*, Kraków 2007.
- Ślęzak K., *Aksjologiczne podstawy prawa ubezpieczeń społecznych ze szczególnym uwzględnieniem solidarności i sprawiedliwości – przyczynek do dyskusji*, https://prawo.amu.edu.pl/_data/assets/pdf_file/0004/173497/Aksjologiczne_wersja_28_03.Pdf (11.11.2019).
- Ura E., *Prawo administracyjne*, Warszawa 2015.
- Winczorek P., *Komentarz do Konstytucji Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r.*, Warszawa 2000.

ZASADA DEMOKRACJI I SOLIDARYZMU SPOŁECZNEGO A ZBIÓRKI PUBLICZNE

Streszczenie

Celem artykułu jest wykazanie, że zasady demokracji oraz solidaryzmu społecznego mają bardzo istotne znaczenia zarówno w procesie organizacji, jak i prowadzenia zbiorów publicznych. Dzięki zagwarantowanej konstytucyjnie wolności zrzeszania się umożliwiono wielu różnym organizacjom (np. organizacjom pozarządowym, komitetom społecznym, spółdzielniom socjalnym, spółkom akcyjnym czy też spółkom z ograniczoną odpowiedzialnością) partycypowanie w realizacji zadań publicznych, które mogą być finansowane ze środków pochodzących z publicznego gromadzenia

datków. W artykule wykazano, że wynikająca z zasady demokratyzmu solidarność społeczna jest jednym z czynników determinujących ofiarność publiczną.

Słowa kluczowe: zasady konstytucyjne, konstytucja, demokracja, solidaryzm społeczny, zbiórki publiczne

Summary

The aim of the article is to show that the principles of democracy and social solidarity play a very important role in the process of organizing and conducting public collections. Thanks to the constitutionally guaranteed freedom of association, many different organizations (e.g. non-governmental organizations, social committees, social cooperatives, joint-stock companies or limited liability companies) have been allowed to participate in the implementation of public tasks, which may be financed with funds from public donation. The article shows that social solidarity resulting from the principle of democratism is one of the factors determining public donation.

Keywords: constitutional principles, constitution, democracy, social solidarity, public collections