Humanities and Social Sciences **2020**
HSS, vol. XXV, 27 (3/2020), p. 113-120 **July-September**

Małgorzata POLINCEUSZ[1]

DISSOLVING ASSEMBLIES TO GUARANTEE SECURITY

This paper discusses the possibilities provided by the provisions of the Polish law to dissolve an assembly in order to guarantee security. The author analyzes the provisions of the Polish normative system that defines the essence and scope of the right to freedom of an assembly, and which sets the limits of this freedom. The paper presents the types of assemblies and the typical features of individual assemblies, entities authorized to issue a decision to dissolve an assembly, as well as the premises legalizing the possibility of dissolving each assembly and the differences between these premises. The author also raises the problem of the legal form of the decision to dissolve an assembly, the procedure for issuing it, and the problems associated with determining the appropriate appeal procedure against the decision to terminate the spontaneous assembly.

Keywords: assemblies, security, dissolution of an assembly, freedom of an assembly, a decision to dissolve the assembly.

1. INTRODUCTION

An intention of the project of the lawin force, which regulates the principles and procedures for organizing, holding and dissolving assemblies, was to create such conditions for organizing and holding assemblies that on the one hand would allow full and effective exercise by citizens and other entities of the constitutionally guaranteed freedom to organize peaceful assemblies and the right to participate in them, on the other one, which would guarantee safety and health protection for the participants of the assembly and the third-parties, as well as protect public order and the freedoms and rights of others.

In the Polish normative system, freedom of assembly was placed first among the freedoms and rights covered by subsection of the Constitution of the Republic of Poland (Journal of Laws 1997 No. 78, item 483, as amended, hereinafter: the Constitution of the Republic of Poland) entitled: "Freedoms and political rights". According to the content of art. 57 of the Polish Constitution, the freedom to organize peaceful assemblies and the right to participate in them is guaranteed to everyone, i.e. – as the Constitutional Court emphasizes in the justification to the judgment of 10 November 2004 (OTK-A 2004/10/105) – an indefinite, anonymous participant who intends to attend an assembly having an occasional and peaceful nature and which was convened for a specific purpose, which means that the exercise of the right to freedom of assembly depends primarily on the free decision and activity of the persons concerned.

[1] Małgorzata Polinceusz, PhD, Rzeszow University of Technology, Faculty of Management, al. Powstańców Warszawy 12, 35-959 Rzeszów; e-mail: malgpope@prz.edu.pl. ORCID: 0000--0002-1179-6628.

Bearing in mind the possibility provided for by the provisions of Polish law for the dissolution of the assembly in order to protect its security, one should pay attention to two aspects of this problem. First, the constitutional norms regulating the issue designate a sphere free from interference by public authorities, which authority was prohibited from unreasonably interfering with the constitutionally defined sphere of individual activity. Secondly, these norms at the same time constitute for both the participants of these assemblies and their holders the right to demand from the public authority a certain activity which aims primarily at the adequate protection of security of those peaceful assemblies (Sokolewicz, Wojtyczek, 2016). This way of perceiving the right to freedom of assembly may mean the need to simultaneously protect two interests that are legitimately honored and may conflict with each other, i.e. the freedom of assembly and the security of these assemblies.

2. TYPES OF ASSEMBLIES

Until the entry into force of the provisions of the Act of 13 December 2016 amending the Act on Assemblies (hereinafter referred to as a.o.a.), only two basic types of assemblies were distinguished.

The first type means an assembly being a grouping of persons in an open space, accessible to unspecified persons in a specific place for joint deliberations, or for the purpose of jointly expressing a position on public matters. This assembly may be organized in the ordinary mode or organized in a simplified mode, which is possible in the event that the holder of the assembly decides that the planned assembly will not cause difficulties in road traffic, and in particular cause changes in its organization (art. 21 a.o.a.).

The second type of an assembly, called a spontaneous assembly, means a gathering that would take place in connection with the occurrence of a sudden and unpredictable event related to the public sphere, whose holding at another time would be pointless or of little importance from the point of view of debate public (art. 3 a.o.a.).

The third type of an assembly was introduced into our legal order by the provisions of the 2016 Amending Act. This new type of assembly is a cyclically organized assembly, which differs from the other two in both the organization procedure and the purpose for which it is conducted. In accordance with the intention of the legislator, cyclical assemblies are defined as assemblies organized by the same holder in the same place, or on the same route, at least 4 times a year, according to a developed schedule, or at least once a year on state and national holidays and when events took place in the last 3 years, even if not in the form of assemblies and were intended in particular to commemorate events significant for the history of the Republic of Poland (art. 26a (1) a.o.a.).

The amendment to the Act on Assemblies, introducing a new type of assemblies, which are cyclically organized ones, granted them a special status, which is also associated with a kind of protection for these assemblies. If the municipality body received a notification about the intention to organize in the same place (at a distance of less than 100m) and at the same time two or more assemblies, and when holding these assemblies is not possible in such a way that their course threatened the lives or health of people or property of considerable size, then the priority of choosing the place and time of the meeting is determined by the order where such a notification was made. However, when one of these conflicting assemblies is a cyclical assembly, it will take precedence over the others (art. 12 (1) a.o.a.).

3. PREREQUISITES FOR THE ASSEMBLY DISSOLUTION

Depending on the type of an assembly, the legislator indicated the entities authorized to dissolve this assembly and established appropriate premises legalizing a possibility of dissolving the assembly, whose holding constitutes the implementation of political rights and freedoms guaranteed to the citizen at the level of the Constitution of the Republic of Poland.

The power to dissolve the public assembly was granted to four entities. The first one is the chairman of the meeting (art. 19 par. 6,a.o.a., art. 26e a.o.a.), the second is the holder of the meeting (art. 24 a.o.a.), the third a representative of the municipality body (art. 20 par. 1 a.o.a., art. 25 par. 1 a.o.a. and art. 26e a.o.a.), and the fourth is the officer managing the Police (art. 28 (1) a.o.a.). The chairman of the meeting was granted the right to dissolve the meeting organized in the ordinary mode and the cyclical meeting. The holder of the meeting has the right to dissolve the ordinary meeting, organized in a simplified mode. A representative of the municipality body may result in the dissolution of the ordinary assembly, irrespective of the mode in which it was organized and the cyclical assembly. On the other hand, a spontaneous assembly can be dissolved only by an officer managing the Police.

The prerequisites legalizing the dissolution of an assembly were also determined by the legislator in various ways, depending on which type of assembly is concerned, and which of the authorized entities undertakes to dissolve it.

In case of ordinary meetings organized in the basic mode, the chairman of the meeting dissolves the meeting if its participants do not comply with the instructions, or if the course of this meeting violates the provisions of the Act on assemblies or criminal provisions (art. 19 (6) a.o.a.). The premises for dissolution of the assembly, which arepresented in this way by the legislator, should be considered as vague and difficult to determine whether, for instance, each case of one of the premises of dissolution of the assembly obliges to dissolve it. The legislator left the chairman of the meeting the freedom to decide whether the intensity of subordination of participants is so important that it should entail the necessity to dissolve the meeting, or whether due to the final nature of this measure it should be used with the utmost moderation (Mamak, 2014). According to P. Suski, the situation which can be managed by other means than the final ones does not justify the dissolution of the assembly (Suski, 2010).

In turn, the premises legalizing the dissolution of the assembly and concerning the violation by its participants of the provisions of the Act on Assemblies and criminal provisions undoubtedly relate to cases in which this assembly, understood as a phenomenon in public space, violates the provisions of the act constituting the basis of its organization. In turn, the violation of criminal provisions may mean the occurrence of collective behavior, whose type and nature indicate the likelihood of their repetition in the further course of the meeting. First of all, it may be behavior committed using violence, posing a threat to the life or health of persons or having the character of a violent assassination attempt (Suski, 2010). The legislator's lack of specification of the phrase “violation of penal provisions” means that it should be understood broadly. Therefore, it may mean all acts endangered by punishment, described in the Penal Code, Penal Fiscal Code, Code of Offenses, special acts containing criminal provisions – in the form of crimes, fiscal offenses or offenses (Rzetecka-Gil, 2019).

A slightly different group of premises was specified by the legislator for the situation of dissolving an ordinary assembly in the event that it is resolved by a representative of the municipal body. They can dissolve the meeting in a situation where the course of the meeting, or if the course of the meeting violates the provisions of the Act on Assemblies or criminal provisions, and the chairman of the meeting, warned by a representative of the municipality body about the need to dissolve the meeting, does not solve it (art. 20 par. 1 a.o.a.). First of all, it should be noted that the power to dissolve the meeting by a representative of the municipality body is derived from the obligation of the chairman to dissolve the meeting. This means that only if the chairman does not dissolve the meeting in accordance with the procedure specified in art. 19 a.o.a., after prior notification of the need to terminate it by a representative of the municipal body, this representative may do so. However, the condition for obtaining the right to dissolve the meeting by a representative of the municipal body is prior notice to the chairman that he should do so pursuant to art. 19 par. 6 a.o.a. (Makowski, 2015). Secondly, in this case, in addition to the premises of the participants of the meeting already discussed above, violations of the provisions of the Act on Assemblies and criminal provisions, in this case additional conditions must be met, i.e. the meeting must pose a threat to the life and health of people or property of considerable size.

These premises should refer to situations in which the way of holding the meeting, in particular its size, collective behavior of participants, their interactions with various elements of the space where it takes place, can realistically cause the death of a person participating in the meeting or the third-party, or cause on their side damage to health orproperty of considerable size ". A specific state of assessment of the threat to property of significant size should also be made not only with reference to their material, but also public utilities, historical, historic, and natural values (Suski, 2010).

In the event of the above-mentioned premises, a police officer may request the dissolution of an assembly. In this situation he has the right to ask a representative of the municipality body to dissolve an assembly.

In case of ordinary meetings, organized in a simplified mode, the meeting holder also has the right to terminate such meeting in the event that its participants do not comply with their instructions, or if the course of the meeting violates the provisions of the Act on Assemblies or criminal provisions. Similarly to ordinary assemblies organized in the basic mode, also these assemblies, held in the simplified mode, may be dissolved by a representative of the municipality body if their course threatens the life or health of people, or property of considerable size. In addition, due to the simplified, i.e. specific mode of organization of this type of ordinary assembly, the legislator defined additional premises, whose fulfillment legalizes the dissolution of such an assembly, thus clearly expanding the catalog of cases where this type of assembly can be resolved. When an ordinary assembly organized in a simplified mode causes a significant threat to the safety or order of road traffic on public roads, the representative of the municipality body may also be dissolved. In this case, a police officer may request that the assembly be dissolved (art. 25 par. 1–2 a.o.a.)

In accordance with the position adopted in the doctrine, it should be assumed that the premise of "a significant threat to the safety or order of road traffic on public roads" refers to a situation where the way of the assembly may disturb the normal scope of access to it, resulting from the adopted road geometry, located on signs, traffic lights and road safety devices, rules of their operation and legal regulations, the course of road traffic in a given

place (Jakubowski, Gajewski, 2017; Rzetecka-Gil, 2019). The literature also indicates that one will encounter such a situation when there is a negative premise that makes it impossible to hold an assembly under the simplified procedure, i.e. its influence on road traffic issues (Makowski, 2015).

In the case of premises justifying the dissolution of an assembly organized cyclically, the legislator recommended the use of the same premises as specified for ordinary assemblies organized in a standard way, i.e. the dissolution of such an assembly will justify behavior threatening the life and health of people, or property in large sizes, or violating the provisions of the Act of Assemblies or criminal regulations.

In turn, a spontaneous assembly may be dissolved when the course of such an assembly threatens the life, health of people, property, when it causes a serious threat to public safety or order, a threat to the safety or order of road traffic on public roads, when it violates the provisions of the Act on Assemblies, or penal provisions, or when it interferes with the course of a parallel ordinary assembly, organized in an ordinary or simplified mode, or an assembly organized cyclically (art. 28 a.o.a.), and the right to dissolve this type of assembly is vested in the officer in charge of the activities of the Police.

In the case of spontaneous assemblies, this additional premise legalizing the dissolution of this type of assembly results directly from the nature of the spontaneous assembly and the fact that it is not subject to notification and, consequently, that it is not protected by state organs to the same extent as ordinary assemblies organized under the procedure ordinary and simplified as well as meetings organized cyclically. Establishing an extended catalog of premises justifying the dissolution of a spontaneous assembly also results from the fact that holding a spontaneous assembly means the inability to prepare public authorities in advance to ensure the safety of participants in such an assembly, as well as to ensure public order during its duration (Rzetecka-Gil, 2019).

4. FORM OF A DECISION TO DISSOLVE AN ASSEMBLY

Due to the specific nature of the action, which is the dissolution of an already ongoing assembly and the circumstances accompanying the decision, the form that this decision will take will be oral, subject to immediate execution. In the event of dissolution of the assembly by a representative of a municipality authority, the regulations additionally require the decision to be delivered to the holder of the assembly in writing within 72 hours of its adoption. Such rules of issuing decisions to dissolve an assembly mean a double system of issuing decisions - oral and written. The doctrine emphasizes that the preparation of a written decision after the announcement is only a method of its recording in writing, taking into account all the elements of the decision specified in the provisions of the Code of Administrative Procedure (hereinafter referred to as: the Code of Administrative Procedure; Art. 107 of the Code of Administrative Procedure). However, it does not have any impact on the binding of the authority and its entry into legal circulation, as these effects occur – pursuant to Art. 110 of the Code of Civil Procedure - upon announcement of such an act orally. Therefore, it should be emphasized that the letter reflecting the verdict announced orally, is not a separate administrative decision (Jakubowski, Gajewski, 2017; Rzetecka--Gil, 2019).

Of course, the holder of the meeting has the right to appeal against the decision to dissolve the assembly to the district court competent for the seat of the commune authority within 7 days from the date of dissolution of the assembly. In turn, the decision of the district

court may be appealed to the court of appeal within 5 days from the date of delivery of the decision. On the other hand, the decision of the court of appeal is no longer subject to a cassation appeal (art. 19 (6) a.o.a., art. 20 a.o.a., art. 24 a.o.a. art. 25 a.o.a., art. 26e a.o.a.).

The above-mentioned double decision-making system was included by the legislator in the procedure of dissolving an ordinary assembly, organized in the ordinary and simplified mode, and the assembly organized cyclically. In the case of a spontaneous assembly, which may be dissolved by an officer in charge of the Police's activities by issuing an oral decision, subject to immediate execution, preceded by a two-time warning of the participants of the spontaneous assembly about the possibility of its dissolution, and then publicly announced to the participants of the assembly, the consequences of the need to prepare the already announced decision in a written form was not provided for by law. The legislator did not express this obligation directly, nor did they refer to other provisions that impose such an obligation on the entity dissolving the meeting. In this case, the legislator did not formulate any guidelines as to the procedure and time limits for appealing against the decision dissolving a spontaneous meeting.

This form of regulations on the dissolution of spontaneous assemblies may lead to the conclusion that in the event of dissolution of such assemblies, the legislator did not provide for any appeal procedure against the decision to dissolve the assembly. Since it is difficult to find a justification for such a position, it is undoubtedly necessary to introduce the *de lege ferenda* postulate to clarify and supplement the provisions of the Act on Assemblies and, consequently, to regulate the need for a written confirmation of an orally issued decision to dissolve a spontaneous assembly, if requested by interested entities, and to specify the appropriate an appeal procedure against a decision to dissolve such an assembly.

5. CONCLUSIONS

Ensuring public order and security of citizens is an important element of the policy of functioning of almost every country in the world. The state, burdened with an obligation to implement the above demands, should set first and foremost the creation of precise normative foundations, and on their background appropriate structures that will enable citizens on the one hand to protect their rights and freedoms, and on the other one which will give an opportunity to secure their implementation and not only during daily functioning, but also during unusual events, such as speeches, assemblies of citizens aimed at expressing support, protest or simply expressing opinions.

As already mentioned, one of the basic criteria conditioning the implementation of constitutionally defined freedom of an assembly is the premise of their peaceful intentions. Undoubtedly, the peaceful nature of the assembly is expressed in the safety of its participants, i.e. the objective state of no threat felt subjectively by individuals or groups taking part in that assembly. Ensuring this objectively and subjectively perceived lack of danger is the role of public authorities, which are obliged to take actions to prevent the risk of unwanted damage that may have a source both in the actions of the participants of the assembly or in the actions of third parties. As noticed by J. Zabłocki, it is the duty of public administration bodies not only to formulate suppositions regarding possible threats arising from the planned assembly, but also to identify and thoroughly identify the negative aspects of the assembly against the specific circumstances of the case (Zabłocki, 2017). In addition, it should be added that public administration bodies are also responsible for reacting as it is a natural response to identified threats. As a result, formulation of assumptions and

identifying a threat can mean (finding both normative and actual grounds) the need to dissolve the assembly to protect its security.

In line with the spirit of the Act on Assemblies, all possibilities of dissolving an assembly provided for in the provisions of the Act should constitute an exceptional measure resulting from the occurrence of extraordinary circumstances. As a rule, the end of the assembly should be the moment of its closure by the chairman, not the moment of its dissolution. As noted by the Constitutional Tribunal, not only the prohibition of assembly, but also its dissolution, constitute the most restrictive measures restricting freedom of assembly. Each of these measures, preventing the exercise of constitutional freedoms, may be issued on the basis of an assessment and as a result of adopting a motion with a high probability of a threat to the peaceful nature of the assembly, i.e. a threat to the values specified in Art. 31 section 3 of the Polish Constitution, such as security, public order, environmental protection, health and public morality, as well as the freedom and rights of other people. The Constitutional Tribunal also emphasized that the decision to dissolve a public assembly should be treated as a last resort and adequate for a situation in which the application of other, less severe measures would be insufficient, because the possibility of organizing public assemblies and participating in them is a constitutional freedom that everyone is entitled to (OTK- A, 2004, No. 10, item 105.).

However, the right to freedom must be considered together with the individual's right to security and, as a rule, the analyzed provisions of the Act on Assemblies constitute an appropriate response to this relationship. However, it is necessary for the legislator to refine the provisions constituting the basis for the verification of the decision to dissolve a spontaneous assembly and to specify the appropriate appeal procedure against the decision to dissolve this type of assembly. The dissolution of this type of assembly, although it does not have the character of a notified assembly, undoubtedly constitutes an interference by public authority in the sphere of civil rights and freedoms, and the possibility of assessing the degree of this interference and whether it pursued a legitimate aim is a necessary element to assess the proper functioning of a democratic state.

REFERENCES

Jakubowski, A., Gajewski, S. (2017). *Prawo o zgromadzeniach. Komentarz.* Warszawa.

Makowski, K. (2015). *Rozwiązanie zgromadzenia.* e-LEX.

Mamak, K. (2014). *Prawo o zgromadzeniach. Komentarz.* Warszawa: e-LEX.

Rzetecka-Gil, A. (2019). *Prawo o zgromadzeniach, Komentarz*. e-LEX.

Suski, P. (2010). *Zgromadzenia i imprezy masowe.* Warszawa.

Sokolewicz, W., Wojtyczek, K. (2016). *Komentarz do art. 57 Konstytucji RP* [w:] Garlicki, L., Zubik, M., ed., *Konstytucja Rzeczypospolitej Polskiej*. *Komentarz.* Vol. II. Warszawa: e-LEX.

Zabłocki, J. (2017). *Prawo do bezpieczeństwa i porządku publicznego w realizacji prawa do zgromadzeń. Wybrane zagadnienia, „Acta UniversitatisWratislaviensis"* No. 3798.

LEGAL ACTS

Konstytucja Rzeczypospolitej Polskiej z dnia 16 lipca 1997 r. (Dz.U. z 1997 r., nr 78, poz. 483). (Constitution of the Republic of Poland of 16 July 1997, Journal of Laws 1997, No. 78, item 483, hereinafter referred to as the Polish Constitution).

Ustawa z dnia 14 czerwca 1960 r. – Kodeks postępowania administracyjnego (tekst jedn. Dz.U. z 2020 r., poz. 256 (The Act of 14 June 1960 Code of Administrative Procedure, i.e. OJ 2020, item 256).

Ustawa z dnia 24 lipca 2015 r. – Prawo o zgromadzeniach (tekst jedn. Dz.U. z 2019 r., poz. 631 (The Act of July 24, 2015 on the law on assemblies, i.e. OJ 2019, item 631).

DOI: 10.7862/rz.2020.hss.32

The text was submitted to the editorial office: January 2020.
The text was accepted for publication: September 2020.