

# Freedom of Assembly and Safety

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**Abstract.** *The article refers to freedom and human rights as universal and global principles covering all aspects of human life. Human rights are those freedoms, means of protection and services respected precisely as rights, which all people should be able to demand from the society in which they live, in accordance with today's freedoms. On the other hand, as rights they solely occur among individuals and authorities. None of the authority can take them away. They can not be waived or renounced. In Poland, guarantees of respect for human rights — to which all people are entitled and citizen's rights — to which only Polish citizens are entitled are included in the Constitution of the Republic of Poland. According to it, the inherent and inalienable human dignity is a source of freedom and human and citizen's rights. One of the fundamental human right is the freedom of assembly. The possibility of using the freedom of assembly must be dictated by the need to ensure the protection of national security or public order, protection of health, public morals and rights and freedom of other people. Due to the subject matter discussed, the study focused on peaceful assemblies, which organization is guaranteed by law, on the other hand no illegal forms of protest were described — the blockades and occupation of buildings, transport routes, or prohibited strike forms. The main task of ensuring security during assemblies rests with the Police, whose fundamental duty is to facilitate the conduct of assemblies. It is important to find a balance between maintaining order and exercising the right of assembly.*

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## Introduction

Ensuring safety at public assemblies is strictly related to respect for constitutional freedoms. The issues are exceptionally complex due to the fact that social expectations for the organisation and assessment of particular assemblies are perceived completely differently by various social environments in Poland. When supervising a public assembly, a basic police responsibility is to prevent civil disorder, vandalising property and non-compliance with traffic regulations, as well as to guarantee the respect for the right to freely assemble in public places. This article focuses on peaceful assemblies whose organisation is guaranteed by the law, and does not present illegal forms of protest — blocked passageways and occupied buildings, or banned forms of strikes.

The tragedy of the civilian population during the second world war resulted in international efforts to having been undertaken to eliminate a similar scenario in the future. This was made possible, among other things, due to the recognition of human rights and freedoms as universal and global rules involving all aspects of human life, which before had been the responsibility of particular states.

## Main Part

The very first organisations which were formed to respect human rights were international ones such as: the United Nations and European Court of Human Rights, and the most important documents of universal nature in this respect (ratified by the Republic of Poland) have become the Universal Declaration of Human Rights, passed at the session of the UN General Assembly in Paris on 10 December 1948, European Convention on Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950, and the International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights, passed by the UN on 16 November 1966.

Based on the aforementioned regulations, human rights are currently defined as basic standards arising in connection with the very fact of being a person. They are inalienable, indivisible and common for all people regardless of sex, race, religion, sexual orientation, ethnic, social and national origin, or political beliefs. They form the basis of democracy, civic society, freedoms, justice and peace. They form an integral and interdependent whole.

Human rights are those freedoms, protection measures and benefits which need to be respected in accordance with currently acceptable freedoms by all people living in society.<sup>1</sup> However, those rights are applicable only in the relationship between an individual and authority. No authority can deprive anyone of his/her rights. They cannot be resigned from or waived.

In Poland, human rights guarantees — vested in all people, and civic rights — vested only with Polish citizens, have been included in the Constitution of the Republic of Poland. According to the Polish constitution, inherent and inalienable dignity constitutes a source of human and civil rights and freedoms. Human dignity is inviolable and must be respected and protected by public authorities<sup>2</sup>, and a fundamental, inherent and privileged nature of those rights does not require justification — justification is needed when the rights are waived.<sup>3</sup>

The notion of freedom is understood as a sphere of rights which the state does not create but only defines their limits and is obliged to prove that particular rights have been infringed by an individual. However, when the rights are catalogued by the state, it is the individual who must seek to exercise their rights and refer to a particular legal basis.<sup>4</sup>

Due to the relationship between the individual and state, human rights are divided into:

- rights (positive rights) requiring the authority to act for the benefit of the individual who has the right to demand his/her legal rights and the state must guarantee their implementation;
- freedoms (negative rights) requiring the authority to resist to interfere in certain spheres of people's lives.

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<sup>1</sup> Encyclopedia of Public International Law, Vol. 8, Human Rights and the Individual in International Law. International Economic relations, Amsterdam-New York-Oxford 1985, p. 268.

<sup>2</sup> Art. 5 of the Constitution of the Republic of Poland of 2 April 1997, Official Journal of 1997, No. 78, item 483.

<sup>3</sup> Osiatyński W, Prawa człowieka i ich granice. Cracow, 2011, p. 17.

<sup>4</sup> Skrzydło W, Konstytucja Rzeczypospolitej Polskiej. Komentarz. Warsaw, 2013, p. 42.

They can be also classified as:

- individual and political rights and freedoms, i.e. right to life, right to freedom and personal inviolability, right to resistance against illegal violence, right to inviolability of home and secrecy of correspondence, right to move and choose the place of living, right to a fair trial, freedom of association, freedom of assembly, right to vote, freedom of conscience and religion;
- economic and social rights, i.e. right to work, right to property and to freely dispose of property held, right to strike, right to unemployment benefit, right to rest, right to education, right to equal payment for equal work, right to disability benefit;
- ecological rights and right to use achievements of contemporary civilisation, i.e. right to fresh air, clean water and soil, right to healthy food, right to personal data protection, right to use various sources of domestic and foreign information, right to culture.

One of the fundamental human rights is the freedom of assembly. The rights to attend and organise peaceful demonstrations have been included in, among others, Article 11, paragraph 1 of the Convention on Human Rights<sup>5</sup> — everybody has the right to a free and peaceful assembly, as well as to form a free association, including trade unions and to join them to protect one's interests, and in Article 21 of the International Covenant on Civil and Political Rights<sup>6</sup>, where the right to free assembly is respected, and when the right is exercised, no limits can be imposed other than those contained in the act and necessary in a democratic society for the state or public interest, public order or protection of health, public morality or other people's rights and freedoms. Another international agreement providing with the right to peaceful assemblies is the OSCE Copenhagen Document of 1990, according to which — everyone has the right to peaceful assemblies and demonstrations. All limits that can be imposed to exercise those rights are legal and in compliance with international standards.

Ratified conventions make it possible for citizens to take advantage of foreign judicial procedures applicable in the Council of Europe and UN Human Rights Committee.

International standards related to the freedom of assembly have been implemented in Poland and they are reflected in Article 57 of the Constitution of the Republic of Poland. The provision guarantees the freedom to attend an assembly, both the whole event and to join and leave the place where the event is held at an earlier time. The freedom of assembly means the freedom to choose the place and time where the assembly is held and how it is organised. It is a basic right vested not only in Polish citizens but also foreigners and stateless persons. The freedom is strictly related to other foundations of democracy and pluralism such as freedom of speech and association.

It needs to be remembered that exercising the freedom of assembly involves preparatory actions, mainly convocation and organisation of an assembly.<sup>7</sup>

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<sup>5</sup> Convention on Human Rights and Freedoms of 4 November 1950, Official Journal of 1993, No 61, item 284 as amended.

<sup>6</sup> International Covenant on Civil and Political Rights of 19 December 1966, Official Journal of 1977, No 38, item 167.

<sup>7</sup> Czarny P, Naleziński B, *Wolność zgromadzeń*. Warsaw, 1998, p. 17.

An assembly is a specific way of expressing one's opinions, conveying information and influencing other people's attitudes. It is an extremely important means of human communication both in the public and private spheres, as well as a form of participating in public debate, and consequently in exercising power in a democratic society. The objective of freedom of assembly is not only to provide autonomy and personal fulfilment to an individual but also as a protection of the social communication processes essential for democratic functioning of society. Most important here is the public interest. Freedom of assembly is a prerequisite for and a necessary element of democracy, as well as a condition for exercising other freedoms and human rights of public life. A public assembly plays a specific role of 'a mechanism of an early alert' showing authorities and the public potential or already existing sources of tension, therefore enabling a relatively early change in policy.<sup>8</sup>

Participation in public assembly is one of the main political freedoms, the exercise of which permits a public voice to those who do not have access to their legislative bodies, these who do not have their representatives in the elections thus enabling all citizens to raise their opinions, even those that may be different or unpopular. Through criticism and disapproval it creates the possibility of influencing the decisions of state authorities and express opinions on their policy.<sup>9</sup>

Elements of constitutional protection for freedom of assembly are anonymity of its participants and lack of organisational links between them, as well as between the organiser and the participants. However, the guarantee of anonymity together with the possibility to cover faces by the assembly participants make it difficult for the police to exercise their powers, namely identify the participants.

The main requirement to exercise the freedom of assembly is to respect its peaceful character.<sup>10</sup> An assembly loses its peaceful character if the participants use violence and coercion towards other people and public officials and destroy private or public property. People possessing guns, explosives and other offensive weapons cannot take part in an assembly.

Also assemblies during which one incites people to criminal acts in spoken or written language or provoke or humiliate others are illegal, but only when the violence or damage occur.<sup>11</sup> Such an assembly of non-peaceful character should be treated as a crowd, constituting a minor offence under article 50 of the Code of Minor Offences; however, when the conduct of the participants poses a threat, they may be brought to justice — article 254 of the Penal Code.<sup>12</sup>

Detailed rules of exercising the constitutional freedom of assembly and providing security to assembly participants are described in the Act of 24 July 2015, the Law on Assemblies.

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<sup>8</sup> Verdict of Constitutional Tribunal of 18 January 2006, No. K 21/05.

<sup>9</sup> Cf. Studziński W, *Wolność zgromadzeń i stowarzyszenia się*, [in:] Florczak A, Bolechów B (Ed.), *Prawa i wolności I i II generacji*. Toruń, 2006, p. 179.

<sup>10</sup> Wróbel A, *Wolność zgromadzania się*, [in:] Chmaj M, Orłowski W, Skrzydło W, Witkowski Z, Wrobel A, *Konstytucyjne wolności i prawa*. Volume III. *Wolności i prawa polityczne*. Cracow, 2002, p. 43.

<sup>11</sup> Suski P, *Zgromadzenia i imprezy masowe*. Warsaw, 2014, p. 61.

<sup>12</sup> Cf. Kulesza W, *Demonstracja, blokada, strajk. Granice wolności zgromadzeń i strajku w polskim prawie karnym na tle prawa niemieckiego*. Łódź, 1991, p. 27.

According to art. 3 section 1 of the Act, an assembly is a group of people in open space available to people, undefined in terms of a name, in a specific place in order to hold a debate or to express common opinion on public issues.

In everyday language the term 'assembly' means a group of people, e.g. a manifestation, a demonstration, a crowd or a picket line, therefore, in practice it serves to name an assembly of individuals and the terms are used interchangeably.<sup>13</sup>

An assembly may involve a great expression of its participants, shouting, collective singing, chanting slogans, but a silent assembly may also take place. It can be also categorised by the subject of a debate e.g. political, economic, ecological, feminist assembly, or the purpose of which is to commemorate historic event.<sup>14</sup>

The Act introduces an obligation to notify the local authorities on whose territory the assembly is due to take place about any such an event. If an organiser decides that a planned assembly will not cause disruption to traffic and changes to its organisation in particular, they notify the relevant commune (municipal) centre for crisis management; if the centre is not set up they inform a regional centre for crisis management (so called simplified proceedings).<sup>15</sup> However, organisation of a public gathering that involves the use of public roads and disruption to traffic do not require any further formalities (there is no necessity to obtain permission for public road use), apart from a notification given to local authorities.<sup>16</sup> The law also defines the timescale for notifying the authorities. This allows authorities to prepare properly in order to provide safety and security as well as to maintain public order during the event.

Failure to notify authorities or missing a deadline cannot automatically render an assembly illegal and consequently loss of constitutional protection.<sup>17</sup> In such a case these should be secured at the same level as other peaceful public gatherings and state authorities ought to facilitate their course.

Introduction in 2015 of the new Act, the Law on Assemblies, was dictated by, among other things, the verdict of the Constitutional Tribunal of 18 September 2015 in which it was stated that spontaneous public gatherings are under constitutional protection in Polish law. On these grounds there is a possibility to hold spontaneous assemblies that have been organised *ad hoc* without prior notification due to a sudden event in a public sphere impossible to predict, and the holding of which some other time would be pointless or insignificant in terms of a public debate. They should be treated as an expected feature of a healthy democracy and an ability to respond instantly to the most important events and changes happening in the public sphere. Their characteristic feature is a willingness to express opinions 'for the moment', adopting a specific stance with relation to some previously unpredicted event that happened in a social or political sphere (e.g. staging a protest against ACTA — multinational Anti-Counterfeiting Trade Agreement).

Freedom of assembly is not an absolute right, it cannot be understood as something unlimited, therefore it may be restricted. Equipping authorities with

<sup>13</sup> Jurgielewicz M, *Bezpieczeństwo zgromadzeń. Komentarz praktyczny*. Warsaw, 2015, p. 30.

<sup>14</sup> Cf. Suski P, *op. cit.*, p. 85.

<sup>15</sup> Art. 21 and 22 of the Act the Law on Assemblies of 24 July 2015 r., Official Journal of 2015, item 1485.

<sup>16</sup> Verdict of Constitutional Tribunal of 18 January 2006, ref. No. K 21/05.

<sup>17</sup> Verdict of Constitutional Tribunal of 10 July 2008, ref. No. P 15/08.

instruments that may limit freedom of assembly cannot violate freedoms and rights described in the Constitution.<sup>18</sup> Such powers have to be treated as something special and may be introduced only in precisely defined situations usually described in international documents or the constitutions of particular countries (e.g. because of some values protection by a state or because of specific threats). An ability to exercise them has to be dictated by a necessity to provide national security or public order and health protection, or public morals and other people's rights and freedoms.<sup>19</sup>

Restrictions on civil and human rights and freedom will be also imposed as a result of introducing of martial law and a state of emergency as well as during the period of election silence. Whereas, any limitations on a place of assembly concern protection of the Holocaust Monument and protection of national parks and wildlife reserves.

The local authorities have the right issue a ban on any public gathering if it is assumed to violate the law and only when:

- its aim and organisation violates the act of assembly or regulations of criminal law;
- the gathering may endanger life and health of people or pose a significant threat to property;
- an organiser of a gathering, which was reported later, did not change the time, place or route coinciding with two or more other gatherings in spite of being requested to do so.

However, the decision of local authorities to ban a gathering cannot be based on an assumption that an aggressive behaviour of opponents, counter demonstrators, or the violent behaviour of extremists who join the gathering whose aggression may endanger life and health of people as well as cause widespread damages to properties. In such a case, both organisers and participants of a peaceful demonstration should not be refused.<sup>20</sup> What is more, any controversy in views or unpopular political or religious slogans manifested by participants of a gathering, which are still not contradictory to an existing law, cannot lead to deprivation of the right to assembly.

An organiser or a leader<sup>21</sup> are obliged to arrange the gathering according to regulations of the Act, the Law on Assemblies, as well as to prevent any damage made by participants of the gathering. During demonstration its leader is obliged to stay in touch with a representative of local authorities or police officers if they arrive at the scene of a gathering.<sup>22</sup> His/her duty is also to eliminate from amongst participants people who violate the law of assembly or try to defeat the gathering and, if they do not comply with a demand to leave the gathering, the Police are usually asked for help.

<sup>18</sup> Wojtyczek K, *Granice ingerencji ustawodawczej w sferę praw człowieka w Konstytucji RP*. Cracow, 1999, p. 110.

<sup>19</sup> Art. 31.3 of the Constitution of the Republic of Poland ..., *op. cit.*

<sup>20</sup> Sentence of the Supreme Administrative Court 25<sup>th</sup> May 2006; ref. No. I OSK 329/06.

<sup>21</sup> A leader of assembly is its organiser who is a legal person, unless other person consents in writing to assume responsibilities of a leader or a person who acts behalf of an assembly organizer who consents in writing to assume responsibilities if the organiser is a legal body or other organisation, Article 18.1 Act of Right to Assembly ..., *op. cit.*

<sup>22</sup> *Ibid.*, art. 19.1.

Freedom of assembly is conditioned by its peaceful manner. Any gathering loses its peaceful manner when its participants use violence and coercion towards other people and police officers, as well as destroy public or private property.

The right to dissolve an assembly is prerogative by virtue of Polish law of a leader<sup>23</sup> or a representative of local authorities.<sup>24</sup> Dissolution of an assembly means that it ceases to exist in legal terms- it is considered illegal.

A leader of a gathering dissolves it if participants do not comply with his commands or the course of events endangers public order and security. When the leader does not honour the obligation then a representative of the authority is entitled to dissolve the assembly. This is authorised by issuing an oral decision which must be immediately abided by. First, the participants of the gathering are twice warned that it can be dissolved and next the decision is stated to a leader or announced in public to the attendees if the leader is unavailable.

The role of the state, in reference to freedom of assembly, should only be that of a guarantor and not a creator of this privilege. In order to provide a complete access to freedom of assembly, it is very important for the state authorities to enable the organisation and execution of such gatherings.

Social and political changes in Poland after 1989 contributed to normative changes, including carrying out international standards of protection of human rights and freedom. The changes included laws regulating public assemblies and functioning of Police.

Statutory obligations of Police are connected with numerous aspects of public security and order. Thus, they also relate to protection of gatherings, demonstrations and social protests.

Scientific literature provides many definitions of security, however, the most frequent is the one which describes it as a state assuring a sense of confidence, guaranty of its retention and a chance for its improvement.<sup>25</sup> Whereas the public order is perceived as a system of standards, legal and custom laws which regulate peoples' life together or only their behaviour in public places.<sup>26</sup>

The main duty of Police, in case of supervising public gatherings, is to enable it to be carried out according to a declaration submitted to local authorities. Moreover, the Police have to prevent disturbance of a gathering by provocation from groups or organisations which are engaged in either ideological or political combat, disturbance of public order by a gathering participants, damage of property and traffic violation and, in the case of a danger caused by participants, rapidly to contain it. This task is carried out to a greater or lesser extent by other services on the grounds of appropriate legal regulations. The efficiency of measures undertaken very often depends on cooperation between engaged parties equally sharing competencies and functions.

The Police should primarily tend to support organisers and participants of a peaceful assembly to achieve their legitimate aims. Facilitating the process

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<sup>23</sup> *Ibid.*, art. 19.6.

<sup>24</sup> *Ibid.*, art. 20.1.

<sup>25</sup> Zięba R, Wprowadzenie. Pozimnowojenny paradygmat bezpieczeństwa międzynarodowego, [in:] Zięba R (Ed.), *Bezpieczeństwo międzynarodowe po zimnej wojnie*. Warsaw, 2008, p. 16.

<sup>26</sup> Falandysz L, Pojęcie porządku publicznego w prawie karnym i karno-administracyjnym. *Palestra*, 1969, No. 2, p. 69.

of an assembly does not only help to avoid violence, but also to gain support from participants in order to limit the potential risk of riots and to be able to efficiently react to all types of public disturbance.

The security can be provided, among the others, by active communication enabling the participants to establish relations based on mutual trust. It can also be a crucial preventive and de-escalation tactic ensuring the avoidance of conflicts in the future.

In order to achieve the aforementioned, there are number of meetings of representatives of Police, assembly organisers and local authorities arranged a few days before the scheduled gathering. When all the involved parties explain their expectations at the outset, it helps to avoid unnecessary misunderstandings and adjust a town or a city to temporarily changing conditions. During the meetings there are a number of arrangements made concerning terms of cooperation with organisers, particularly in emergency situations, time of the gathering, suitable traffic direction, diversions, access roads, approximate number of participants, arrival roads and the way participants will be marked. Moreover, some areas must be demarcated by means of technical devices such as metal fences in order to secure local officers from an uncontrolled disruption from unauthorised people. All the arrangements are supposed to improve the organisation process of a gathering and thereby its safe passage.<sup>27</sup> In addition while organising mass gatherings, residents are informed about anticipated disturbances through an information campaign.

Another way of facilitating communication, which directly influences the improvement of public assemblies, is to undertake activities within the established police anti-conflict teams. Among others, their task is to monitor places potentially being at risk of conflict situations, as well as to provide help with solving such situations. The aim of their activity is to take control of participants' negative emotions which may cause different kinds of public disturbance, including violence.

The dialogue, that is being conducted, ought to be present during all stages of police security and is particularly important when tensions — public order offences, begin to appear.

Among elements which are inseparable from public meetings, is the necessity to meticulously prepare, and most importantly to plan police security activities. The following factors should be taken into consideration when planning police security operations: providing assistance while participants march, controlling traffic routes, the place of an assembly and the neighbouring areas, as well as determining the command and communications structure, dispatching necessary sources and resources and working out methods of activity essential for restoring the disrupted legal and public order.

The success of these type of actions is always dependent on the knowledge of them previously acquired, and also on the particular elements which may influence their course of events. It must be based on the most up-to-date and precise information on the threats. The most critical ones, which are directly connected with organising public assemblies, are the threats caused by their participants who may be of totally different attitudes and reasons to act. Usually they want to express

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<sup>27</sup> Cf. Struniawski J, Dowodzenie w trakcie operacji policyjnych w zakresie imprez masowych i zgromadzeń publicznych. Szczytno, 2014, p. 162.



their opposition or disapproval, or they make requests for their demands to be met. These are expressed by the environment with which they identify themselves.

The information collected on particular persons and groups ought to be linked to their ideologies, values, attitudes and intentions, as well as to offensive weapons or dangerous materials possessed by them, the ways they may behave or react, their stereotypes and expectations relating to other groups, and other elements which are of symbolic importance. That kind of knowledge makes it possible to learn how a given group responds to police activities which may be seen as insulting or provoking, and may potentially lead to a conflict.

The data is used to make an analysis. It consists in predicting the danger of security disruption and public disturbance in the place of a public assembly, as well as on the route of moving participants. Accurately defining the nature of possible threats will allow the police to produce a quick and effective response. The analysis allows for determining the probability with which unwanted incidents could happen and their level of severity. It is made on the basis of historical data (case analyses). The information on the current state of possible security threats is critical to the type and quantity of resources used to counteract their results, as well as the method of conducting police actions. The quality of data on threats is of vital importance when decisions on the way to provide security are taken. Therefore, they also influence the effectiveness of actions.

The main form of gathering information by the police is making a reconnaissance, as well as being in contact with organisers and other engaged entities, e.g. city authorities or non-governmental organisations.

The state is at disposal of a wide range of entitlements and competence, the aim of which is to protect those who use their right to peacefully gather from aggressive behaviours of others. Within the legal borders, they make it possible to interfere in the area of assemblies' freedom, as well as in the related rights and liberties, that is, personal inviolability and freedom, the freedom of thought, conscience and faith and the right to freely express one's opinions.

When conducting their public order or covert policing activities, the police are entitled to check persons' IDs in order to establish their identity, to search people and buildings, to perform personal checks and to request necessary help from the state institutions, economic units or citizens. However, if participants of public assemblies do not obey the rules of law, police officers have the right to detain them.

To prevent civil order disturbances when public meetings take place, the police may also psychologically influence the crowd, because a sense of impunity is often present there. It is the result of the incorrect belief that common actions of numerous and anonymous people are not subject to the same penalties as those of individual persons. Then police activities consist in using cameras and video cameras in a pointed way so that participants do not remain anonymous any longer and they start to feel fear, uncertainty and shame. On the other hand, recording police activities or negotiations makes it possible to later review the participants' frequent accusations of illegal police interventions often connected with exceeding their authority

Moreover, the police carry out so called warning activities. It means that they inform participants on their unlawful acts, the consequences of taking part in an illegal protest, on applying coercive measures as well as on calling for

dispersal. In practice, it turns out, however, that because participants of a legal demonstration start to behave unlawfully (there is a march that has not been planned and approved of before, criminal or minor offences start to occur), the police forces need to change the preventive and protective nature of their activities and start responding in a disciplinary way.

In a situation when police warning actions are not successful, and the participants do not show any willingness to comply with orders and the law regulations are still being broken, the police are obliged to restore public order, that is, to remove threats and the conditions which cause them. Therefore, distracting activities are then being conducted. These are direct and fast operations undertaken by riot police squads aiming at breaking up the crowd and relocating its particular parts in other directions. Officers ought to react only when illegal acts are committed and not just to prevent them. Every such situation is an emergency one, and applying police coercive measures must be appropriate to a threat to the legal order<sup>28</sup> and necessary for taking over control by making participants start following orders. Applying them is possible only when other instruments have turned out to be ineffective and must be used at a last resort.

The Polish law system does not give the possibility to use firearms by riot police units. They may be used only in a situation when human life or health is in danger, and only some police officers (e.g. commanders) may use this according to the act on police coercive measures and firearms.<sup>29</sup>

The freedom of gathering may be limited, but when it comes to practice, authorities ought to be tolerant and patient in that respect. The issue is a very controversial one and it is extremely difficult to define its limits. An important factor, in the context of public assemblies, is the risk of recognising and treating all participants of a group in the same way.

The method for recognising and diversifying participants is watching their behaviour, not the category of people they belong to. It is advisable to avoid applying sources and resources against crowds, especially when only a small number of persons pose a danger to the public order. If this rule is not followed, conflicts, growth of tensions and negative behaviours of peaceful assemblies' participants may arise.

Similarly, single individual incidents of violence or acts of violence committed by some demonstrators are not a sufficient cause to call the whole public gathering a disturbance and impose severe penalty on the participants.<sup>30</sup> Police actions which help to efficiently identify the organisers of violence within the group and isolate them from the peaceful participants, will allow the police to gain respect and support for their actions by other public gathering participants.

Police have the right to take actions even against demonstrators, who attended the legal demonstration, but only in situations when the behaviour at the time of the demonstration is justified. However, the police cannot disperse the legal demonstration. Nevertheless, in cases of serious public order breaches and when the leader or representative of local authorities lose their powers, the police can

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<sup>28</sup> *More*: Czarny P, Naleziński B, *op. cit.*, pp. 86–88.

<sup>29</sup> Article 46.1 of the act of 24 May 2013 on coercive measures and firearms, Official Journal of 2013, item 628.

<sup>30</sup> Verdict of the Constitutional Tribunal of 10 November 2004, ref.no. Kp 1/04.

close the gathering by dispersing the crowd. This type of intervention falls within the police competence and it is the police who take full responsibility for the outcomes of the action.

In cases of mass public disorder during legal public gatherings or prohibited public gatherings the main task of law enforcers is to apprehend the most aggressive rioters and secure all the necessary documents to be later used for initial selection and the legal process. We need to remember that the procedure related to the apprehension of aggressive rioters should guarantee that the organisers of violence are identified and tried for specific breaches of law and individually charged with committing these offences.

When public assemblies escalate into gross civil disorder or when police are charged with exceeding their authority, the internal affairs control procedure is adopted. The internal affairs control procedure is also applied by the Commission of Administration and Internal Affairs, which is a part of the Sejm. They deal with cases related to public administration, security and public order. During the meetings of the Commission the police chiefs present evidence collected at the time of public disturbance and explain their own decisions, orders and tactics used by the riot police.

Non-governmental organisations i.e. Helsinki Foundation for Human Rights, the OSCE Office for Democratic Institutions and Human Rights, which is a part of the Organisation for Security and Cooperation in Europe perform the control function during public gatherings. The representatives of these organisations not only monitor police actions taken at the time of public disturbances or actions taken by companies responsible for security, but they also take a closer look at the behaviour of the demonstrators. They judge the proportion and adequacy of actions taken against the particular behaviour of the demonstrators, passers-by or counter-demonstrators. The idea behind the actions is to meet the international standards and techniques of monitoring related to the freedom of assembly.

Another aspect of work for non-governmental organisations is their educational activity on human rights. An example of their work is organising training courses aimed at police officers, especially those who deal with the protection of human rights, but also law enforcers who are commanders responsible for security at mass events.

Freedom of assembly is treated as the essence of democracy. In this context it is extremely crucial to protect the freedom against excessive and unjustified restrictions. Restrictions are acceptable, however their form and scope are very thoroughly examined by national and international courts and tribunals. However, the very opportunity to impose restrictions on human rights does not eliminate their essence in any case.

Security of public assembly depends on various factors, but most importantly on the behaviour of demonstrators and proper performance of duties by the organiser and the head of the public assembly.

The main authority providing security at the time of public assemblies is the police. Their main responsibility is to enable to conduct all peaceful assemblies, but also spontaneous public gatherings, parallel assemblies and counter-demonstrations. They also need to protect demonstrators enabling them to express their views. We need to remember that the police, when they perform their duties related to public security, should take into consideration public expectations e.g. the

expectations of local citizens or local authorities, who require immediate response when vandalising property or rowdy behaviour prevail. When responding to the acts of violence police may be charged with limiting the citizens' freedom or, on the other hand, they may be charged with neglecting their duties. Therefore, police actions need to be not only effective, but also respectful towards the citizens' rights and socially acceptable. It is important to keep the balance between maintaining public order and the opportunity to make use of the right of assembly.

## Conclusions

Public assemblies may impose a threat to security and public order. However, the threat itself cannot be the reason to prohibit organising the public gathering. Therefore, public administration authorities should make use of such measures which provide security to the demonstrators and also protect life, health and property of the demonstrators.<sup>31</sup> Therefore such actions should include identification and analysis of security threats, prevention and response to their effects. Complicated situations should be addressed rapidly before they pose a serious problem to the security and will require a stronger response from the police force.

Taking into consideration the use of freedom of assembly accompanied by the threats to public security it needs to be highlighted that the issue of security at public assemblies is one of the most difficult and complicated doctrinal and legal problems. It will be impossible to reach stable security if we fail to comply with human rights and we are governed by ineffective democratic authorities.

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**Abstract.** Artykuł odnosi się do wolności i praw człowieka jako uniwersalnych i globalnych zasad obejmujących wszelkie aspekty życia ludzkiego. Prawa człowieka to te wolności, środki ochrony oraz świadczenia, których respektowania właśnie jako praw, zgodnie ze współcześnie akceptowanymi wolnościami, wszyscy ludzie powinni móc domagać się od społeczeństwa, w którym żyją. Natomiast jako prawa obowiązują i występują wyłącznie w relacjach jednostki z władzą. Żadna władza nie może ich odebrać, nie można się ich zrzec czy zrezygnować z nich. W Polsce gwarancje poszanowania praw człowieka — przysługujące wszystkim ludziom, oraz praw obywatelskich — przysługujące tylko obywatelom polskim, zostały ujęte w Konstytucji RP. Zgodnie z nią, przyrodzona i niezbywalna godność człowieka stanowi źródło wolności i praw człowieka oraz obywatela. Jednym z fundamentalnych

praw człowieka jest wolność zgromadzeń. Możliwość korzystania z wolności zgromadzeń musi być podyktowana koniecznością zapewnienia ochrony bezpieczeństwa państwowego lub porządku publicznego oraz ochrony zdrowia, lub moralności publicznej albo praw i wolności innych osób. Ze względu na podjętą tematykę w opracowaniu skupiono się na zgromadzeniach pokojowych, których organizacja jest zagwarantowana przez prawo, natomiast nie opisano bezprawnych form protestu — blokad i okupacji budynków ciągów komunikacyjnych, czy zabronionych form strajkowych. Główne zadanie zapewniania bezpieczeństwa w trakcie zgromadzeń spoczywa na Policji, której podstawowym obowiązkiem jest ułatwienie ich przebiegu. Ważne jest znalezienie punktu równowagi między utrzymaniem porządku a możliwością korzystania z prawa do zgromadzenia się.

**Резюме.** В статье рассматриваются вопросы, связанные с правами и свободами человека как универсальными и глобальными принципами, охватывающими все аспекты человеческой жизни. Права человека — это свободы, меры защиты и услуги, соблюдения которых все должны иметь возможность требовать от общества, в котором живут, как прав, в соответствии с одобряемыми в настоящее время свободами. Однако, как права они действуют и встречаются только в отношениях между гражданами и властью. Никакая власть не имеет права отобрать прав, не можно отречься или отказаться от них. В Польше гарантии соблюдения прав человека, которыми пользуются все люди, а также гражданских прав, распространяющихся только на польских граждан, предусмотрены Конституцией Республики Польша. Согласно Конституции, прирожденное и неотъемлемое достоинство человека является источником свободы и прав человека и гражданина. Одним из основных прав человека является свобода собраний. Возможность реализации права на свободу собраний обязательно обусловлена необходимостью обеспечения государственной безопасности или общественного порядка, а также защиты здоровья, общественной морали либо прав и свобод других лиц. В статье основное внимание уделяется мирным собраниям, организация которых гарантируется законом. Авторами не описываются запрещенные формы забастовки, а также незаконные формы протеста: блокирование и оккупация зданий или путей перемещения внутри зданий. Главная задача обеспечения безопасности во время собраний на стороне полиции, основной обязанностью которой является облегчение их проведения. Важно найти равновесие между сохранением порядка и возможностью пользоваться правом на свободу собраний.

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