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Spontaneous Assemblies during the COVID-19 Pandemic in Poland – A Case Study Analysis

Abstract: COVID-19 turned into a global pandemic and affected public life in many states worldwide and in the Republic of Poland as well. The change of life under the pandemic regime meant a huge alteration in many aspects for most people. The unprecedented situation, for which the Polish authorities were unprepared, forced an immediate change in the law in Poland because of the introduction of the state of epidemic emergency. One of the instances of the changes of law was the limitation of freedom of assembly. The restriction of freedom of assembly was introduced by decrees, not by acts of parliament. The restrictions were described as illegal by the opposition and some parts of society. Many formal remarks were made by the Polish Ombudsman. The judgment of the Constitutional Tribunal in Poland of 22 October 2020 on abortion caused large-scale demonstrations throughout Poland as people wanted to express their views on the decision, which was perceived as the practical end of the compromise on abortion in the Republic of Poland. The research for this article was undertaken by means of system analysis and the analysis of the decision-making process.

Keywords: COVID-19 pandemic, freedom of assembly, spontaneous assemblies

Introductory Remarks

The COVID-19 pandemic had its beginnings in late 2019 in China. The first impact of the pandemic in Poland was visible in late February 2020. The authorities introduced a state of epidemic emergency in March 2020. Many legal measures were taken to deal with the spread of the virus. The authorities claimed that the restrictions which were implemented were necessary to fight against the pandemic. A large num-

ber of legal regulations were therefore adopted to combat the spread of the virus.¹ The legal framework for restrictions changed many times during the pandemic and implicated many changes in public and private affairs in Poland.² The government decided to implement many measures which restricted the freedom guaranteed by the Constitution of the Republic of Poland. The authorities were not eager to introduce a state of emergency on the territory of Poland. Instead, the state of epidemic emergency was announced, which was not the proper legal constitutional basis and would restrict human rights even under such unprecedented and unexpected circumstances such as a pandemic.³ Some of the applied changes were not fully communicated to the public and the issue of disinformation and the vast amount of fake news became a serious difficulty.⁴ Moreover, there was a problem with the legal framework for the implemented restrictions of selected aspects of freedom, e.g. the freedom for the organisation of spontaneous assemblies.⁵

It is of utmost importance to examine the following research questions:

- What were the implications of the changes of law introduced by the government as anti-Covid measures and the outcomes of the legal changes in the context of the political rights and freedom to organise a spontaneous assembly? How did the ban on spontaneous assemblies affect the protection of human rights in Poland, in particular political rights?
- Did the introduced ban on spontaneous assemblies have any effect on the public arena of Poland, especially on the intensification of the internal po-

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- 1 K. Urbaniak and M. Urbaniak, Limitation of human and civil rights and freedoms during the pandemic in Poland, 'Przegląd Prawa Konstytucyjnego' 2021, vol. 64, no. 6, pp. 329–340.
 - 2 S. Trociuk, Prawa i wolności w stanie epidemii, Warsaw 2021, pp. 15–110; Ł. Goździaszek, Electronic signature of the taxpayer in times of COVID-19, 'Białystok Legal Studies' 2021, vol. 26, no. 4, pp. 111–120; M. Ofiarska, Government Fund for Local Investments – legal aspects of financial support for local government investment projects during the COVID-19 pandemic, 'Białystok Legal Studies' 2021, vol. 26, no. 4, pp. 140–162; T. Gwóźdź, Special legal solutions introduced in regard to the relationship with COVID-19 affecting municipal budgets – selected issues, 'Białystok Legal Studies' 2021, vol. 26, no. 4, pp. 163–178; P. Dąbrowska-Kłosińska, A. Grzelak and A. Nimark, The use of COVID-19 digital applications and unavoidable threats to the protection of health data and privacy, 'Białystok Legal Studies' 2021, vol. 26, no. 3, pp. 61–94; P. Pawluczuk-Bučko, The impact of the pandemic on economic crime, 'Białystok Legal Studies' 2021, vol. 26, no. 6, pp. 71–84.
 - 3 A. Gajda, Restrictions on human rights and freedoms during the time of epidemic in Poland, 'Przegląd Prawa Konstytucyjnego' 2020, vol. 57, no. 5, pp. 17–27.
 - 4 Read more: M. Barańska, The subjective dimension of fake news, 'Studia Iuridica Lublinensia' 2021, vol. 30, no. 5, pp. 53–74.
 - 5 Compare: Państwo prawa i prawa człowieka w czasach koronawirusa, 24 June 2020, <https://bip.brpo.gov.pl/pl/content/panstwo-prawa-i-prawa-czlowieka-w-czasach-koronawirusa> (accessed 20.02.2022); Państwo prawa i prawa człowieka w czasach koronawirusa – prof. A. Bodnar (RPO) i prof. E. Łętowska, 24 June 2020, <https://www.youtube.com/watch?v=JRJbf0oEILQ> (accessed 30.01.2022).

litical conflict in Poland? What are the core implications of the situation in which the political rights guaranteed by the Constitution are suspended?

- Did the government justify the introduction of the ban on spontaneous assemblies? How did the government react in the case of a spontaneous assembly such as the one after the Constitutional Tribunal Judgment on Abortion (22 October 2020)? What were the consequences and implications of the assemblies organised after the judgment on abortion?

1. The Notion of a Spontaneous Assembly

After the period of transformation, it was certain that there was a necessity to secure freedom of assembly to the Polish nation.⁶ The freedom of assembly remained one of the rights which was guaranteed not only in the state constitutions but in international law as well.⁷ The notion of a spontaneous assembly refers to an assembly which is organised without prior registration.⁸ The goal of such an assembly is to react ad hoc to an event which affects a particular group who wishes to publicly show their satisfaction or dissatisfaction with the event.⁹ Naturally, through the public presentation of discontent, there is a likelihood that the number of the people demonstrating increases. A spontaneous assembly might be a reaction to the adoption of a law, a statement by the representatives of an institution or a court judgment. By participating in the spontaneous assembly, people have the opportunity to express opinions and display their discontent publicly. The core issue of such a type of assembly is to react to unforeseen events or a sequence of unexpected events.¹⁰ The possibility to gather to protest and express views remains one of the constitutional laws in Poland.¹¹ Furthermore, article 57 of the Constitution gives everybody freedom to gather for

6 A. Gajda, Important amendments in Polish regulation of freedom of assembly, 'Przegląd Prawa Konstytucyjnego' 2016, vol. 34, no. 6, p. 335.

7 A. Łukaszczyk, Zgromadzenia spontaniczne w orzecznictwie Europejskiego Trybunału Praw Człowieka i ich wpływ na Polską regulację prawną, (in:) R. Balicki and M. Jabłoński (eds.), *Wolność zgromadzeń*, Wrocław 2018, pp. 105–116; M. Gołda-Sobczak, Zgromadzenia publiczne w polskim systemie prawnym i ich znaczenie dla kultury i sztuki, 'Środkowoeuropejskie Studia Polityczne' 2014, no. 2, pp. 151–168; A. Malkiewicz-Jaros, O wolności zgromadzeń w aspekcie teorii formalizmu, pozytywizmu prawniczego i prawa natury, (in:) R. Balicki and M. Jabłoński (eds.), *Wolność zgromadzeń...*, *op. cit.*, pp. 13–26.

8 A spontaneous assembly cannot be mistaken with a crowd which is spontaneous as well but is accidental and random; compare: Helsińska Fundacja Praw Człowieka, *Prawo o zgromadzeniach. Praktyczny przewodnik*, Warsaw 2017, pp. 12–13.

9 B. Kołaczkowski, The new notion and classification of assemblies, 'Adam Mickiewicz University Law Review' 2016, pp. 107–108.

10 A. Bodnar and M. Ziółkowski, Zgromadzenia spontaniczne, 'Państwo i Prawo' 2018, no. 5, p. 38.

11 The Constitution of the Republic of Poland, art. 54 (Journal of Law from 1997, no. 78, pos. 483).

peaceful assemblies and participate in them and the restriction or limitation of such freedom is possible only by an act of parliament (not by decree).¹²

The notion of a spontaneous assembly comes from the notion present in literature which was classified as an urgent assembly.¹³ There is a definition of a spontaneous assembly in the law on assemblies operating in Poland since 2015. The notion of an assembly refers to a situation where a group of people gather in an open space which is available for everybody who wishes to join the group in order to express a view or present an opinion on public affairs. A spontaneous assembly is a particular type of assembly where the assembly is triggered by an urgent event which was not predicted. The legislator did not specify exact reasons which ought to occur to classify an assembly a spontaneous one, but it was stated that the event is somewhat connected with the public sphere. The organisation of the spontaneous assembly as an urgent follow-up for the event which triggered some social movement is perceived as necessary for the public debate, and the delay of such an activity would have an impairing impact on the public sphere.¹⁴

There is no notification of a spontaneous assembly.¹⁵ Still, the legislator protects the assemblies organised in a normal or a simplified mode. That was the reason for the would-be ban on possible disturbances at a registered assembly by the people participating in a spontaneous assembly. Furthermore, such disturbances are classified as a sufficient reason to dissolve a spontaneous assembly.¹⁶

The organisation of numerous spontaneous assemblies definitely has political implications, even in the case in which the reason for the assembly does not directly refer to a political arena. In democratic states such as Poland every public event – planned or spontaneous – has its political implication in the context of political competition. The understanding of the key concepts in political science – a political conflict and political polarisation – helps to analyse every single issue happening on the public arena as there is no public event which is neutral for a political conflict. Therefore, the impact of the spontaneous events is important for the political market in which there is a constant struggle between those who form and support the government and those who remain against the government and form the opposition. The decision-making process is the domain of the government and there is vast inequality in the number of spontaneous assemblies supported or planned by the gov-

12 Read more: The law on assemblies (Journal of Laws from 2019, pos. 631); The Constitution of the Republic of Poland, art. 57 (Journal of Law from 1997, no. 78, pos. 483).

13 Compare: P. Czarny and B. Naleziński, *Wolność zgromadzeń*, Warsaw 1996, p. 6.

14 The law on assemblies, art. 3 (Journal of Laws from 2019, pos. 631).

15 Compare: M. Florczak-Wątor, *Zgromadzenia cykliczne*. Głosa do wyroku TK z dnia 16 marca 2017 roku, Kp 1/17, LEX/el. 2017.

16 A. Rzetecka-Gil, *Prawo o zgromadzeniach*. Komentarz do art. 27, LEX; M. Polinceusz, *Dissolving assemblies to guarantee security*, 'Humanities and Social Sciences' 2020, vol. XXV, no. 3 (27), pp. 113–119.

ernment which are follow-up reactions to particular government decisions. Still, the system analysis and the examination of the decision-making process are necessary for the examination of the reasons and the inspirations of particular assemblies as the lack of a political decision might result in social resentment and lead to spontaneous assemblies as well.¹⁷

The core issue of the public assemblies is the possibility to react immediately to the most important events and the changes taking place in the public arena. The direct and fast reaction is often a condition for the effectiveness of the assembly. The urgent character of the assemblies is the cause of the actions of the authorities and public institutions which inform about certain facts or aspects. As soon as the aspect occurs, it may result in the need to express an opinion by means of public assembly. Where society is surprised by particular situations, spontaneous assemblies are justified.¹⁸ The freedom to organise such assemblies is one of the citizens' rights which allows them to make their voices heard by the authorities.¹⁹ Moreover, the freedom to organise assemblies has its individual and group dimension and is strictly connected with the idea of the pluralism of values.²⁰

2. The Ban on Spontaneous Assemblies as One of the COVID-19 Measures

The COVID-19 measures which were introduced by the decrees of the Ministry for Health and the decrees of the Council of Ministers placed restrictions on the rights for spontaneous assemblies. The first restrictions and limitations were implemented simultaneously with the introduction of the state of epidemic emergency. There were severe doubts when the government brought in the change of law concerning the admissibility. The restrictions were appropriate for the state of emergency – the state of epidemic emergency was treated as a state of emergency but without the classification recognised in the Constitution of the Republic of Poland.²¹ The juris-

17 H.E. Zadroźniak, *Zgromadzenia publiczne jako forma udziału obywateli w życiu społecznym*, 'Samorząd Terytorialny' 2009, no. 5, pp. 63–70.

18 List Rzecznika Praw Obywatelskich Adama Bodnara do Ministra Spraw Wewnętrznych i Administracji Mariusza Kamińskiego z dnia 23 października 2020 r. – VII.613.112.2020.MAW, <https://bip.brpo.gov.pl/sites/default/files/Do%20MSWiA%20ws.%20zgromadze%C5%84%20spontanicznych,%2023.10.2020.pdf> (accessed 30.01.2022).

19 R. Grabowski, *Ewolucja ustawowych wolności zgromadzeń w Polsce*, (in:) R. Balicki and M. Jabłoński (eds.) *Wolność zgromadzeń...*, *op. cit.*, p. 27–36.

20 J. Holocher, *In dubio pro libertata* jako dyrektywa interpretacyjna – uwagi na kanwie orzecznictwa Trybunału Konstytucyjnego, 'Przegląd Prawa Publicznego' 2019, no. 7–8, p. 87.

21 Rzecznik Praw Obywatelskich, *Raport RPO na temat pandemii. Doświadczenia i wnioski*, Warszawa 2021, p. 7.

prudence of the Constitutional Tribunal in Poland excluded the possibility to restrict freedom via such an indirect state of emergency.²²

The absolute ban on spontaneous assemblies was evaluated critically by the Polish Ombudsman as it was established to be against the rules of the Constitution of the Republic of Poland. The ban on spontaneous assemblies was introduced by the decrees of the Council of Ministers instead of an act of parliament. The ban on spontaneous assemblies which was introduced by the decrees restricted several aspects of freedom which were guaranteed in the Constitution of the Republic of Poland.²³

Additionally, the ban on spontaneous assemblies was a breach of the rule of proportionality. According to art. 31 of the Constitution of the Republic of Poland, restrictions on the use of the freedoms guaranteed in the Constitution may only be introduced when it was necessary in a democratic state. The Polish Ombudsman claimed that the introduction of the ban was excessive because ultimately the law was altered and the decrees made it possible to organise meetings and assemblies connected with professional activities or with the running of businesses.²⁴ Furthermore, it was claimed that spontaneous assemblies were a permitted and legally protected form of public assembly. The ban on spontaneous assemblies which was introduced by the decree should have been evaluated in the context of its concordance with art. 31 of the Constitution of the Republic of Poland – the restrictions of law can be limited only by an act of parliament (not a decree) and such restrictions had to fulfil the test of proportionality in a democratic state.²⁵

In selected judgments the Supreme Administrative Court and the Highest Court of Poland reached an unequivocal conclusion – the restrictions breached the Constitution as neither the Ministry for Health nor the Council of Ministers had the power to introduce such restrictions.²⁶

22 Compare: The judgment of the Constitutional Tribunal of the Republic of Poland from 21 April 2009, K 50/07.

23 List Rzecznika Praw Obywatelskich Adama Bodnara do Ministra Spraw Wewnętrznych i Administracji Mariusza Kamińskiego z dnia 23 października 2020 r. – VII.613.112.2020.MAW, <https://bip.brpo.gov.pl/sites/default/files/Do%20MSWiA%20ws.%20zgromadze%C5%84%20spontanicznych,%2023.10.2020.pdf> (accessed 30.01.2022).

24 *Ibidem*; M. Florczak-Wątor, Niekonstytucyjność ograniczeń praw i wolności jednostki wprowadzonych w związku z epidemią COVID-19 jako przesłanka odpowiedzialności odszkodowawczej państwa, 'Państwo i Prawo' 2020, no. 12, pp. 5–21.

25 List Rzecznika Praw Obywatelskich Adama Bodnara do Ministra Spraw Wewnętrznych i Administracji Mariusza Kamińskiego z dnia 23 października 2020 r. – VII.613.112.2020.MAW, <https://bip.brpo.gov.pl/sites/default/files/Do%20MSWiA%20ws.%20zgromadze%C5%84%20spontanicznych,%2023.10.2020.pdf> (accessed 30.01.2022).

26 Compare: the judgments by the Supreme Administrative Court from 8 September 2021 (II GSK 1010/21; II GSK 781/21) and 23 September 2021 (II GSK 1011/21; II GSK 949/21); the judgments by the Supreme Court of Poland from 16 March 2021 (II KK 64/21), 15 April 2021 (V KK 111/21), 26 April 2021 (II KK 67/21) and 29 June 2021 (II KK 255/21).

3. Spontaneous Assemblies in Poland during the COVID-19 Pandemic – the Case of the Constitutional Tribunal on Abortion (K 1/20 – 22 October 2020)²⁷

Since 2015, the Constitutional Tribunal has been the subject of political conflict in the Republic of Poland.²⁸ The controversy started with the choice of judges made ‘in advance’ by the Sejm majority who, after the shift of power in 2015, were not accepted by the president of Poland. This was how the political struggle over the Constitutional Tribunal began. The opposition started to treat the Constitutional Tribunal as a politicised institution and, furthermore, accused the institution of being an instrument used by the ruling party in case of unsuccessful attempts to change legislation in the parliament.²⁹ The opposition claimed that instead of organising parliamentary debates on controversial issues, the ruling party (Law and Justice) made use of the Polish Constitutional Tribunal in order to implement certain sensitive laws.

There are certain issues concerning a question of conscience which are a matter of public compromise in Poland – the notion of legal abortion was one of these issues.³⁰ Still, Poland was perceived as one of the EU states with strict abortion laws. The judgment of the Polish Constitutional Tribunal of 22 October 2020 restricted the possibility to have an abortion. The announcement of the Polish Constitutional Tribunal strongly divided the nation and caused large-scale demonstrations in many locations in Poland – mainly in big cities. The judgment of the Constitutional Tribunal in Poland was presented by the opposition as the end of the ‘abortion compromise’ which had existed since 1993 and 1996.³¹

27 R. Adamus, Przesłanka eugeniczna (embriopatologiczna) jako przesłanka legalnego przerywania ciąży – glosa do wyroku Trybunału Konstytucyjnego z 22.10.2020 r. (K 1/20), ‘Palestra’ 2020, no. 11.

28 Compare: Poland: Constitutional Tribunal is illegitimate, unfit to interpret Constitution, <https://www.europarl.europa.eu/news/en/press-room/20211015IPR15016/poland-constitutional-tribunal-is-illegitimate-unfit-to-interpret-constitution> (accessed 30.01.2022).

29 See: W. Czuchnowski, ‘Trybunał zagwarantował PiS bezkarność’, 17 July 2018, <https://wyborcza.pl/7,75398,23683227,trybunal-konstytucyjny-zagwarantowal-pis-bezkarnosc.html> (accessed 30.01.2022); Historia o tym, jak PiS podporządkował sobie Trybunał Konstytucyjny, 30 November 2016, <https://www.polityka.pl/tygodnikpolityka/kraj/1685206,1,historia-o-tym-jak-pis-podporzadkowal-sobie-trybunal-konstytucyjny.read> (accessed 20.01.2022).

30 Compare: E. Korolczuk, Explaining mass protests against abortion ban in Poland: the power of connective action, ‘Zoon Politikon’, 2016, no. 7, pp. 91–113; Z. Kinowska-Mazaraki, The Polish Paradox: From a Fight for Democracy to the Political Radicalization and Social Exclusion, ‘Social Sciences’ 2021, no. 10, pp. 2–16.

31 Compare: The judgment of the Constitutional Tribunal of the Republic of Poland from 28 May 1997, K 26/96.

The Polish Constitutional Tribunal announced that one of the three exceptions which formed the compromise on abortion in contemporary Poland was classified as unconstitutional. Before the judgment, abortion was possible when prenatal tests indicated either a high probability of irreversible and severe impairment of the foetus or an incurable disease which was life-threatening. This represented a significant change in the legal system in Poland. As a result of the ruling, abortion is only permitted in two cases: 1) when the pregnancy was a result of a prohibited act, e.g. incest or rape; 2) when the pregnancy posed a threat to the life or health of a woman.

The COVID-19 pandemic statistics in Poland in October 2020 were not positive. Every day, the Ministry for Health released statistics showing the high number of infections and deaths. At the beginning of autumn, the statistics fueled rising concerns over the pandemic among the public. Still, the Constitutional Tribunal judgment on abortion saw politicians, political observers, civil activists and many others take to the streets to show their discontent at the decision. The demonstrations were among the biggest since the fall of communism.³² The protests, which initially were due to the assault on human rights, turned into a protest against the ruling party as well.³³

The social reaction towards the judgment of 22 October 2020 certainly had a significant impact on Poland's political arena. Still, over time, the protests weakened, a normal trend in the dynamics of such social movements. Nevertheless, the public realised there was a violation of women's rights to make their own decisions.³⁴

The reaction of the citizens was the subject of the initiative of the Polish Ombudsman Adam Bodnar, who wrote a formal statement to the Minister of Home Affairs and Administration.³⁵ In the letter the Polish Ombudsman referred to the reaction of the Polish police towards the spontaneous assemblies after the judgment of the Polish Constitutional Tribunal. One of the greatest concerns of the Polish Ombudsman was the use of the measures of direct coercion, e.g. tear gas, which in his opinion was unacceptable.³⁶ The other issue of concern was the great number of dem-

32 M. Pronczuk, Why are there protests in Poland?, 'The New York Times', 27 Oct. 2020.

33 A. Gliszczyńska-Grabias and W. Sadurski, The Judgment that wasn't (but which nearly brought Poland to a standstill) – 'Judgment' of the Polish Constitutional Tribunal of 22 October 2020, K1/20, 'European Constitutional Law Review' 2021, vol. 17, issue 1, pp. 130–131.

34 *Ibidem*.

35 List Rzecznika Praw Obywatelskich Adama Bodnara do Ministra Spraw Wewnętrznych i Administracji Mariusza Kamińskiego z dnia 23 października 2020 r. – VII.613.112.2020.MAW, <https://bip.brpo.gov.pl/sites/default/files/Do%20MSWiA%20ws.%20zgromadze%C5%84%20spontanicznych,%2023.10.2020.pdf> (accessed 30.01.2022).

36 Compare: COVID-19 nie usprawiedliwia tłumienia protestów, <https://amnesty.org.pl/covid-19-nie-usprawiedliwia-tlumienia-protestow> (accessed 10.01.2022); Protesty po wyroku TK – interwencja KGP, 23 October 2020, <https://www.hfhr.pl/wp-content/uploads/2020/10/Protesty-po-wyroku-TK-interwencja-KGP.pdf> (accessed 10.01.2022).

onstrators who were detained.³⁷ In the opinion of the submitter, the key aspect for democracy was the possibility to organise a spontaneous assembly. The Polish Ombudsman appealed for a change in the approach of the law enforcement service.³⁸ Moreover, he claimed that the assemblies organised as a reaction to the judgment of the Constitutional Tribunal had to be spontaneous as even the simplified procedure for organising a demonstration took three days. This would make it impossible in the context of a situation which provoked people to express their discontent on the streets. The Polish Ombudsman stated that the situation resulting from the social reaction to the judgment of the Polish Constitutional Tribunal required immediate measures and reactions. These included the freedom to express one's voice, a key freedom in a democratic state.³⁹

One of the greatest concerns of the Polish Ombudsman were the activities of the Polish police undertaken towards the protesters and called the Chief of the Polish Police to undertake measures in concordance with the Constitution of the Republic of Poland.⁴⁰ One of the essential elements of the democratic standard was the freedom to participate in a public assembly, which could not be restricted or limited by the decrees announced during the pandemic in Poland. Peaceful participation in such a gathering was a purely practical exemplification of the freedom guaranteed in the Constitution of the Republic of Poland.⁴¹

37 List Rzecznika Praw Obywatelskich Adama Bodnara do Komendanta Stołecznego Policji Pawła Dobrodzieja z dnia 23 października 2020 r. – VII.613.112.2020.MAW, <https://bip.brpo.gov.pl/sites/default/files/%2FDo%20KSP%20ws.%20zgromadze%C5%84%20spontanicznych%2C%2023.10.2020.pdf> (accessed 30.01.2022).

38 List Rzecznika Praw Obywatelskich Adama Bodnara do Ministra Spraw Wewnętrznych i Administracji Mariusza Kamińskiego z dnia 23 października 2020 r. – VII.613.112.2020.MAW, <https://bip.brpo.gov.pl/sites/default/files/Do%20MSWiA%20ws.%20zgromadze%C5%84%20spontanicznych,%2023.10.2020.pdf> (accessed 30.01.2022) .

39 *Ibidem*; List Rzecznika Praw Obywatelskich Adama Bodnara do Komendanta Głównego Policji Jarosława Szymczyka z dnia 4 listopada 2020 r. – VII.613.112.2020.MAW, <https://bip.brpo.gov.pl/sites/default/files/Wyst%C4%85pienie%20do%20KGP%2C%204.11.2020.pdf> (accessed 30.01.2022).

40 Compare: T. Witkowski, *Uprawnienia policji wobec zgromadzeń*, (in:) R. Balicki and M. Jabłoński (eds.) *Wolność zgromadzeń...*, *op. cit.*

41 List Rzecznika Praw Obywatelskich Adama Bodnara do Komendanta Głównego Policji Jarosława Szymczyka z dnia 4. listopada 2020 r. – VII.613.112.2020.MAW, <https://bip.brpo.gov.pl/sites/default/files/Wyst%C4%85pienie%20do%20KGP%2C%204.11.2020.pdf> (accessed 30.01.2022). As a response, the Deputy of the Commander in Chief of the police claimed the priority of the activities undertaken by the police was to ensure the safety of all taking part in the assembly and to prevent the escalation of a conflict among those who participated in the event and that the actions of the police were not aimed at the restriction to anybody to demonstrate and were within the law; compare: List Zastępcy Komendanta Głównego Policji Tomasza Szymańskiego z dnia 3 grudnia 2020 r. – Kplp–1993/1460/20/GB, https://bip.brpo.gov.pl/sites/default/files/Informacja_RPO_za_2020.pdf (accessed 30.01.2022).

The measures taken by the police during the spontaneous assembly in the night of 22/23 October 2020 were classified as excessive by the Polish Ombudsman. Detention and the imposition of fines were one of the actions which were considered a breach of law by the police. Moreover, the Ombudsman expected the withdrawal of the motion from the court as it was an illegal decision. All things considered, it was claimed that the actions of the police violated the sphere of freedom of the demonstrators, as they did not break any law (there was no act of parliament which restricted the freedoms guaranteed in the Constitution of the Republic of Poland).⁴²

Conclusions

The global COVID-19 pandemic affected the public sphere in many areas.⁴³ Still, even the unprecedented battle with the pandemic could not justify some of the actions undertaken by the authorities in Poland. The Polish government claimed that public health was of utmost importance and did not explain the whole context of the implemented legal changes and the ban on spontaneous assemblies. In the opinion of the Polish Ombudsman, the COVID-19 pandemic could not have been the explanation for the practical ban on spontaneous assemblies as one of the COVID-19 measures.⁴⁴ The right of the society in a democratic state to react immediately to an event which affects people cannot be limited by the decree. The authorities in Poland did not wish to discuss the implications of the ban on spontaneous assemblies in public. Such an attitude helped the opposition to consolidate and gather those who wanted to protest against the government. Potentially, it may have resulted in changes in the political arena – for example the formation of the movement for the protection of political rights in Poland operating even in times of pandemic. Nevertheless, those who

42 List Rzecznika Praw Obywatelskich Adama Bodnara do Komendanta Stołecznego Policji Pawła Dobrodzieja z dnia 25 listopada 2020 r. – VII.613.112.2020.ST, https://bip.brpo.gov.pl/sites/default/files/Informacja_RPO_za_2020.pdf (accessed 30.01.2022). As a response, the Deputy of the Commander in Chief of the police answered that it was not possible to expect from the police the analysis of the concordance of a particular legal act (a decree) with the Constitution of Poland; compare: List Rzecznika Praw Obywatelskich do Komendanta Głównego Policji, https://bip.brpo.gov.pl/sites/default/files/2021-11/Do_KGP_zgromadzenia_spontaniczne_22.11.2021.pdf (accessed 30.01.2022).

43 H. Lorenz, E. Turhan, *The Pandemic and Criminal Law – A Look at Theory and Practice in Germany*, 'Białystok Legal Studies' 2021, vol. 6, pp. 9–10; E. M. Guzik-Makaruk, *Some Remarks on the Changes in the Polish Penal Code During the Pandemic*, 'Białystok Legal Studies' 2021, vol. 6, pp. 28–29.

44 The website of the Polish Ombudsman, www.rpo.gov.pl, List Rzecznika Praw Obywatelskich Adama Bodnara do Ministra Spraw Wewnętrznych i Administracji Mariusza Kamińskiego z dnia 23 października 2020 r. – VII.613.112.2020.MAW, <https://bip.brpo.gov.pl/sites/default/files/Do%20MSWiA%20ws.%20zgromadze%C5%84%20spontanicznych,%2023.10.2020.pdf> (accessed 30.01.2022).

decided to participate in the spontaneous assembly were not discouraged by a potential penalty.⁴⁵

Furthermore, the decree is not a proper legal framework to restrict the right which was guaranteed in the Constitution of the Republic of Poland. The opportunity to organise a spontaneous event is widely treated in democratic states as a freedom which cannot be restricted, even under a pandemic regime.⁴⁶ Moreover, under the circumstances of the COVID-19 pandemic, the authorities should have made it possible to organise spontaneous assemblies in a safe way for those participating in the event.⁴⁷ In fact, in the situation when a prior announcement of a demonstration is not possible or is impractical, it is the responsibility of the authorities to prepare the infrastructure for a spontaneous assembly.⁴⁸ The lack of such infrastructure should be perceived as a breach of human rights. The ban on spontaneous assemblies due to the pandemic could have had an additional implication as well – the possibility to ban spontaneous assemblies under other circumstances as well.⁴⁹ Last but not least, the protection of diverse forms of the organisation of society including spontaneous assembly is a core responsibility of a democratic state.⁵⁰ The protection of the freedom of assemblies is guaranteed by the Constitution of Poland and its limitation could be established by the Council of Ministers, but such a decision must not breach the principle of such freedom.

45 P. Rojek-Socha: Karać za zgromadzenia? Są wytyczne dla prokuratorów, 31 October 2020, <https://www.prawo.pl/prawnicy-sady/jakie-zarzuty-za-udzial-w-manifestacji-nielegalne-zbiegowisko,504168.html> (accessed 10.01.2022); S. Szołucha: Wolność zgromadzeń w pandemii. Mimo kilkudziesięciu rozporządzeń, obywatele protestują, 15 February 2021, <https://mamprawowiedziec.pl/czytelnia/artukul/wolnosc-zgromadzen-w-pandemii-mimo-kilkudziesieciu-rozporzadzen-obywatele-protestuja> (accessed 20.12.2021); D. Sitnicka: Nowe limity, to samo bezprawie. Rząd nadal dusi zgromadzenia publiczne, 30 May 2021, <https://oko.press/nowe-limity-to-samo-bezprawie-rzad-nadal-dusi-zgromadzenia-publiczne> (accessed 20.02.2022).

46 Rok 2020 – pandemia, kryzys praworządności, wyzwania dla praw człowieka, Warsaw 2021, <https://www.hfhr.pl/wp-content/uploads/2021/02/2020.Pandemia-kryzys-praworzadnosci-wyzwania-dla-praw-czlowieka-01-02.pdf>, pp. 43–50 (accessed 20.01.2022).

47 List Rzecznika Praw Obywatelskich Adama Bodnara do Komendanta Stołecznego Policji Pawła Dobrodzieja z dnia 23 października 2020 r. – VII.613.112.2020.MAW, <https://bip.brpo.gov.pl/sites/default/files/%2FDo%20KSP%20ws.%20zgromadze%C5%84%20spontanicznych%2C%2023.10.2020.pdf> (accessed 30.01.2022).

48 Read more: D. Habrat, Problematyka odpowiedzialności za wybrane wykroczenia związane ze zgromadzeniami, 'Wojskowy Przegląd Prawniczy' 2012, no. 3, pp. 1–9.

49 Read more: P. Chmielnicki, D. Minich, R. Rybkowski, M. Stachura and K. Szocie, The COVID-19 Pandemic as an opportunity for a permanent reduction in civil rights, 'Studia Iuridica Lublinensia' 2021, vol. 30, no. 4, pp. 77–109.

50 Compare: S. Iwanowski, Prawne formy organizowania się społeczeństwa, 'Samorząd Terytorialny' 2010, no. 1–2, pp. 22–30.

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