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Qualification of Freedom of Religious Assembly in the Period of Ordinary Functioning of the State and in the Legislation from the Time of COVID-19 Pandemic in Poland

Abstract: The subject of this article is to present the legal qualification of the freedom of religious assembly in the period of ordinary functioning of the state and in the content of regulations from the period of the COVID-19 pandemic in Poland. The analysis is concerned with determining how the legislator treats this freedom from the point of view of links between freedom of assembly and freedom of thought, conscience and religion. The function of freedom of religious assembly is presented, as well as the legal model of religious freedom assembly in the conditions of ordinary state action, as well as on the ground of legal regimes possible to introduce in connection with counteracting the occurrence and effects of an infectious disease. In the research the dogmatic method was applied. Amendments to the Law on Assemblies and special law regulations have been proposed to take into account constitutional principles and values, as well as ongoing social changes.

Keywords: conscience and religion, COVID-19, epidemic state, freedom of assembly, freedom of thought

Introduction

More than two years of the COVID-19 pandemic has revealed many problems in the functioning of the Polish state and its legal system.¹ It may even be said that there has been an unexpected verification of the assumptions of the Constitution of the

1 P. Mierzejewski (ed.), Ombudsman's report on the pandemic – experiences and conclusions, Warsaw 2021, passim.

Republic of Poland of 2 April 1997² and the disclosure of its gaps in the field of legal regulations concerning state action in a crisis situation. Particular attention should be paid to the issue of legal qualification of religious assemblies in the Polish legal system. The analysis of the legal solutions adopted in the state of an epidemic will be set in the context of the qualification of such gatherings in the conditions of the ordinary functioning of the state.

It should be noted that the evaluation of the established legal regulations on religious assemblies in a pandemic in Polish law raises extreme and differentiated assessments. In public opinion one can note a critical position towards the adopted limitation of the organization of religious assemblies in a pandemic³, as well as disapproval of the organization of such gatherings.⁴ It seems that the ongoing discussion is due to the lack of a precise and unambiguous legal qualification of religious gatherings in the Polish legal system. Some commentators consider them as a realization of the freedom of thought, conscience and religion, others as a manifestation of the freedom of assembly. The focus is usually on one of these two freedoms. It is worth mentioning that the above relationship between these two freedoms is strongly emphasized in the case law of the European Court of Human Rights.⁵

The legal literature mainly focuses on the issue of limitations to the freedom of manifestation of religious beliefs⁶, whereas there is no detailed analysis of the limitations to the freedom of religious assembly *in genere*. The aim of the article is not a dogmatic analysis of the numerous regulations on religious assemblies, but an attempt to take a model view of the problems of regulating such gatherings of the population in the context of combating the spread of an infectious disease.

2 Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws 1997 No. 78, item 483).

3 E.g. B. Zalewski, *Opinia prawna dotycząca ograniczeń w sprawowaniu kultu religijnego w związku ze stanem epidemii (stan prawny na 29 marca 2021 r.)*, <https://ordoiuris.pl/wolnosc-sumienia/opinia-prawna-dotyczaca-ograniczen-w-sprawowaniu-kultu-religijnego-w-zwiazku-ze> (accessed 28.02.2022).

4 E.g. M. Piasecki, *W Kościołach łamią zakaz zgromadzeń. OKO.press zwraca uwagę dla wspólnego bezpieczeństwa*, <https://oko.press/oko-press-zwraca-uwage-na-lamanie-ograniczen-zgromadzen-w-kościolach-dla-wspolnego-bezpieczenstwa/> (accessed 28.02.2022).

5 A. Koman-Bednarczyk and N. Kurek, *Freedom of Assembly in the Light of Polish Regulations and Selected Case Law Standards of the European Court of Human Rights*, 'Studia Iuridica Lublinensia' 2021, vol. XXX, (5), p. 309 et seq.

6 K. Dyda and M. Olszówka, *Analiza konstytucyjności ograniczeń w korzystaniu z wolności religii podczas pandemii koronawirusa w Polsce*, 'Studia z Prawa Wyznaniowego' 2020, vol. 23, pp. 441–469; P. Stanisław, *Ograniczenia wolności kultu religijnego w czasie pandemii COVID-19: między konstytucyjnością a efektywnością*, 'Przegląd Sejmowy' 2021, no. 3, pp. 143–165; A.M. Abramowicz, *Wolność religijna w czasie pandemii koronawirusa ocena rozwiązań polskich*, 'Studia z Prawa Wyznaniowego' 2021, vol. 24, pp. 255–278; M. Bielecki, *Ograniczenia wolności religijnej w pandemii*, (in:) P. Szustakiewicz and M. Wieczorek (eds.), *Transformacje prawa polskiego w dobie epidemii COVID-19*, Radom 2020, pp. 37–57.

1. Religious Assemblies in the Ordinary Period of the State

The considerations must be countered with the content of the regular legislation. Polish law does not explicitly differentiate religious assembly as a special legal category in the Constitution. In this regard, the Polish Constitution does not distinguish itself from others. On the contrary, in the regular legislation, the phrase concerning assemblies held as part of the activities of churches and other religious associations (Article 2 of the Law on Assemblies of 24 July 2015⁷) or religious assemblies (Article 19, paragraph 2, point 3 *in fine* of the Law on Guarantees of Freedom of Conscience and Religion of 17 May 1989⁸) is most common.

An assembly of a religious nature may derive from the profile of the assembly, and therefore relate to religious issues and faith that provide the motivation for people's participation in a given meeting. That in turn entails the need to find out what religion is within the meaning of the domestic legal order. First, it must be acknowledged that Polish law does not provide a definition of religion.⁹ This is fairly understandable in terms of the requirement to respect the principle of the impartiality of public authorities in Article 25(2) of the Constitution. Nevertheless, we can find some clues in the interpretative practice concerning the content of Article 2.1. of the l.g.f.c.r. This provision stipulates that a church and a religious association is understood as a religious community founded in order to profess and spread religious faith. The legal provisions do not in any way specify what this 'religious faith' is, but for years the administrative practice of the Polish registration authority has presumed that religion should be rooted in a specific *sacrum* and has discarded the phenomenological concept of religion, which in practice implies that communities based on beliefs that depart from the classical divinity are not granted entry in the register of churches and other religious associations.¹⁰

Adopting a restricted understanding of the definition of religion, it should be concluded that a religious assembly would not be a gathering of people concentrated around the so-called new religious movements and other new contemporary forms of religiosity dissociated from institutional structures.

The realization of the freedom of conscience and religion of an individual may not be determined by an organizational criterion.¹¹ The Constitutional Tribunal found that 'freedom of religion is construed very broadly in the constitutional norm,

7 Consolidated text of Journals of Laws 2019, item 631, hereinafter: l.a.

8 Consolidated text of Journals of Laws 2017, item 1,153, hereafter: l.g.f.c.r.

9 G. Maroń, O pojmowaniu religii w polskim porządku prawnym, 'Forum Prawnicze' 2021, no. 3, p. 39.

10 M. Ożóg, Rejestrowanie kościołów i innych związków wyznaniowych w trybie administracyjnym, 'Forum Prawnicze' 2015, no. 2, p. 35.

11 P. Sarnecki, art. 53, (in:) L. Garlicki (ed.), Konstytucja Rzeczypospolitej Polskiej. Komentarz. Vol. III, Warsaw 2003, pp. 4–5.

as it embraces all religions and membership in all religious associations, and thus it is not limited to participation in religious communities forming a formal, separate organizational structure and registered in the relevant registers kept by public authorities.¹² This is especially crucial nowadays, when the phenomenon of deinstitutionalization of religion becomes visible, and the role of subjective experience of religiosity in separation from permanent organizational structures increases.¹³

Of fundamental importance for the legal qualification of religious assemblies under the terms of ordinary functioning of the state is the l.a., which determines that the l.a. provisions do not apply to assemblies held as part of the activities of churches and other religious associations. Neither do the provisions of the l.a. make any reference to whether this exemption refers only to churches and religious associations with a regulated legal situation, or also to all confessional communities. It appears that an appropriate meaning would be to apply the general directive of narrowing interpretation of provisions concerning exceptions in the legal regulation of a given subject. Therefore, it must be stated that the provisions of the l.a. will be applicable to religious assemblies organized by churches and religious associations with an unregulated legal position.¹⁴ The security of the legal law system therefore demands recognition that the exclusion of the l.a. regulation applies only to churches and religious associations with a legal status grounded in one of the ways prescribed by the Polish legal order.¹⁵ The religious communities with an unregulated legal position or with a position shaped in foreign law will be allowed to organize their assemblies on the general principles of the realization of freedom in Articles 53 and 57 of the Constitution.

The phrase ‘within the scope of activities’ of churches and religious associations is therefore crucial. The meaning of this formulation may be a controversial issue. Two interpretations could be proposed for consideration. The subjective interpretation would assume that this would be any de facto activity undertaken by a given religious community. The objective interpretation, on the other hand, would presuppose that these are activities specific to confessional organizational structures, given the classical definition of religion. These should be their own affairs according to Article 25, paragraph 3 of the Constitution. The author is in favour of the second proposal. The first approach seems unacceptable due to the full wording of the l.a. formula – ‘the provisions of the Act shall not apply to assemblies within the activities of churches and other religious associations’. If the lawmaker had allowed the exclusion of the l.a. to any meetings of the confessional community, then the legal provi-

12 Judgment of the Constitutional Tribunal of 16 February 1999, ref. no SK 11/98, LEX no. 36175.

13 Zob. E. Ciupak, *Religijność poza Kościołem*, (in:) W. Zdaniewicz (ed.), *Znaczenie Kościoła w pierwszych latach III Rzeczypospolitej*, Warsaw 1994, pp. 27–37.

14 Compare the different position – P. Suski, *Zgromadzenia i imprezy masowe*, Warsaw 2007, pp. 38–39.

15 K. Mamak, *Prawo o zgromadzeniach. Komentarz*, Warsaw 2014, p. 45.

sion would have *express verbis* provided that the provisions of the Act shall not refer to assemblies organized by churches and other religious associations, similarly as it was adopted in Article 2.1 of the l.a. with respect to assemblies organized by public authorities. For these reasons, the view expressed in the literature, according to which the provision of Article 2.2 l.a. applies to all meetings, is controversial, and it may result in a lack of competence of public authorities to interfere when an assembly ceases to be peaceful.¹⁶

The exemption of l.a. regulations should pertain to confessional assemblies in the narrow sense, i.e. concerning the matters of worship and participation in it. This is the scope of activity of religious communities in the light of the Polish model of the relationship between the state and churches and religious associations in the light of Article 25(3) of the Constitution. Possible political assemblies set up on the initiative of religious communities should be subordinate to the general rules of the l.a. It seems that the reasons for excluding confessional assemblies from the regulation of the l.a. was to take into account the nature of these assemblies connected with worship in places other than public space. However, when it comes to political matters, it is sometimes difficult to make a strict delineation between the political and the non-political, given that religious questions concern a very wide category of phenomena in social life and can also concern political issues. Thomas Mann said that 'there is no non-politics, everything is politics.'¹⁷ People who gather to collectively express their beliefs for religious motivation will in this case enjoy freedom of assembly.¹⁸

Article 19(2)(2) of the l.g.f.c.r. provides for the free exercise of religious functions of churches and religious associations through the organization and public performance of worship. The substance of this statutory provision focuses on the protection of the autonomy of religious communities in the organization and conduct of meetings connected with the performance of religious worship. On the other hand, Article 19(2)(3) *in fine* of the l.g.f.c.r. explicitly mentions the possibility of organizing religious assemblies. This indicates that on the grounds of the l.g.f.c.r. the legislator used two formulations – 'organizing and public worship' and 'religious assemblies'. Such a distinction could suggest that the former category is something separable from the latter, but it seems to be its exemplification. It is possible for public worship to take place without the participation of the community by the celebrant alone, but this is usually done with the participation of a smaller or larger number of worshippers, thus forming an assembly. It must be assumed that religious assembly is a category broader in meaning and includes not only collective worship but also other gatherings.

16 A. Jakubowski, komentarz do art. 2, (in:) S. Gajewski and A. Jakubowski (eds.), *Prawo o zgromadzeniach. Komentarz*, Warsaw 2017, p. 30.

17 T. Mann, *Czarodziejska góra*, vol. 1–2, Warsaw 2009–2012.

18 A. Wróbel, *Wolność zgromadzania się*, (in:) M. Chmaj, W. Orłowski, W. Skrzydło, Z. Witkowski and A. Wróbel (eds.), *Wolności i prawa polityczne*, Zakamycze 2002, p. 30.

Thus, when discussing possible restrictions on the freedom of religious assembly, it will be necessary to distinguish the profile of the religious assembly in question. A religious assembly *sensu stricto* will be a meeting during which public worship takes place, i.e. with access for some group of participants. In this case, participation in such an assembly will be a manifestation of the exercise of personal freedom, and therefore of freedom of conscience and religion. It should be remembered that an assembly of a church or religious association may raise political issues, and the state law may not prohibit this, because it would be discrimination on the grounds of religion, but in such a case the *ratio legis* of special treatment of religious assemblies disappears, and then the regulations concerning the realization of freedom of assembly should be applied.

2. Religious Assemblies in Light of the COVID-19 Pandemic Regulations

At the onset, it should be noted that in Poland, as of 14 March 2020, a state of epidemic emergency was declared¹⁹, and then as of 20 March 2020, a state of epidemic was introduced. As of May 16, 2022 an epidemic emergency was declared and the epidemic status was lifted.²⁰

Referring to the legal qualification of religious assemblies in the period of the COVID-19 pandemic, it should be stated that the Polish legal regulations of that period referred only to a small extent to the issue of religious gatherings, given the wide scope of these meetings, as the restrictions enacted concerned primarily the performance of public worship in public places, including religious facilities. From the point of view of the adopted legislative technique, the legal regulations in question did not directly refer to the terminology used in the Constitution, i.a., i.g.f.c.r. and individual laws to define the categories of religious gatherings subject to restriction, which would have been highly desirable in order to maintain terminological consistency and order.

It should be highlighted that the regulation of freedom of religious assembly in the COVID-19 pandemic is flawed in terms of its merits and the adopted linguistic drafting of the legal provisions. Namely, the content of § 9.1.3 of the Decree of the Council of Ministers of 31 March 2020 on the establishment of certain restric-

19 Regulation of the Minister of Health of 13 March 2020 on the declaration of an epidemic emergency on the territory of the Republic of Poland (Journal of Laws of 2020, item 433).

20 Regulation of the Council of Ministers of 13 May 2022 amending the regulation on the establishment of specific restrictions, orders and prohibitions in connection with regard to the occurrence of an epidemic situation (Journal of Laws 2022, item 1025).

tions, orders and prohibitions in connection with the outbreak of the epidemic²¹ determined a limit of persons during religious worship, including religious activities or rituals, in a given area or facility, both inside and outside the premises. On the other hand, the content of § 7, section 1, item 3 of the Ordinance of the Minister of Health of 20 March 2020 on the declaration of a state of epidemic in the territory of the Republic of Poland provides for the necessity to adhere to the limit of persons during religious worship in a given area or in a given facility, both inside and outside the premises. The difference relates to the use of three linguistic phrases in the 31 March 2020 ordinance instead of one to denote what appears to be the same freedom of conscience and religion entitlement. Indeed, the semantic scopes of the phrases 'religious worship, religious acts or rites' are closely related to each other and generally coincide in meaning. If it were to be envisaged that specific rights concerning the collective performance of religious practices were to be restricted, then the best solution would seem to be a reference to the wording of Article 53, paragraph 2 of the Constitution, i.e. defining the restrictions on the organization of meetings with public worship, prayer, participation in rituals, practice and teaching, taking place inside and outside the premises. In addition, the phrases used may indicate the adoption of a broader scope of legal regulation, although this is an entirely apparent impression. Moreover, the enumeration used by the legislator does not fulfil the criteria of logical division and contradicts the requirement of conciseness of legal acts.

In the first period of legal regulation resulting from the COVID-19 pandemic, limits were set in the executive acts issued on the number of persons who could participate in a religious worship. Initially, a numerical criterion of five persons participating in religious worship regardless of the size of the church facility was adopted²², and later this number was increased to 50 persons.²³ Subsequently, a different method was used based on indicating the maximum permissible number of persons taking part in religious practice per square metre of space. This second method seems to be more appropriate, as it takes into account the different sizes of the religious facilities in which religious worship takes place.²⁴ The limits to the number of participants have undergone numerous changes in the law, the study of which is beyond the scope

21 The Regulation of the Council of Ministers of 31 March 2020 on the establishment of certain restrictions, orders and prohibitions in connection with the occurrence of an epidemic (Journal of Laws 2020, item 566).

22 The above arrangement was effective from 24 March to 11 April 2020.

23 Regulation of the Council of Ministers of 10 April 2020 on the establishment of certain restrictions, orders and prohibitions in connection with the occurrence of an epidemic (Journals of Laws 2020, item 658).

24 M. Olszówka and K. Dyda, *Analiza zgodności z Konstytucją RP ograniczeń w korzystaniu z wolności religii i przemieszczania się związanych z pandemią koronawirusa SARS-Cov-2 oraz strategii ich znoszenia* (stan na 14 maja 2020 r.), <https://ordoiuris.pl/wolnosc-obywatelskie/analiza-zgodnosc-z-konstytucja-rp-ograniczen-w-korzystaniu-z-wolnosc> (accessed 21.03.2022).

of this paper, since the purpose of the study is to try to bring out the general approach of the legislator to religious assemblies.

Limitations on religious gatherings should take into consideration the pluralism of world views. Modern holistic law should be open to diverse world views.²⁵ This issue is of practical importance because the limits of persons participating in assemblies within the activities of churches and religious associations were shaped differently. As a result, the legal provisions on restrictions on the freedom of assembly were applied to persons with a world view that was not connected with the organizational structure of a church or religious association.²⁶ An example is the question of participation of persons in secular funerals, which are not organized by confessional denominations. There is no doubt that the organization of such a funeral is linked to freedom of thought, conscience and religion, which cannot be narrowed down to a theistic world view, since it also includes freedom from religion (the negative aspect of freedom of thought, conscience and religion). The respective wish for such a burial could have been expressed by the deceased during life or such is the will of the family members organizing the funeral.

It is also worth noting that the content of § 14, section 1, item 2 of the 31 March 2020 Ordinance of the Council of Ministers on establishing certain restrictions, orders and prohibitions in connection with the occurrence of an epidemic situation additionally provided for a ban on assemblies organized as part of the activities of churches and other religious associations. Therefore, the formula clearly referred to the expressions of the 1.a. Interestingly, § 11 of the Regulation of the Minister of Health of 20 March 2020 on the declaration of an epidemic in the territory of the Republic of Poland did not provide such a restriction. Arguably, the subsequent legal regulation decided to strengthen the ban on assembly by broadening its scope to include the activities of churches and religious associations along with events, meetings and gatherings with some narrow exceptions for meetings with loved ones. This regulation meant that it was not lawful for a church or religious association to hold an assembly on matters unrelated to public worship, such as socio-political issues, so it had a much broader scope. This approach seems to consider religious assemblies other than public worship as equivalent to assemblies defined as 'events, meetings and gatherings', which may be subject to limitation. The content of this legal regulation should be evaluated positively. Exceptions to the freedom of religious assembly should be especially justified so as not to create the impression of discrimination on the basis of world view. Assemblies of believers on matters other than worship should be treated in the same way as political assemblies in terms of sanitary safety restrictions.

25 M. Szyszkowska, *Prawo holistyczne*, 'Białostockie Studia Prawnicze' 2010, vol. 8, p. 12.

26 M. Sewastianowicz, *Uroczysty pogrzeb nie dla ateisty – absurd w rozporządzeniu epidemicznym*, <https://www.prawo.pl/prawo/pogrzeb-swiecki-a-obostrzenia-koronawirus-limity,507419.html> (accessed 21.03.2022).

It was also indicated that the provisions of the Act of 5 December 2008 on prevention and control of infections and infectious diseases in humans²⁷ in no way address the issue of the feasibility of restricting in the executive acts the freedom of religious assemblies or the performance of religious worship. It is definitely appropriate to share the position that the restriction of this freedom could only take place by means of a law, which follows from Article 31(3) and Article 53(5) of the Constitution. As to the remaining allegations, it must be acknowledged that indeed the wording of Article 46(4) of the p.c.i.d. does not explicitly mention the possibility of temporarily limiting the freedom of religious assembly or restricting the organization of public worship. It is therefore worth noting the statutory provisions that could potentially be considered as a legal basis for such restrictions and the choice made by the legislator.

Article 46(4)(4) of the p.c.i.d. mandates the 'prohibition of the holding of spectacles and other assemblies of the public' by ordinance. There is no doubt that the gathering of people in a temple, sacred place or other facility for the purpose of religious worship constitutes an assembly of the population. However, according to P. Stanisz, such a legal basis is not adequate to limit the freedom of worship. The author points out that the legal provisions on the freedom of worship have a special feature in relation to the general freedom of assembly and 'from this it follows that the restriction of the performance of religious worship cannot be based exclusively on the general authority to limit the freedom of assembly'.²⁸ This agrees with the above statement that the Polish legislator treats religious assemblies in a different way, which has already been hinted at earlier in this article. Probably this is the reason the legislator did not place the mentioned restrictions in the chapters concerning, according to their titles, bans on organizing spectacles and other public assemblies, and they directly referred to the statutory phrases.²⁹

Nevertheless, the legislator decided to reference in the restriction of the freedom of public worship the provision of Article 46(4)(3) of the p.c.i.d. This provision allows the limitation of 'the functioning of certain institutions or establishments'. Thus, the legislature classified churches and other religious associations as 'institutions'. The provision does not specify in any way which institutions fall within its scope, which is presumably a conscious effort to avoid the omission of some organizational structures in the context of the introduced restrictions. The provision of Art. 46, sec. 4(3) of the p.c.i.d. does not differentiate between state and other institutions, e.g. churches and religious associations, foundations and societies, so one should assume that it is permissible to include confessional organizational structures within the scope of

27 Consolidated text of Journals of Laws 2021, item 2,069, hereinafter: p.c.i.d.

28 P. Stanisz, Ograniczenia wolności kultu religijnego w czasie pandemii COVID-19: między konstytucyjnością a efektywnością, 'Przegląd Sejmowy' 2021, no. 3, p. 154.

29 *Ibidem*.

this legal provision, in accordance with the *lege non distinguente* principle, although this is not a common view.³⁰ Churches and other religious associations, together with all their organizational structures, are subject to the generally binding law issued for the purpose of preventing infectious diseases and their effects.³¹ Obviously, the autonomy and independence of churches and other religious associations should not be infringed. To be precise this constraint concerns only the limitation of holding a meeting for the purpose of public worship, whereas it cannot forbid the performing of acts of worship as such.

However, the adopted legal basis may arouse some reservations. Without doubt, the regulation containing restrictions on the freedom of worship requires the form of a statutory act, and not a regulation, which follows from the content of Article 46, section 4 of the p.c.i.d. Article 53, section 5 of the Constitution demands the form of a statutory act for introducing restrictions on the freedom of manifestation of religion.³² This is a serious defect in the legal regime of the epidemic state. It worth noting that in some countries, the executive authorities have been given special powers to impose restrictions on freedom of assembly and explicitly singled out religious observances.³³ This is because the Act is a legal act that has an appropriate level of social legitimacy, and the legislative procedure allows for a proper discussion of the permissibility of the restrictions and their scope.³⁴ The ordinance as a legal act is not distinguished by these characteristics.

Adequate discussion should be entered into regarding the extent of restrictions on the freedom of religious assembly for the sake of preventing the spread of an infectious disease and its consequences. The answer to this question demands an honest discussion and balancing of values. As of the present time, it is clear that the current model of protecting the freedom of religious assembly does not find effective realization on the basis of the current legislative practice. In the case of social acceptance of additional protection of freedom from Article 53 of the Constitution in a state of epidemic, it is worth considering the addition of a legal provision securing the perfor-

30 E.g. G. Maroń, Polskie prawodawstwo ograniczające wolność religijną w okresie pandemii koronawirusa SARS-CoV-2 a standardy państwa prawa – wybrane zagadnienia, 'Przegląd Prawa Publicznego' 2021, vol. 1, p. 39.

31 M. Ożóg, Zwalczenie chorób zakaźnych w stanie epidemii oraz w stanie klęski żywiołowej a realizacja wolności sumienia i religii w świetle Konstytucji Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 roku i ustawodawstwa, 'Studia z Prawa Wyznaniowego' 2021, vol. 24, p. 345.

32 W. Skrzydło, Konstytucja Rzeczypospolitej Polskiej. Komentarz, Warsaw 2013, p. 62.

33 L. Bosek, Anti-Epidemic Emergency Regimes under Polish Law in Comparative, Historical and Jurisprudential Perspective, 'European Journal of Health Law' 2021, vol. 28, p. 127.

34 K. Wojtyczek, Granice ingerencji ustawodawczej w sferę praw człowieka w Konstytucji RP, Kraków 1999, p. 107.

mance of religious services in facilities used for religious worship, as was accepted in the regulation of the institution of a state of emergency.³⁵

It can be considered that since such a guarantee was provided for in the statutory regulation of one of the states of emergency, it should be adopted all the more in the legal model of the state of epidemic. Suspension of freedom of assembly would be possible during the state of emergency.³⁶ However, the provision of Article 22, section 2 of the act of 21 June 2002 on the state of emergency establishes³⁷ that the prohibition of assembly in this state of the functioning of the state does not pertain to gatherings held by churches and other religious associations and religious organizations conducting their activities in temples, church buildings or other premises serving the organization and public performance of worship. This provision explicitly includes derogations in favour of protecting religious freedoms organized by religious communities. The legislator sets limits to the freedom of assembly in a state of emergency but establishes an exception for the realization of the freedom of religious assembly. In this regard, the criterion of the organizer of the assembly is of particular importance. It should be observed that the provisions of the p.c.i.d. do not envisage such an exemption for the freedom of assembly, similar to the statutory regulation of the state of emergency. The previous practice of the Polish legislature during the COVID-19 pandemic proves the positive approach towards religious gathering relative to assemblies of other types, but in the absence of relevant constitutional and statutory guarantees this is left entirely to the goodwill of the lawmaker, and one can conceive a case where there is no preferred treatment of religious assemblies.

On the other hand, the public belief in the permissibility of limiting the freedom of religious assemblies would demand, in order to dispel doubts, the addition of a legal provision to the p.c.i.d. that would expressly address the possibility of limiting the holding of religious assemblies. The law would then have to distinguish with precision between public worship and other meetings as part of the activities of churches and religious associations. It would be necessary to refer to the distinction made in Article 19 of the l.g.f.c.r. There is no doubt that a full restriction of the ability to participate in public worship would be inadmissible, because it would constitute an intrusion into the essence of the freedom to manifest religion, which is impermissible in the light of Article 31(3) of the Constitution and Article 53(5) of the Constitution. Attending such religious practices usually constitutes the foundation of faith. Restrictions on other religious gatherings, which may touch on cultural events, scientific

35 M. Ożóg, *Zwalczanie chorób zakaźnych w stanie epidemii oraz w stanie klęski żywiołowej a realizacja wolności sumienia i religii w świetle Konstytucji Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 roku i ustawodawstwa*, 'Studia z Prawa Wyznaniowego' 2021, vol. 24, p. 354.

36 Compare the dissenting view: K. Urbaniak, *Ograniczenie praw i wolności człowieka i obywatela w okresie pandemii w Polsce*, (in:) K. Hajder, M. Musiał-Karg and M. Górny (eds.), *Konsekwencje pandemii COVID-19: państwo i społeczeństwo*, Poznań 2020, p. 175.

37 Consolidated text of Journals of Laws 2017, item 1,928.

conferences, popularization of faith etc., may be carried out much more deeply. At this point it is worth pointing out that the literature draws attention to the deficiency of the constitutional regulation in terms of the lack of violating the essence of the freedom of assembly and the freedom to manifest religion, which may be needed to prevent the spread of an infectious disease.³⁸ The possibility of violating the essence of the freedom of assembly, or freedom of manifestation of religion, also holds true for state actions under a state of natural disaster.

Conclusions

Religious assemblies make up a special category of popular assemblies in Polish law. They have their specific legal basis in the Constitution, in the l.g.f.c.r. and in individual laws on the relationship of the state to individual churches and other religious associations. Religious congregations constitute a broad category. With the established exclusion of the application of the l.a. it would be necessary to add relevant legal regulations in the provisions of the l.g.f.c.r. to further define the principles of their implementation in the conditions of ordinary functioning of the state. In contrast, counteracting the occurrence of infectious diseases and their consequences may demand that freedom of religious assembly be restricted to a certain extent. For this purpose, an adequate legal basis should be established in the provisions of the p.c.i.d., but with the admission of religious worship organizations. With respect to these assemblies, the possibility of their fulfilment in a state of epidemic or natural disaster should be respected. Restrictions should constitute the *ultima ratio*. A broader scope of interference may apply to other religious assemblies that do not concern worship and thus involve, for example, socio-political matters. The category of religious assemblies should be viewed from a broad perspective, taking into consideration the wide range of functions of religious communities and relating the scope of allowable restrictions to this.

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