

Does the Law on Assemblies matter?

Analysis of the Evolution of Freedom of Assembly in Poland

Freedom of assembly is a particular pillar of liberal democracy and a kind of mirror in which the latter can see itself through. There is a significant correlation between the regulation of freedom of assembly and its application and the quality of democracy. PI aims to explore the nature of these links. The issue of assemblies has not received such a cross-sectional study by Polish academics, and there is no study that uses a similar model of research. A certain stagnation has also characterised the legal science of continental Europe until recently.

As a research team, we distinguish **three levels of analysis - conceptual, analytical-legal and regulatory**. The right of participation as belonging to the constitutional essentials is not exhausted by electoral rights; the democratic process also consists of the right to participate in extra-parliamentary political discourses. We wish to emphasise the legitimacy of treating freedom of assembly in the analysis separately from freedom of association (they are often treated in a kind of 'package'). The research will cover constitutional and statutory regulations, as well as attempts by the courts to explain the concept of assembly. When the constitutions of the countries of continental Europe explicitly declare the 'right of (peaceful) assembly', it should be the domain of the legislator to protect this right in the process of institutionalisation. In the meantime, we observe a phenomenon of a kind of 'budding': the creation of different types of assemblies, subjected to different standards for their organisation and conduct. In the nineteenth century, specific laws on assemblies began to be enacted which referred specifically to 'public assemblies'. In particular, 'open-air' assemblies, considered unpredictable and difficult to control, were treated restrictively. Other types of assemblies (such as religious assemblies, at universities or artistic events) were given separate legal solutions over time. It may lead to unequal treatment of the different actors. This way, the broad constitutional conception of the freedom under study was in fact limited.

In the analysis, we will use a historical perspective, i.e. research on the evolution of the law and practice of assemblies in the context of political and social changes in the Polish lands - from the times of Prussian, Russian and Austrian subordination and its legislation maintained after 1918 (e.g. the German law on assemblies of 1908, the Austrian law of 1867), through the law of the Second Republic of Poland (law of 1932) and the period of the People's Republic of Poland (law of 1962), to the post-transformation times (law on assemblies of 1990 and 2015 with the amendment introducing cyclical assemblies). The research's challenge is to identify the place of assemblies in moments of crisis (e.g. states of war, states of emergency, and epidemics). These bring the need to balance the interests of public safety (health, public order) and respect for the right to assemble. The researchers will analyse the legislative and administrative attempts to restrict freedom of assembly against minority communities (e.g. national minorities in the Second Republic, opposition or Catholic communities in the People's Republic of Poland, in the post-transition period LGBTQIA+). Based on extant sources the researchers will examine in this long-term perspective how consistently the administrative authorities behaved in their formal determinations towards those wishing to organise the assembly, and whether - and how - the courts were able to incorrect administrative decisions. Consequently, certain patterns can be identified, the presence of which should be linked to a decline in democratic standards. We will apply the methods of critical legal history on equal footing with the classical dogmatic method. In doing so, we will include the broader social and cultural context in which the law operates.

It is accepted that the law on assemblies is an important indicator of the quality of democracy. However, we pose the thesis that this assumption is only verified when the letter of the law is confronted with the practice of law. Moreover, we will examine it for very different political conditions and in the face of changing challenges. This will explain how the process of narrowing freedom of assembly works. The final outcome of the project is thus to find the factors that are potentially dangerous for freedom of assembly and, consequently, for the democratic process.