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Freedom of Assembly in the Light of Polish Regulations and Selected Case Law Standards of the European Court of Human Rights

Wolność zgromadzeń w świetle regulacji polskich i wybranych standardów orzeczniczych Europejskiego Trybunału Praw Człowieka

ABSTRACT

The article is of a research and scientific nature, and its main purpose is to compare Polish legal regulations and case law standards developed by the European Court of Human Rights in the field of freedom of assembly. The analysis of national regulations was preceded by a presentation of the freedom of assembly as the basis of a democratic legal state and by a comparison of the freedom of assembly with the freedom of speech. The analysis of the case law standards of the European Court of Human Rights in relation to freedom of assembly is preceded by a consideration of Article 11

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Data: 18/11/2026 23:59:30

of the European Convention on Human Rights. This issue is supported by the fact that the right to demonstration and public assembly is one of the foundations of democracy, as well as an expression of the existence of civil society and civic activity. The article is a new approach to the research problem.

Keywords: human rights; freedom of assembly; European Court of Human Rights; European Convention on Human Rights; civil society; civic activity

INTRODUCTION

This article is devoted to the issue of freedom of assembly in the light of Polish regulations and selected case law standards of the European Court of Human Rights (ECHR). According to the authors, the freedom of assembly is an exceptional freedom among the catalogue of human rights and freedoms, because it is a *conditio sine qua non* for the existence of civil society, political pluralism and civic activity.

The main research intention is to analyse the freedom of assembly as the basis of a democratic legal state and to analyse the legal regulations concerning the freedom of assembly in the Polish and European legal order (determined by the European Convention on Human Rights). The Convention is the most important pillar of the human rights protection system, which is shaped within the framework of the Council of Europe. In the further part of the article, the authors analyse selected Strasbourg standards of freedom of assembly on the example of selected judgements of the ECHR.

The thesis and objectives determined the choice of the article layout and research methods. The observations contained in the study were carried out on the basis of dogmatic method referring to specific normative regulations and the method of analysis of case law. The article contains both current literature on the subject and the jurisprudence of the Constitutional Tribunal in Poland and the ECHR in Strasbourg.

FREEDOM OF ASSEMBLY AS A BASIS FOR A DEMOCRATIC LEGAL STATE

Freedom of assembly is a fundamental principle of a democratic legal state. The public, by taking part in demonstrations or assemblies, has a real possibility to influence the political process. The citizens, by manifesting their views – whether in approval or criticism of the government – co-create a democratic state. The way in which the law ensures freedom of assembly and its practical observance by the authorities is therefore certainly an indicator of the state of democracy.[1]

[1] Judgement of the ECHR in Moscow Branch of 5 October 2006 in the case of the *Salvation Army v. Russia*, application no. 72881/01, § 59.

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Data: 18/11/2026 23:59:30

In considering the issue of freedom of assembly, the meaning of the term "assembly" in the Polish language should be established. In the light of the definition contained in the Polish language dictionary, an assembly is a general meeting of all the members of a given organisation, a group of people who constitute some kind of authority.[2] In a common language we can find a whole range of terms used to describe events, in which a group of people expresses its support or opposition to actions taken, for example, demonstration, conference, congress, convention, meeting, mass, demonstration, deliberation, picket, session, assembly, crowd, rally, gathering, reunion.[3] However, the dictionary explanation of the term assembly in no way explains the essence of an assembly as a legal phenomenon.

The Polish Constitutional Tribunal, in the judgement of 18 January 2006, took the view that an assembly is a grouping of persons considering common matters, both public and private.[4] In a similar way, the definition of an assembly is expressed by our domestic legislature, which has clarified the definition formulated by the Constitutional Tribunal. According to Article 3 (1) of the Law on Assemblies,[5] an assembly is a grouping of persons in an open space accessible to persons not specified by name in a particular place for the purpose of holding joint deliberations or for the purpose of jointly expressing a statement on public matters. An assembly is an event that is inherently limited in time, has no fixed organisational framework, and may or may not (if it is private, for example) be open to an unlimited number of participants.[6]

From the legal-political point of view, an assembly is a kind of arena for presenting one's views, conveying information, and consequently influencing the opinions of other people. It constitutes a means of communication between people in both the public and private spheres. Freedom of assembly also plays a crucial role in the activities of political parties and trade unions, whose members, by organising assemblies, not only strengthen their sense of identity, but also focus the attention of the mass media, leaders and activists of other political parties.

The gathering of representatives of the world of work and politics to collectively discuss matters concerning them, to agree on a way of conduct and to manifest their views has become a permanent feature of history.[7] In ancient Athens, supreme power belonged to the People's Assembly, in which only (male) citizens of Athens could participate. The aforementioned Assembly was the central organ of Athenian

[2] *Słownik języka polskiego*, ed. M. Szymczak, vol. 3, Warszawa 1981, p. 1012.

[3] L. Wiśniakowska, *Słownik wyrazów bliskoznacznych PWN*, Warszawa 2006, p. 704.

[4] Judgement of the Constitutional Tribunal of 18 January 2006, K 21/05, OTK-A 2006, no. 1, item 4.

[5] Act of 24 July 2015 – Law on Assemblies (Journal of Laws 2019, item 631).

[6] P. Winczorek, *Komentarz do Konstytucji Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r.*, Warszawa 2008, p. 138.

[7] A. Sylwestrzak, *Historia doktryn politycznych i prawnych*, Warszawa 2020, pp. 57–66.

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Data: 18/11/2026 23:59:30

democracy, which dealt with all key issues for the *polis*. Democracy also existed in feudal societies, but in a limited way. The greatest achievement of the French Revolution was the equality of all people before the law. The socialist conception of the state benefited in some way from the gains of the bourgeois revolution. In the light of this concept, the interests of the individual are identical to those of society. Thus, the interests of the human being – the individual and society – and the rights and duties of citizens cannot be juxtaposed. Regulations governing the freedom of assembly in the Polish People's Republic were the complete opposite of the freedom of assembly. Manifestations, parades and marches were the basic forms of opposition activity.[8] In the age of the Internet, freedom of assembly has not lost its significance. The possibility of organising events *via* social networking sites increases the awareness of society and, at the same time, increases the attendance during organised assemblies.

In light of the above, it can be firmly stated that freedom of assembly is a *conditio sine qua non* for the existence of civil society, political pluralism and active citizenship. In view of the importance of the idea and the role which assemblies play and will certainly continue to play, one might be tempted to say that assemblies are a safety valve through which society's discontent is channelled. Organised assemblies become a litmus test of public sentiment.

FREEDOM OF ASSEMBLY AND FREEDOM OF EXPRESSION

Freedom of assembly is a necessary component of a properly functioning democracy and a prerequisite for the exercise of other freedoms and human rights that are inextricably linked to the public sphere, such as freedom of expression, freedom of association and the right to petition.[9] It should be noted that the strongest link is between freedom of assembly and freedom of expression. The terms "freedom of speech" and "freedom of expression" should be treated as synonymous, which is in line with international standards. The idea of freedom of expression is a product of the culture of the West, to be more precise, the culture of ancient Athens, since it was the place where the practice of conducting disputes became established.[10]

The authors state that freedom of speech is one of the most important civic freedoms, which is reflected in its placement in Article 57 of the Polish Constitution. Freedom of speech shall be considered in two aspects – in the narrow and in the broad sense. In the former, freedom of speech is limited solely to verbal expression.

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[8] K. Mamak, *Prawo o zgromadzeniach. Komentarz*, Warszawa 2014, p. 9.

[9] J. Blicharz, *Prawo o zgromadzeniach. Wybór i wprowadzenie*, Warszawa 2013, p. 15.

[10] W. Wacławczyk, *Swoboda wypowiedzi jako prawo człowieka*, [in:] *Prawa człowieka. Wybrane zagadnienia i problemy*, eds. L. Koba, W. Wacławczyk, Warszawa 2009, p. 247.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 18/11/2026 23:59:30

In the latter, however, freedom of speech also refers to expression in the press, public debate and entries on social networking sites. Freedom of expression is a form of expression of one's own views through all available means of communication. It must therefore be understood in the broadest possible sense.

The exercise of freedom of expression is aimed at the individual's pursuit of the truth. Defenders of human rights treat freedom of speech as a certain kind of weapon in the fight against abuses of power and social discontent. The objective presentation of information, the opportunity and freedom to present views and beliefs mean that modern societies can continue to develop.

LEGAL REGULATION OF FREEDOM OF ASSEMBLY IN POLAND

The legal regulation of freedom of assembly in Poland has a long tradition. After Poland regained independence in 1918, the first act formulating a catalogue of rights and freedoms was the Manifesto of the Provisional People's Government of the Republic of Poland of 7 November 1918.[11] The passing of the Constitution of the Republic of Poland of 17 March 1921 was of great significance for the development of freedom of assembly.[12] It was the first legal act which comprehensively regulated the matter of human rights and freedoms and devoted Articles 108 and 124 to the freedom of assembly. The Act of 5 August 1922 on freedom of pre-election assembly[13] was the first indigenous Polish legal act of statutory rank regulating the freedom of assembly. The normative act in question contained a guarantee of freedom of assembly connected with general elections. In turn, the Act of 11 March 1932 on Assemblies[14] was the legal act devoted to assemblies. According to L. Wiśniewski, this Act classified assemblies and clarified the most important notions and the procedure for organising assemblies.[15] The solutions adopted in the Constitution of 23 April 1935[16] should be regarded as a step backwards in regulating the freedom of assembly as the basic law did not contain any mention of freedom of assembly. The guarantee of ensuring by the state freedom of assembly and rallies, marches and manifestations returned in the 1952 Constitution

[11] B. Kołaczkowski, *Kształtowanie się regulacji prawnych zgromadzeń w Polsce oraz w wybranych krajach anglosaskiej tradycji prawnej*, Warszawa 2014, p. 30.

[12] Act of 17 March 1921 – Constitution of the Republic of Poland (Journal of Laws 1921, no. 44, item 267).

[13] Journal of Laws 1922, no. 66, item 594.

[14] Journal of Laws 1932, no. 48, item 450.

[15] L. Wiśniewski, *Wolność zgromadzeń w świetle prawa o zgromadzeniach*, "Państwo i Prawo" 1991, no 4, p. 34.

[16] Constitutional Act of 23 April 1935 (Journal of Laws 1935, no. 30, item 227).

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 18/11/2026 23:59:30

of the People's Republic of Poland.[17] This provision, by virtue of Article 77 of the so-called Small Constitution of 1992,[18] remained in force until 1997.

De lega lata, the guarantee of freedom of assembly has been regulated in the provision of Article 57 of the Constitution of the Republic of Poland,[19] which stipulates that "Everyone shall be granted the freedom to organize peaceful assemblies and to participate in them. Limitations of this freedom may be specified by statute". The constitutional freedom of assembly consists of two rights: the freedom to organise meetings (active aspect) and the freedom to participate in them (passive aspect). Only peaceful assemblies enjoy constitutional protection. Peaceful character refers to any assembly, regardless of its purpose or form either public or non-public. This requirement refers to the peaceful organisation of the assembly, its peaceful course, the behaviour of the organisers and participants of the assembly. A peaceful assembly is not an assembly attended by armed persons, i.e. persons carrying weapons, explosives or other dangerous materials or tools.[20] In the opinion of the Constitutional Tribunal, such an assembly should take place with respect for other people and for both public and private property.[21] It shall be the duty of the State to create conditions to ensure that the assembly remains peaceful throughout its entire course.

The constitutional guarantee was reflected by its authors as freedom of assembly, not as the right to assembly, which is significant, because the role of public authority is to secure the realisation of freedom that has already been established.[22] The meaning of the second sentence of Article 57 of the Constitution of the Republic of Poland indicates that freedom is not absolute, but is subject to limitations. This freedom may be restricted only under the conditions set out in Article 31 (3) of the Constitution of the Republic of Poland, namely only by statute, and only when they are necessary in a democratic state for the protection of the values indicated: state security, public order, protection of the environment, health and public morals, freedoms and rights of other persons. Such limitations may not infringe the essence

[17] Article 71 of the Constitution of the People's Republic of Poland of 22 July 1952 (Journal of Laws 1952, no. 33, item 232; consolidated text, Journal of Laws 1976, no. 7, item 36).

[18] Constitutional Act of 17 October 1992 on Mutual Relations between the Legislative and Executive Powers of the Republic of Poland and on Local Self-Government (Journal of Laws 1992, no. 84, item 426).

[19] Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws 1997, no. 78, item 483, as amended). English translation of the Constitution at: www.sejm.gov.pl/prawo/konst/angielski/kon1.htm [access: 10.11.2021].

[20] *Ibidem*.

[21] Judgement of the Constitutional Tribunal of 28 June 2000, K 34/99, OTK 2000, no. 5, item 142.

[22] W. Skrzydło, *Komentarz do art. 57*, [in:] *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, LEX/el. 2013.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 18/11/2026 23:59:30

of the freedom or right in question.[23] It should be emphasised that the essence of the regulation contained in Article 31 (3) of the Constitution of the Republic of Poland is to set limits to the interference of public authorities in the sphere of constitutional freedoms and rights (including the freedom of assembly) by generally specifying the conditions which are necessary to fulfil in order to introduce limitations to individual rights and freedoms. In the opinion of the Constitutional Tribunal, it is crucial that the necessary restrictions on the freedom of assembly, in the name of protecting the individual, do not lead to the freezing of the social debate and enforced silence on undisclosed phenomena. Therefore, the assessment of the proportionality of restrictions on the freedom of assembly must be carried out taking into account strict criteria of the "necessity" of the restriction.[24]

The principles and procedure for organising, holding and dissolving public assemblies *de lege lata* are regulated by the Act of 24 July 2015 – Law on Assemblies.[25] This Law was issued following the judgement of the Constitutional Tribunal of 18 September 2014, in which the Tribunal ruled on the unconstitutionality of certain provisions of the Act of 5 July 1990 – Law on Assemblies[26] in force at that time. The 1990 Act was repealed as an expression of the implementation of the aforementioned judgement of the Constitutional Tribunal and the judgement of the ECHR of 3 May 2007 in the case of *Bączkowski and others v. Poland*.[27] It should be noted that the 1990 Act uses the autonomous definition discussed above.[28] This Act also introduces the concept of a spontaneous assembly, defining it as "an assembly held in connection with a sudden and unforeseeable event related to the public sphere, the holding of which on another date would be pointless or of little importance from the point of view of public debate". In addition, the amendment to the Act of 13 December 2016 amending the Law on Public Assemblies[29] introduced the concept of a cyclic assembly. Cyclic assemblies are those organised by the same organiser in the same place or on the same route at least four times a year according to a prepared schedule or at least once a year on the days of national and state holidays, and such events have taken place over the past 3 years, even if not in the form of assemblies and aimed in particular at celebrating momentous and significant events for the history of the Republic of Poland, the organiser may apply to the voivode for permission to organise these assemblies cyclically.

[23] Judgement of the Constitutional Tribunal of 10 July 2008, P 15/08, OTK-A 2008, no. 6, item 105.

[24] *Ibidem*.

[25] Journal of Laws 2019, item 631.

[26] Journal of Laws 2013, item 397.

[27] Application no. 1543/06.

[28] Article 3 (1) of the Law on Assemblies.

[29] Journal of Laws 2017, item 579.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 18/11/2026 23:59:30

The amendment under discussion has been criticised from the point of view of the implementation of freedom of assembly. Critical comments on the parliamentary draft amendment were submitted by the Ombudsman, who claimed that the draft did not meet any standards in this respect. Polemical comments to the draft were also made by the then First President of the Supreme Court, M. Gersdorf, indicating that "the draft as a whole is anti-constitutional and contrary to the principles of international law".[30] Similar positions were taken by the OSCE, the Supreme Bar Council, the Council of the Faculty of Law and Administration of the University of Warsaw, the Helsinki Committee in Poland and NGOs (including an appeal by 194 NGOs to the President of Poland not to sign the bill).[31] By judgement of 16 March 2017, the Constitutional Tribunal ruled, however, that the amendment in question is constitutional.[32]

Protection of freedom of assembly is also guaranteed by criminal law regulations. Criminal sanctions for the breach of the provisions of the cited Act on Assemblies are provided for by the Code of Offences.[33] As stipulated in Article 52 §§ 1 and 2 of the Code of Offences, it is punishable by:

1) participation in an assembly of persons carrying weapons, explosives or other dangerous tools,
2) obstructing or attempting to obstruct the organisation or course of an unprohibited assembly,
3) convening an assembly without the required notice or chairing such assembly or a prohibited assembly,
4) presiding over an assembly after its dissolution by the chairman or representative of a municipal authority,
5) unlawfully occupying or refusing to leave a place which is another person or organisation legally disposes of as the convener or chairman assembly.

Committing an offence under Article 52 § 1 is punishable by imprisonment for up to 14 days, restriction of freedom or a fine, and under Article 52 § 2 is punishable

[30] Opinion of the First President of the Supreme Court to the parliamentary bill on amendments to the Law on Assemblies, 30.11.2016, www.rpo.gov.pl/sites/default/files/021-499_16%20Uwagi%20SN%20do%20projektu%20ustawy%20o%20zm.%20ustawy%20-%20Prawo%20o%20zgromadzeniach.pdf [access: 1.04.2021]].

[31] Law on amending the Law on Assemblies (Parliamentary Paper no. 1044), http://obserwatoriumdemokracji.pl/ustawa/projekt-ustawy-o-zmianie-ustawy-prawo-ozgromadzeniach-druk-sejmowy-1044 [access: 1.04.2021].

[32] Judgement of the Constitutional Tribunal of 16 March 2017, Kp 1/17, LEX no. 2242310: "Article 1 (4) of the Act of 13 December 2016 amending the Act – Law on Assemblies, adding Chapter 3a 'Proceedings in cases of assemblies organised cyclically' to the Law on Assemblies of 2015 (Articles 26a–26e), is compatible with Article 32 (1) and Article 57 of the Constitution of the Republic of Poland and that Article 2 of the Act of 13 December 2016 is compatible with Article 2 of the Constitution, and discontinued the proceedings in the remainder".

[33] Act of 20 May 1971 – Code of Offences (Journal of Laws 2021, item 281).

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 18/11/2026 23:59:30

by restriction of freedom or a fine. Most of the offences defined in Article 52 § 2 of the Code of Offences appear to be inconsistent with international law, which prohibits state authorities from declaring peaceful assemblies illegal simply because the organisers have not registered them with the relevant authorities or have not sought permission to organise them.[34] The mere threat of restriction of freedom or a fine against demonstrators exercising their freedom of assembly seems disproportionate to their activities.

FREEDOM OF ASSEMBLY IN THE EUROPEAN CONVENTION ON HUMAN RIGHTS

The European Convention of Human Rights and Fundamental Freedoms[35] came into force on 3 September 1953. M. Nowacki points out that thanks to the European Convention on Human Rights there is now a European legal order in the sphere of protection of individual rights, encompassing not only a catalogue of protected rights, developed by additional protocols and interpretation of its bodies, but also a globally unique mechanism for their implementation.[36] Freedom of assembly has been regulated in Article 11 of the Convention, which deals with freedom of assembly and of association: "1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests. 2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State".

The freedom of assembly guaranteed by the Convention is not an absolute right, but is subject to restrictions within the limits provided for in its Article 11 (2). The basic aim of this provision is to protect individuals against arbitrary and unjustified interference of public authorities in the exercise of the rights protected

[34] OSCE/ODIHR and the Venice Commission, *Guidelines on Freedom of Peaceful Assembly*, Warsaw–Strasbourg 2010, www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2010)020-e [access: 10.12.2021], para. 71–73 (public order) and para. 80–84 (rights of others).

[35] Convention for the Protection of Human Rights and Fundamental Freedoms drawn up in Rome on 4 November 1950, subsequently amended by Protocols no. 3, 5 and 8 and supplemented by Protocol no. 2 (Journal of Laws 1993, no. 61, item 284, as amended).

[36] M.A. Nowicki, *Wokół Konwencji Europejskiej. Krótki komentarz do EKPCz*, Kraków 2006, p. 383.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 18/11/2026 23:59:30

by this provision. The ECHR has repeatedly indicated that national laws should be interpreted in favour of the right of peaceful, free assembly. The Convention guarantees real and effective rights, not theoretical and illusory ones. This provision is the basis for imposing positive obligations on the State. The competent authorities have a duty to take appropriate measures with regard to lawful assembly to ensure its peaceful conduct and the safety of all citizens and thus the effective exercise of these rights.[37]

The restriction of the freedom of assembly is possible due to the construction of Article 11 (2) of the European Convention on Human Rights and the inclusion in this provision of the construction of restrictive clauses. Restrictive clauses shall be understood as, following B. Liżewski, "a construction contained in the provisions of the Convention which enables to limit the rights and freedoms of individuals".[38] It means that this freedom may be restricted only under the conditions set out in Article 11 (2) of the European Convention on Human Rights, namely it may not be subject to limitations other than those specified by statute and which are necessary in a democratic society in view of the interests of state or public security, the protection of order and the prevention of crime, the protection of health and morals or the protection of the rights and freedoms of others. It shall be noted that while drafting Article 31 (3) of the Constitution of the Republic of Poland, there was a reference made precisely to the construction of the European Convention on Human Rights in this respect, which resulted in including in the Polish Constitution "the classic formula of limitations on the rights and freedoms of the individual, consisting of three parts".[39]

STRASBOURG STANDARDS ON FREEDOM OF ASSEMBLY ON THE EXAMPLE OF SELECTED JUDGEMENTS OF THE ECHR

The case law of the ECHR plays an important role in setting standards for the protection of human rights. The multitude of judgements of the ECHR results in the fact that this part of the article refers only to selected – in the authors' opinion

[37] Judgement of the ECHR of 5 December 2006 in the case of *Oya Ataman v. Turkey*, application no. 74552/01, § 35; judgement of the ECHR of 29 November 2007 in the case of *Balçik and others v. Turkey*, application no. 25/02, § 46.

[38] See more B. Liżewski, *Klauzule generalne i ich funkcje w Europejskiej Konwencji o Ochronie Praw Człowieka*, "Annales UMCS sectio G (*Ius*)" 2016, vol. 63(2), p. 197 ff; L. Leszczyński, *Kryterium „konieczności w demokratycznym państwie prawnym" w Europejskiej Konwencji Praw Człowieka – studium teoretycznoprawne*, "Europejski Przegląd Sądowy" 2014, no. 1.

[39] L. Garlicki, K. Wojtyczek, *Komentarz do art. 31*, [in:] *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, vol. 2, ed. M. Zubik, LEX/el. 2016; M. Wyrzykowski, *Granice praw i wolności – granice władzy*, [in:] *Obywatel – jego wolności i prawa*, comp. B. Oliwa-Radzikowska, Warszawa 1998, p. 48.

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Data: 18/11/2026 23:59:30

basic – standards of protection of assembly. Article 11 of the European Convention on Human Rights, likewise the national regulations, protects only peaceful assembly.[40] The ECHR points out that for the requirement of "peaceful character" to be met, an assembly must remain peaceful throughout its duration, and the very behaviour of its participants is important. The mere possibility of provoking a violent counter-demonstration does not deprive an assembly of its peaceful character.[41] In the light of the case law of the ECHR, the right to freedom of peaceful assembly is a fundamental right in a democratic society.[42] One of the functions of the right of assembly is to provide a forum for public debate and open expression of protest.[43] One of the purposes of that right is to protect the expression of personal convictions.[44] The ECHR indicates that the right of assembly is an essential, substantive element of the content of other rights and freedoms, such as freedom of expression under Article 10 and freedom of thought, conscience and religion under Article 9 of the European Convention on Human Rights.

The freedom of assembly consists of the right to freely organise a peaceful assembly, as well as the right to freely participate in a peaceful assembly. The right to freedom of organising an assembly is the right to decide freely, without compulsion by the State, individually or jointly with others, to hold an assembly, and the right of the organiser to choose freely the time and place of the assembly.[45] In this regard, it should be pointed out that the ECHR indicates that, while the State may, in certain circumstances, refuse permission to hold a demonstration if it is in accordance with Article 11 (2) of the European Convention on Human Rights, it may not change the date of the organisers' planned assembly[46]. Nor does the State have the power to arbitrarily change the location of a public assembly.[47]

According to the ECHR, the organiser of a public assembly is required, under national law, to notify the competent authority of the holding of the public assembly or to obtain the approval (authorisation) of that authority to hold the assembly at

[40] Decision of the European Commission of Human Rights of 16 July 1980 in the case of *Christians against Racism and Fascism v. Z.K.*, application no. 8440/78.

[41] *Ibidem*.

[42] See judgement of the ECHR of 7 October 2008 in the case of *Éva Molnár v. Hungary*, application no. 10346/05, § 39; judgement of the ECHR of 20 February 2003 in the case of *Djavit An v. Turkey*, application no. 20652/92, § 56.

[43] See judgement of the ECHR of 7 October 2008 in the case of Éva Molnár v. Hungary, application no. 10346/05, § 42.

[44] See judgement of the ECHR of 26 April 1991 in the case of *Ezelin v. France*, application no. 11800/85, § 37.

[45] L. Garlicki, P. Hofmański, A. Wróbel, *Konwencja o Ochronie Praw Człowieka i Podstawowych Wolności*, vol. 1: *Komentarz do artykułów 1–18*, Legalis 2010.

[46] See judgement of the ECHR of 3 May 2007 in the case of *Bączkowski and others v. Poland*, application no. 1543/06, § 82.

[47] *Ibidem*.

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Data: 18/11/2026 23:59:30

a place and time chosen by the organiser. The requirement of prior notification or authorisation serves, on the one hand, to reconcile the right to freedom of assembly with the rights and legally protected interests, including the right to freedom of movement, of others, but also to prevent disorder and crime.[48] The above is not contrary to Article 11 (2) of the European Convention on Human Rights as long as it does not constitute a disguised obstacle to the freedom of peaceful assembly protected by the Convention.[49] It shall be pointed out that the lack of notification or authorisation required by law results in the fact that the assembly does not enjoy the presumption of lawfulness, which is an important aspect of the effective and unimpeded exercise of the right to freedom of assembly and to freedom of expression.[50] To ensure effective protection of the right of freedom of assembly, it is important that the law provides for a reasonable period of time within which the competent authorities should take the relevant decisions.[51] Freedom of assembly includes the right to freedom of participation in a peaceful assembly. The right to take part in a peaceful assembly is so fundamental that an individual may not be subject to penalties, even the lowest in the catalogue of disciplinary penalties, for taking part in an assembly which has not been prohibited, so long as that individual does not commit any reprehensible act on that occasion.[52]

Taking into consideration our deliberations referring to the possibility of restrictions on the freedom of assembly, it should be pointed out that, in the ECHR's view, there shall be no unnecessary direct or indirect restrictions on that right.[53] Limitations on the right of assembly cannot be based on mere presumptions, assumptions or speculations.[54] The possibility that a violent counter demonstration might take place or that violent extremists who are not members of the association organising the demonstration might join the demonstration may not lead to a denial of that right, even where there is a real risk that the public procession would be disrupted by events beyond the control of the organisers.[55] The organisation of an

[48] See judgement of the ECHR of 7 October 2008 in the case of *Éva Molnár v. Hungary*, application no. 10346/05, § 37.

[49] See judgement of the ECHR of 29 November 2007 in the case of *Balçik and others v. Turkey*, application no. 25/02, § 49.

[50] See judgement of the ECHR of 3 May 2007 in the case of *Bączkowski and others v. Poland*, application no. 1543/06, § 67.

[51] See *ibidem*, § 83.

[52] Judgement of the ECHR of 15 November 2007 in the case of *Galstyan v. Armenia*, application no. 26986/03, § 115.

[53] Judgement of the ECHR of 29 November 2007 in the case of *Balçik and others v. Turkey*, application no. 25/02, § 47.

[54] Judgement of the ECHR of 8 July 2008 in the case of *Vajnai v. Hungary*, application no. 33629/06, § 55.

[55] Judgement of the ECHR of 29 June 2006 in the case of *Ollinger v. Austria*, application no. 769900/01, § 41.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 18/11/2026 23:59:30

assembly cannot be refused solely on the grounds of protection under Article 11 (1) of the European Convention on Human Rights (any restrictions imposed on such an assembly must comply with Article 11 (2) of this provision).

CONCLUSIONS

To summarise, we would like to formulate the conclusions that result from the analysis of the legal acts, the case law of the ECHR and the literature on the subject.

Freedom of assembly is the foundation of a democratic state of law. It is an expression of civil society and active citizenship. Freedom of assembly is also a political right which guarantees citizens the freedom to express their views and thus to approve or disapprove of particular actions. The aforementioned freedom is a collective right, which means that it is enjoyed by a community. Its exercise is most often linked to freedom of speech. In the interwar period, as many as five legal acts were passed which directly or indirectly referred to the organisation and participation in assemblies. The passing of the Law on Assemblies in the 1990s and their inclusion under constitutional protection in the Constitution of 1997 was the citizens' response to the current political situation in the country.

The Law on Assemblies was in force between 1990 and 2015. Most of the provisions of the Law were repealed by the Constitutional Tribunal in the judgement of 18 September 2014. Since 24 July 2015, the "new" Law on Assemblies has been in force, the provisions of which comply with the Constitutional Tribunal's judgement. The law in its current form gives the possibility to organise spontaneous assemblies, which was advocated especially by the Helsinki Foundation for Human Rights.

The 2016 amendment to the Law on Assemblies introduced significant changes, which in particular concerned the priority in organising cyclical assemblies. Despite the fact that the Constitutional Tribunal, in its judgement of 16 March 2017, ruled on the constitutionality of the provisions on the organisation of cyclic assemblies, the amendment continues to be highly criticised. According to the Ombudsman, the changes resulting from the amendment do not comply with the standards of a democratic state, constitutional and international standards on freedom of assembly and constitute a restriction of this freedom, which may constitute a prompt to refer this matter to the ECHR.

Strasbourg standards on freedom of assembly have been developed based on the extensive case law of the ECHR. These standards are a reference for national state authorities responsible for approving, banning or organising assemblies.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 18/11/2026 23:59:30

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Data: 18/11/2026 23:59:30

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Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 18/11/2026 23:59:30

ABSTRAKT

Artykuł ma charakter badawczo-naukowy, a jego zasadniczym celem jest porównanie polskich regulacji prawnych i standardów orzeczniczych wypracowanych przez Europejski Trybunał Praw Człowieka w zakresie wolności zgromadzeń. Analiza regulacji krajowych została poprzedzona ukazaniem wolności zgromadzeń jako podstawy demokratycznego państwa prawnego oraz zestawieniem wolności zgromadzeń z wolnością słowa. Natomiast analiza standardów orzeczniczych Europejskiego Trybunału Praw Człowieka w odniesieniu do wolności zgromadzeń poprzedzają rozważania dotyczące art. 11 Europejskiej Konwencji Praw Człowieka. Za podjęciem tego zagadnienia przemawia fakt, że prawo do demonstracji i zgromadzeń publicznych należy do fundamentów demokracji, jak również jest wyrazem istnienia społeczeństwa obywatelskiego i aktywności obywateli. Artykuł stanowi nowe ujęcie problemu badawczego.

Słowa kluczowe: prawa człowieka; wolność zgromadzeń; Europejski Trybunał Praw Człowieka; Europejska Konwencja Praw Człowieka; społeczeństwo obywatelskie; aktywność obywateli

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