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ORCID ID: <https://orcid.org/0000-0002-9809-5778>**Favoring particular assemblies or cultivating
Poland's history?¹**[book review *Zgromadzenia w Polsce. Teoria, praktyka
i komentarz do ustawy*]**Отдавать предпочтение определенным ассамблеям
или культивировать историю Польши?**[рецензия книги *Zgromadzenia w Polsce. Teoria, praktyka
i komentarz do ustawy*]

The book *Zgromadzenia w Polsce. Teoria, praktyka i komentarz do ustawy* [eng. *Assemblies in Poland, Theory, Practice and Commentary to the Law*] was published in 2022 under the scientific editorship of Marcin Jurgilewicz, Sabina Grabowska and Radosław Grabowski. It constitutes a collection of works on the legal status of assemblies in Poland, as well as how it was established over the past years. Assemblies in Poland have been a widely discussed topic for several years (Skrzypek 2020a; Rak 2022a). The introduction of a new law in 2015 and its amendment in 2016 evoked heated discussion, as a new institution of cyclic assemblies was introduced into law (Rak 2021). However, this was not the only controversy related to the

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organization of assemblies in Poland, as 4 years later the COVID pandemic hit Poland (Osiewicz, 2020). Those in power, hiding behind concerns for the health of their citizens, restricted the possibility of political contestation (Rezmer-Płotka, 2021; Rak, Bäcker, Osiewicz, 2021).

The above study opens with an introduction of the book, which is divided into two parts. The first one being *Theory and Practice* divided into six subsections, and the second one being *Commentary to the Law of July 24, 2015 Law on Assemblies*. The commentary itself is also divided into six chapters according to the division of the Law on Assemblies.

Freedom of assembly is one of the basic human rights, a particularly important element of qualities characterizing a democratic system. However, it is worth pointing out restrictions were already imposed during the interwar period. The purpose of some of the restrictions was to combat the enemies of democracy, who, using freedom, sought (and still seek) to overthrow democratic systems (Skrzypek, 2020b). Karl Loewenstein (1937), author of the concept of militant democracy, shows how states create restrictions on basic rights such as freedom of assembly, why this can be a positive value for the state and strengthen the democratic system. However, as Rak and Bäcker (2022b) note, the solutions and restrictions put in place are not always designed to work in favor of the sovereignty of a political nation. The following study focuses on the issue of freedom of assembly in Poland, their organization, and also their conduct or prohibition. It explains the concepts and comments on all the provisions of the Law on Assemblies of 2015, and shows in the first part the history of the creation of this law in Poland and around the world.

The introduction to the book not only directs the reader towards an idea of what to expect in the next section, but also shows the innovation of the study, making it an important contribution to the discussion on the legal state of assemblies. Moreover, it can be valuable to researchers, focusing on the state of democracy in Poland (Rak, Bäcker, 2022a) or social movements and protests (Rak, Owczarek, 2022). The first chapter by Elżbieta Kurzėpa describes the history of the right to assembly in Poland, as well its introduction worldwide (p. 13). The author describes the various legal regulations from the time of the Partitions to the present day. During the communist era, under the 1952 Constitution and the 1962 Law on Assemblies, the right

to assemble theoretically existed. However, in practice, it was illegal to hold an assembly that acted “against the state”. The transformation of the system and the 1990 Law on Assemblies repealed the earlier legislation and finally broke with the traditions of the Polska Rzeczpospolita Ludowa (PRL) (p. 25). It remained in force until it was amended in 2015, when a new law – the Law on Assemblies – was presented. The author also points towards the legal protection of freedom of assembly guaranteed by the Constitution of April 2, 1997. The reader, after reviewing the above mentioned chapter, will be aware of the differences and similarities between the laws currently in place as well as from the past. Additionally, the reader has the opportunity to deepen their knowledge regarding the formation of this law in Poland, which may influence their overall perception of the current Law.

The second chapter by Sabina Grabowska and Radosław Grabowski looks at the issue of freedom of assembly as defined by the provisions of the Polish Constitution of April 2, 1997. The authors show how the essence of the freedom of assembly has been interpreted differently over the years, as well as show how it has been shown in light of judicial decisions. Under the Constitution of the Republic of Poland, political, public, and private assemblies are ensured both in open and closed spaces. Moreover, this freedom is guaranteed to everyone (p. 33). The Constitutional Court in Poland has repeatedly taken up the issue of assemblies in Poland. According to one of the justifications for the judgment issued by this judicial body, the essence of freedom of assembly is, among other things, the right to peaceful assembly, which does not require notice beforehand (which is also confirmed by the statements of the European Court of Human Rights). Moreover, it is subject to constitutional protection as well as ratified international covenants (p. 34). It is noteworthy, that the ECHR emphasizes that the law protects peaceful assemblies, and these again are a component of the deliberation process in direct democracy (p. 37). Furthermore, after analyzing not only Polish jurisprudence, but also the judgment of the ECHR, the Constitutional Court presented eight rules which should be respected for the sake of freedom of assembly, and also outlined to what extent the aforementioned right can be restricted within the meaning of the 1997 Constitution. However, the Law on Assemblies has been amended and the so-called “cyclic assemblies” have been introduced, which, according to some researchers, are incompatible

with international standards. The above mentioned provision was revised by the Constitutional Court and was not declared unconstitutional. Nonetheless, as the authors of the above chapter state, not only the provision, but also the composition of the Constitutional Court raised doubts (p. 40). This discussion allows the reader to get acquainted with more than just the opinions of researchers. The chapter is a collection of composite arguments from the judgments of judicial bodies in Poland, which allow the reader to better interpret the law and be more aware of some of its elements.

The third chapter is entitled *Cyclic Assemblies and Constitutional Freedom of Assembly*. Elzbieta Ura presents the legal context of the previous legislation and shows the norms introduced in 2015, paying special attention to the institution of cyclic assemblies introduced with the amendment of this law in 2016. Furthermore, the author does not forget to describe the doubts about the constitutionality of the draft law on assemblies under procedure indicated by institutions such as the Supreme Court or the Helsinki Foundation for Human Rights and the Ombudsman, as well as the consequences of these opinions. The bill, after its adoption by the Sejm, was submitted for an analysis of its compliance with the Polish Constitution by the President. However, this check did not result in any changes, and doubts are raised not only by the verdict itself, but also by the politicized composition of the Constitutional Court (p. 53). Governors' decisions on the organization of cyclic assemblies have been controversial, and some of them (such as the one concerning the March for Independence association) have been challenged and overturned by the courts (p. 56). The authors of the book point out the debate on assemblies and civil rights faces the challenge of answering the question of "whether" or not the above law and the new laws introducing the institution of cyclic assemblies are intended to serve citizens or to serve the authorities as a means used for political purposes. After reading the considerations, the reader will be aware, first of all, of how the above law was processed and the opinions of the public expressed in the votes of various institutions. In addition, the reader will gain knowledge on how the new law was practiced once in place.

The fourth chapter by Boleslaw Kurzepa presents an analysis of the laws on assemblies regarding criminal liability of their violation. The first part deals with crimes that can possibly be committed. Here, among other things, the author analyzes article 260 of the Criminal Code which speaks

of thwarting or dispersing an assembly or a march held legally (p. 58). Thus, the above provision protects legal assemblies, in the same way as the next analyzed article – 249 of the Penal Code. This one, in turn, criminalizes obstruction of such an assembly. The author devotes the second part of this chapter to analyzing the articles on misdemeanors that provide criminal law protection for assemblies. Article 52 of the code points to eight different behaviors that constitute offenses during an assembly. Kurzępa analyzes the mentioned points and presents the conditions under which the above article can be applied to participants of an assembly (p. 62). Kurzępa's considerations touch on an important element concerning assemblies, in particular, the fact that the institution of counter-manifestations is very often created during assemblies, which can lead to violations of criminal law. Therefore, the above chapter is a useful collection of information primarily for the organizers of assemblies, but also for researchers dealing with the issue of assemblies.

In the next chapter of the monograph under review, Aleksander Babiński analyzes the powers of the police when securing assemblies. The author introduces the reader to the history of demonstrations, as well as the measures taken in Poland over the past several decades (pp. 68–69). The author points out that freedom of assembly is not absolute and can be restricted, but certain conditions must be met. The main task of the Police is to eliminate internal and external threats to the peaceful conduct of the assembly. In reference to the actions of the Police, municipal bodies also have their responsibilities under the 2015 law. They are now obliged to inform the police about the assembly taking place, therefore the police can prepare necessary forces and resources (p. 80). The 2015 law gave police officers the power to disband a spontaneous assembly under specific circumstances (p. 81). When securing assemblies, the Police have powers based on the Police Act (p. 82). The author also notes the large role played by the Police when securing assemblies on public streets; they are responsible for maintaining public order on the roads and the smooth flow of traffic, meaning they are primarily responsible for the security of assemblies. Babiński also points out the difficulties of securing assemblies due to the regulations in place during the COVID pandemic (p. 85). The Supreme Court stated, the ban on assemblies during the pandemic went beyond the legislature's delegation, but nevertheless, as he describes in the text, many uninformed individuals were held criminally and administratively

liable (p. 86). The chapter provides a collection of essential information about the powers of the police when securing an assembly. It does not reach only to the law on assemblies, but also reminds about other rights police officers have when securing a demonstration. It is worth noting, the author also touched on the legality of assemblies during the coronavirus pandemic, as well as the fines issued and the actions taken by the Police back then. This text is a study that can be useful for every citizen who intends to take part in an assembly, in order to know their rights as well as the limits of police activity.

Part One closes with the chapter entitled *Mediation in cases of violations of assembly laws* by Marcin Jurgilewicz and Kamila Spalińska. The authors introduce the reader to the world of laws that can be violated in order to outline the situations in which mediation can be used. Jurgilewicz and Spalińska then move on to the concept of mediation, after which they begin to consider the application of mediation in misdemeanor cases. This possibility has been allowed since July 1, 2015 (p. 94). The authors analyze the various provisions on assemblies and how the institution of mediation can be used in such cases. In addition, they point out detailed information on mediation such as those on who can act as a mediator in particular cases, what the time periods are for mediation, or what the effects of mediation can be. The authors also point out, it is still a new instrument in misdemeanor cases, therefore it is very possible it will become more popular in the future, thus it is worth knowing of its existence (p. 102). The above chapter shows a relatively new institution that can transform proceedings. It is a new option that is primarily intended to work in favor of the victim. The usage of mediation, in most cases, is favorable to the offender, compared to classic court proceedings.

Part two of the study is a commentary on the current Law on Assemblies. It is divided in exactly the same way as the law, with 6 separate chapters. The first chapter includes a commentary on the general provisions on assemblies. It indicates, among other things, which churches and religious associations are excluded from the obligation to report assemblies, and who is subject to them (p. 114). It also directs the reader on how to understand the various terms contained in the above law. In chapter two, the authors analyze in detail the provisions on the organization, holding and dissolving of assemblies. They explain specifically how to organize assemblies under the above provisions who should be informed of such actions. Also analyzed

and commented on are the provisions on the basis of which it is possible to prohibit the holding of an assembly, as well as those that talk about appealing against such a provision (pp. 154–164). The duties of the organizer and chairman of the assembly are also extensively commented on, as well as the possibility of dissolving the assembly (pp. 168–177).

The chapter entitled *Simplified proceedings in cases of assemblies*, i.e. chapter three of the Law on Assemblies, provides commentary on such assemblies to which the simplified procedure may be applied. The authors comment on the conditions appearing in the regulations for the application of such proceedings, the notification of such gathering (pointing out the differences, among others, regarding the period of notification between the simplified procedure and the general procedure), as well as the obligation to wear a badge, pointing out the essence of being visible, which is not included in the regulations in such detail as in the above commentary. The above mentioned comments show points not included in the regulations, but could be included, or requires an interpretation, which average citizens are unable to carry out. They clarify some of the terms and requirements to make things easier for the organizer, among others, who will not have to ask for more detailed information from public authorities.

The most extensive commentary concerns the controversial provisions on the new institution of “cyclic assemblies”. According to the authors of the monograph, the draft law did not contain any social, legal or even political arguments in support of the creation of this institution (p. 194). The law, after adoption by the Sejm, went to the Constitutional Court, which found no irregularities. The new concept of the relationship between the individual and the state was criticized, which, according to the authors, has no support in the Polish Constitution (p. 196). The provisions on the identity of the organizer, place, route and frequency of assemblies are vague and give wide room for interpretation, therefore may cause problems. The requirement for application deadlines is also criticized, especially concerning the time after which a permit can be applied for. As the authors point out, the legislature is required to specify the purpose, which, for example, is “to commemorate momentous and significant events in the history of Poland”. Nevertheless, as the authors of the above study point out, the legislator does not stipulate whether these events are to be significant in a positive or negative way (p. 207). The

article on consenting to the cyclic organization of assemblies is also widely commented. The authors point to two different viewpoints. One applauds the designation of the provincial governor as the decision-making body for applying for permission for cyclic assemblies. The others, on the other hand, criticize the transfer to the governor of the power to issue permits for such events (pp. 208–210). There is also extensive commentary on the duties that are imposed on municipal authorities when an organized cyclic assembly comes into collision with a previously reported assembly to municipal authorities, as well as the possible consequences of failing to comply with them (pp. 212–215). The article on the revocation of permission to organize such permits also includes several elements for the authors to comment on and confront their practice such as the failure to organize an assembly for reasons beyond the organizer's control (p. 222). The relevant application of the regulations also left room for extensive commentary by the authors of the publication. The authors point to disputes in the doctrine between the powers of the governor and the municipal authority, as well as other problems arising from the appropriate application of the regulations. These include the application, which, according to some scholars, should be updated and delivered every cycle (p. 229). The above chapter deserves such an extensive commentary because, as the authors have shown, a large part of the regulations are vague or unclear. Hence they explain how to interpret some of them, but also show the viewpoints of various researchers regarding these regulations and their validity. Understanding of these regulations may prove extremely useful to researchers of militant democracy measures, but also to organizers who would like to undertake organizing such assemblies in the future.

The fourth chapter deals with the institution of spontaneous assemblies. The authors briefly comment on the provision distinguishing spontaneous assembly from others, among others citing the ECHR judgment (p. 238). Then they point out and explain the premises that can be the basis for the application of the final measure i.e., the dissolution of a spontaneous assembly (including by the Police). As the first of them according to the legislation is “a threat to the health or life of people or property of significant size,” here the authors explain, among other things, what the term property of significant size is. The provision allowing the dissolution of a spontaneous assembly indicates as the second premise “a serious threat to public safety or order”,

this is how the authors of the above monograph explain both terms and point out the important elements contained in the above provision. The third premise is “a significant threat to traffic safety and order on public roads” here, the authors note the word “significant” as well as cite other researchers who explain what the situation described in the legislation is. The last of the premises commented on by the authors is the one stating a violation of the Law on Assemblies, or of criminal laws. However, it is worth noting that the authors indicate what specific violations may constitute grounds for the dissolution of a spontaneous assembly, as not all of them will qualify as such (p. 242). The above considerations allow for a better understanding of the powers of the police to dissolve a spontaneous assembly. This can be particularly useful when examining protests and the strategies used to secure them, as well as guiding considerations about whether such a decision was right or wrong. The fifth chapter contains amendments to the current legislation without commentary. The book closes with a chapter on transitional provisions, which are briefly explained.

The above study can be useful literature for students of law, sociology, and political science. This study will attract the attention of scholars who study assemblies or protests in Poland, as well as those who conduct research on democracy and its forms such as militant democracy and quasi-militant democracy (Rak, 2022b; Rezmer-Płotka, 2022). This monograph introduces the interpretation of legislation based on the rulings of various judicial institutions and explains in detail the concepts used by the legislature, which can be an important element when looking for answers to who the Polish legislature defines as an enemy of democracy. Moreover, the above book may prove extremely useful to those who plan to organize assemblies, as it explains in a simple, yet comprehensive manner, regulations whose interpretation for a citizen who does not deal with legal issues on a daily basis may pose a problem.

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