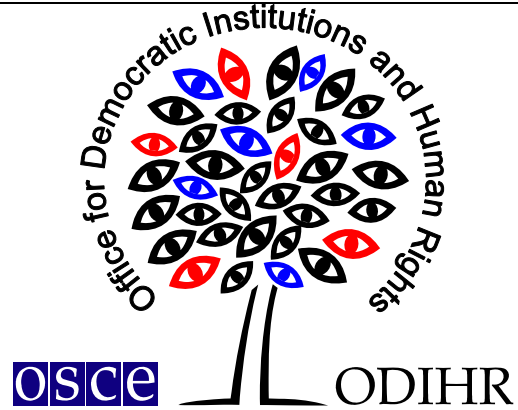


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NOTE
ON THE DRAFT LAW
AMENDING THE LAW ON ASSEMBLIES
OF POLAND

features contributions from

**Mr David GOLDBERGER, OSCE/ODIHR Panel of Experts on
Freedom of Assembly**

**Mr Neil JARMAN, OSCE/ODIHR Panel of Experts on Freedom of
Assembly**

**Mr Yevgeniy ZHOVTIS, OSCE/ODIHR Panel of Experts on Freedom
of Assembly**

**Mr Serghei Ostaf, OSCE/ODIHR Panel of Experts on Freedom of
Assembly**

**Ms Muatar Khaidarova, OSCE/ODIHR Panel of Experts on Freedom
of Assembly**

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INTRODUCTION

1. This Note was prepared following the meeting of ODIHR representatives with the Head of the Human Rights Committee, Mr Ryszard Kalisz, of the Sejm of the Republic of Poland. During this meeting, the Head of the said Committee, invited the ODIHR to comment on the new text of the amendments, which were subsequently sent by his office to ODIHR on 14 May, 2012. Following this, on 17 May, 2012, ODIHR was invited by Ryszard Kalisz, MP, Head of the Justice and Human Rights Committee, to attend the joint hearing of the Administration and Internal Affairs Committee and the Justice and Human Rights Committee of the Sejm of Poland. The hearing will focus on draft amendments to the Law on Assemblies of Poland that the Presidential Administration initiated last November following street clashes that took place in Warsaw on 11 November 2011 and the Note contained herein has been put together to assist in those discussions.

II SCOPE OF THE REVIEW

2. The scope of this Note covers the Draft Law Amending the Law on Assemblies of Poland (hereinafter “the Draft Law”). Thus limited, the Opinion does not constitute a full and comprehensive review of the existing legislation pertaining to freedom of assembly in Poland.
3. The Note assesses and analyses the compliance of the Draft Law with international standards ratified by Poland and in light of the second edition of the OSCE/ODIHR – Venice Commission Guidelines on Freedom of Peaceful Assembly (hereinafter “OSCE/ODIHR-Venice Commission Guidelines”).
4. In view of the above, the OSCE/ODIHR would like to make mention that this Note is without prejudice to any written or oral recommendations and comments to this Law that the OSCE/ODIHR may make in the future.
5. This Note was prepared on the basis of the comments by Mr David Goldberger, Mr Neil Jarman, Mr Yevgeniy Zhovtis, Mr Serghei Ostaf and Ms Muatar Khaidarova from the OSCE/ODIHR Expert Panel on Freedom of Assembly. It was approved by the OSCE/ODIHR Expert Panel on Freedom of Assembly as a collective body and should not be interpreted as endorsing any comments on the Draft Law made by individual Panel members in their personal capacities.

III EXECUTIVE SUMMARY

6. Freedom of assembly is a fundamental democratic right and should not be interpreted restrictively. The right to freedom of peaceful assembly, together with freedom of association and freedom of expression, underpins the implementation of other civil and political rights of all individuals. It provides people with an opportunity to convey a message to the outside world, including the authorities and can help the latter identify pressing challenges experienced within the society. The approach of the

authorities towards peaceful assemblies also serves as a litmus test of their overall commitment to human rights on a wider scale.

7. The right to freedom of assembly covers all types of gatherings provided they are peaceful. As a “qualified” right: it may be subject to some restrictions, however any such permissible limitations shall meet a three-condition-test, namely: be prescribed by law, be proportionate, and be 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).
8. The Draft Law seeks to address some issues which have reportedly caused challenges in practice, such as effective policing simultaneous assemblies and counter-demonstrations. While reviewing these amendments, other aspects of the current law that call for attention on the part of the legislators were mentioned, such as lack of effective judicial remedies or lack of provisions explicitly covering spontaneous and simultaneous assemblies as well as counter-demonstrations.
9. The Draft Law still leaves some room for improvement and would benefit from further supplementing in order that its provisions can be properly implemented in practice. It is therefore recommended as follows:

Recommendations related to the proposed draft amendments:

- A. To keep the minimum timeframe required for submitting notification to the three-day period as it is in the current Law and not extend it to six days (with a compatible time for appeal);
- B. To remove the maximum period for notification or at least extend it till 120 days;
- C. To exclude the necessity for re-submission of notification due to introduction of changes to it;
- D. To ensure that organisers / leaders of assemblies will not be held liable for failure to perform their responsibilities providing they made reasonable efforts to do so;
- E. To withdraw the requirement to provide a photo of the organizer or authorized leader in the notification;
- F. To remove the requirement for the signature and the seal of the municipality among the distinguished characteristics the leader needs to have during the course of the assembly;
- G. To define the role of the municipality representatives delegated to the assembly.
- H. To define in a clearer manner what “large extent” of damage inflicted in Article 1 of the Draft Law referring to art. 7a par 2 implies;
- I. To limit the reasons for dispersal of the assembly to a threat to public safety or danger of imminent violence and state that the response should be proportionate to the anticipated threat and state that any dispersal of the whole assembly shall only be used as a last resort;

- J. To remove Article 13b referred to in Article 1 of the Draft Law as redundant;
- K. To provide for a timely judicial remedy after the administrative remedies have been exhausted when appealing against prior restrictions on assemblies;
- L. To explicitly provide for administrative repercussions for the authorities in case the court finds the assembly was illegally dispersed.

Additional recommendations to the current Law:

- M. To provide for a possibility to hold spontaneous assemblies when submitting prior notification deems to be impractical;
- N. To explicitly provide for the state’s positive obligation to facilitate simultaneous assemblies or counter demonstrations in one place and time, to the extent possible;
- O. To provide for the time framework within which the notified authorities respond to the notification in case of certain objections;

IV ANALYSIS OF THE DRAFT LAW

1. International Freedom of Assembly Standards

10. This Note is based on international instruments, which are legally binding upon Poland, in particular, the European Convention on Human Rights (hereinafter “ECHR”), which, in its Article 11, guarantees the right to peaceful assembly.¹ Moreover, the extensive jurisprudence of the European Court of Human Rights (hereinafter “ECtHR”) establishes important benchmarks, which further define permissible boundaries to the right to freedom of peaceful assembly and limits the restrictions that may legitimately be placed upon the exercise of this right. These benchmarks are widely accepted as reflecting European and international practice in this area.
11. This Note also takes into account OSCE commitments pertaining to freedom of peaceful assembly, which provide that “[e]veryone will have the right of peaceful assembly and demonstration. Any restrictions which may be placed on the exercise of these rights will be prescribed by law and consistent with international standards.”²

¹The Council of Europe’s Convention for the Protection of Human Rights and Fundamental Freedoms, signed on 4 November 1950, entered into force on 3 September 1953. The full text of the ECHR is available at <http://conventions.coe.int/treaty/EN/Treaties/html/005.htm> (last visited on 18 May 2012); Article 11 reads: “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”.

² The Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, Copenhagen, 29 June 1990, par 9(2).

12. Finally, this Note is based on non-binding international instruments, including documents of a declarative or recommendatory nature, which have been developed to aid interpretation of relevant international treaties. The Opinion bears extensive reference to the OSCE/ODIHR-Venice Commission Guidelines on Freedom of Peaceful Assembly (hereinafter referred to as “the OSCE/ODIHR-Venice Commission Guidelines”).³

2. Notification procedures

13. The notification time framework as set in Article 1 of the Draft Law referring to Article 7 par 1 requires to notify “the municipality in such a way, so that the information about the assembly reaches it no later than 6 days and not earlier than 30 days prior to the date of assembly”.
14. Evidently, the authorities need the notifications in order to prepare and make adequate arrangements that might be necessary in order to ensure the maintenance, protection and promotion of the assembly rights. However, establishing the minimum time framework for submitting notification as six working days (and not three days as in the current wording of the Law on Assemblies, assessed as a positive provision) is exceedingly lengthy. Such a lengthy period of notification will inevitably have the effect of significantly reducing the ability of people to respond with reasonable promptness to events about which they wish to assemble, especially since the current Law on Assemblies does not provide for spontaneous assemblies, which ought to be considered as a feature of a healthy democracy and as such the authorities should protect and facilitate any spontaneous assembly so long as it is peaceful in nature.⁴ The provision leads to the result that there may be occasions when people wish to assemble, for instance, within three days of an event but this will then be considered unlawful according to the proposed amendments. The advance notification period, thereby, should be as short as possible because timely access to the target audience is often of great importance where public advocacy is concerned.
15. Furthermore, Article 7 of the current Law needs to indicate instances when submission of prior notification does not deem to be practical. As it has been mentioned above, the ability to respond peacefully and immediately to some occurrence, incident, other assembly, or speech is an essential element of freedom of assembly. Spontaneous assemblies by definition are not notified in advance since they generally arise in response to some event which could not have been reasonably anticipated⁵. It would be recommendable to address this issue through amendments as well.

³The OSCE/ODIHR Venice Commission Guidelines on Freedom of Peaceful Assembly, second edition, prepared by the OSCE/ODIHR Panel of Experts on the Freedom of Assembly and the Council of Europe’s European Commission for Democracy through Law in 2010. The full text of the OSCE/ODIHR-Venice Commission Guidelines on Freedom of Peaceful Assembly is available at <http://www.legislationline.org>

⁴ See Joint OSCE/ODIHR-Venice Commission Opinion on the Act on Public Assembly of Sarajevo Canton (CDL-AD(2010)016), par. 36

⁵ Joint OSCE/ODIHR-Venice Commission Opinion on the Draft Law on Assemblies of the Kyrgyz Republic (CDL-AD(2009)034), par. 36; see also Joint OSCE/ODIHR-Venice Commission Opinion on the

16. The given lengthened period would effectively amount in certain circumstances to a failure of the state to observe its positive obligation to facilitate the freedom of assembly. In a recent opinion adopted by the OSCE/ODIHR and the Venice Commission⁶, a notification period of five days prior to the event was deemed “unusually long” and this was reduced to four working days, though that too was considered long in comparison to some countries of the OSCE. The proposed amendment is particularly discouraging in the light of the current wording of the Law, which provides the three-day period and falls in line with the recommendations OSCE/ODIHR and the Venice Commission were highlighting in both the OSCE/ODIHR-Venice Commission Guidelines and the recent joint opinions.
17. Article 1 of the Draft Law referring to Article 7 par 1 also provides that the notification shall not be submitted earlier than 30 days prior to the planned assembly. There appears no apparent reason or which this maximum period for notification may not be extended to at least another 90 days. Where possible, if assemblies are planned well in advance, the authorities may also be notified in advance in order to make necessary preparations.
18. Article 1 of the Draft Law featuring Article 7 par 2 clause 1 states that the notification shall include the following information: name, surname, date of birth, photograph and address of the organizer and the name and address of the legal entity or other organization, “if the assembly is organized in its name”. The requirement of the date of birth appears being unnecessary while the requirement for the photo in this provision, as well as in Article 7 par 2 clause 1a) might be considered as an onerous requirement and should be removed. This requirement does not seem to be justified, unless there is strong evidence that the persons in question have a record of misrepresenting their identities to authorities during past assemblies. It is therefore recommended to remove this provision, also because it encourages maintenance of intelligence files with photographs of activists. It is sufficient to require the organizer to carry a photo ID and to wear a distinctive piece of clothing like a special hat or armband, where necessary. This should be sufficient to identify the organizer to the police during the assembly.
19. In addition, neither the current law nor the proposed amendments provide for the time framework within which the notified authorities shall respond to the notification in case, for instance, they have time or place objections or would prefer to negotiate the route of the assembly with the organisers, keeping in mind that they can be authorised to propose changes only in case a real threat is posed to conduct of an assembly or the safety of its participants or those in the neighbourhood. The organizers shall be notified of the reasons for such a decision. So far, the framework is provided only in case the authorities wish to ban the assembly. It is also important to provide the

Draft Law on the Order of Organizing and Conducting Peaceful Events of Ukraine (CDL-AD(2009)052), par 23.

⁶ See, for instance, OSCE/ODIHR-Venice Commission Joint Opinion on the Law on Peaceful Assemblies of Ukraine (CDL-AD(2010)033).

organizers with the possibility to challenge the decision of the respective state bodies before the appropriate authorities, including the court⁷.

3. Simultaneous assemblies and counter-demonstrations

20. The state has the positive obligation to facilitate simultaneous assemblies, i.e. two or more unrelated assemblies held at the same time and location where physical circumstances permit. Each assembly should be facilitated to the extent possible in order to comply with the principle of non-discrimination⁸. Further, it is the state's duty to prevent disruption of the assembly where counter-demonstrations are organized – which should be defined by the law as assemblies convened to express disagreement with views expressed at the main event, and taking place at almost the same time and place as the one that it disagrees with⁹.
21. However, unfortunately, the proposed amendments appear to fall short of meeting the requirements outlined above. Despite the fact that the Law does not explicitly provide for simultaneous assemblies or counter demonstrations, one can assume that Article 1 of the Draft Law featuring Article 7a implies these types of public events as it refers to the notified events that take place “at the same time and place or on the same walking route”. Article 7a par 1 provides that although the regulatory body should accommodate such assemblies, the municipality is vested with the right to immediately summon “the organizer of the assembly for which notification was provided later to amend the time and place of the assembly or the walking route of the participants” in case “it is not possible to separate them or for them to take place in such a way that their conduct does not endanger life or health of persons or property to a large extent”.
22. This provision raises several concerns and potentially contains scope for abuse. First, in case of simultaneous assemblies, the amendment explicitly requires that where there are two notifications filed for the same site or route, the first one filed might have the exclusive right to use the venue. This may encourage malicious pre-emption of the venue in question by, for instance, counter-demonstrators who can learn of advance planning of an assembly which has not been officially notified yet.
23. Second, the notion “large extent” is too broad, may be susceptible to abusive interpretation, and is therefore recommended to be clarified for lack of legal certainty. Further, Article 1 of the Draft Law referring to Article 7a par 3 obliges the organizer to change the time or place of the assembly or the walking route of the participants “in such a way, so that the information about the change reaches the municipality no later than 4 days prior to the date of the assembly”. This provision should be re-phrased in a way to meet the relevant international standards as currently it is in conflict with the very essence of the freedom of assembly. Moreover, Article 8 par 3 reads that the authorities shall prohibit the assembly if “the organizer (...) despite the summoning mentioned in Article 7a par 1, did not make the change of the time or

⁷ Joint OSCE/ODIHR-Venice Commission Opinion on the Draft Law on Assemblies of the Kyrgyz Republic (CDL-AD(2009)034)

⁸OSCE/ODIHR-Venice Commission Guidelines on Freedom of Peaceful Assembly, pars 4.3, 122

⁹ Id., pars 4.4, 33, 45 and 101

place or the walking route in due time”. The OSCE/ODIHR-Venice Commission Guidelines provide that “the organizer of an assembly should not be compelled or coerced either to accept whatever alternative(s) the authorities propose or to negotiate with the authorities about key aspects, particularly the time or place, of a planned assembly. To require otherwise would undermine the very essence of the right to freedom of peaceful assembly.”¹⁰

24. Third, in case of counter-demonstrations, when persons exercise their right to assemble to express their disagreement with the views expressed in another assembly: there is a possibility of disruption of an assembly by a counter-demonstration, and it is the state’s positive obligation to prevent such disruption and provide adequate policing to facilitate counter-demonstrations within sight and sound of one another¹¹ and where possible, the authorities should take measures to ensure all assemblies can take place, rather than use the notification of simultaneous events as a justification of imposing unreasonable restrictions¹².
25. Thus, it is recommended to modify Article 7a par 1, referred to in Article 1 of the Draft Law, to bring it into line with international standards by stating the positive obligation of the state to facilitate two or more assemblies in one place and time to the extent that the site and circumstances permit. The authorities are vested with the obligation to ensure the protection of peaceful assemblies regardless of the degree of controversy the publicly expressed views and opinions can raise. Further, Article 7a par 3 that obliges the summoned organizer to change the time and route of the assembly and re-submit notification at least four days prior to the event should be removed. This provision lacks certain degree of flexibility: once the notification of an assembly has been submitted, subsequent modifications should be permitted as long as the municipality and the law enforcement bodies are informed of the changes prior to the start of the assembly so that they could adjust accordingly, since the original notification has already permitted them to launch preparations. The authorities can agree to or reject the changes to the time or place based on the particular circumstances of each case and based on reasonable considerations of time, place, and manner, however, minor changes of time or place should not require a new notification.
26. It is also recommended to revise Article 6 par 2b, referred to in Article 1 of the Draft Law, because the current wording is somewhat misleading: the assembly may have more than one organizer, or no organizer at all (in case of a spontaneous event), and the way this provision reads at present (at least, in English translation), it leaves an impression that the legislator did not take these possibilities into account.

4. Responsibilities of an organiser

27. The organizer of an assembly is the person(s) in whose name an application for holding an assembly is submitted. The Law does not state who the organizer is,

¹⁰ OSCE/ODIHR-Venice Commission Guidelines on Freedom of Peaceful Assembly, 2nd edition, par 103

¹¹ See OSCE/ODIHR-Venice Commission Guidelines on Freedom of Peaceful Assembly, 2nd edition, par 4.4

¹² See ECtHR case-law, *Ollinger v. Austria*

however, Article 10 par 2 referred to in Article 1 of the Draft Law provides for a definition of “a leader of assembly” who is the organizer “unless he charges somebody else with his duties, in writing”; this authorization shall be attached to the submitted notification.

28. The Draft Law appears to focus on one person as the organizer or “leader” of the assembly. The OSCE/ODIHR-Venice Commission Guidelines define the organizer as the person or persons “with primary responsibility for the assembly. It is possible to define the organizer as the person in whose name prior notification is submitted”¹³. Further, in case of spontaneous assemblies, it is also possible for an assembly not to have an identifiable organizer¹⁴. Unless it is the issue of translation, the effort to define one person responsible for everything – “the leader” - seems to aim at finding someone to be held liable for any wrongdoings during the course of assembly rather than safeguarding the freedom of peaceful assembly as such. Indeed, it will be quite difficult to determine who the leader is in case the assembly has several organizers or the event is, for instance, spontaneous and does not have one or even a few identifiable organisers. A useful approach may be to consider the inclusion in the Draft Law of a provision which would require a leader (especially in case spontaneous assemblies are provided for in the Law) to be identified at the commencement of the event.
29. While dealing with freedom of assembly, the issue of liability will be inevitably raised: the local executive authority, the police, the organizers of assemblies and participants of such assemblies may all face varying forms of liability. Article 1 of the Draft Law referring to art. 10 par 3 holds the leader of the assembly responsible for “the lawful conduct of the assembly” and provides that he or she “is obliged to carry it out in such a way, so that to prevent damage intentionally caused by the participants” and shall take measures prescribed by the law to achieve this aim. This provision is highly recommended to be re-visited: the organizers (or leaders, in this case) should not be held liable for failure to perform their responsibilities if they made reasonable efforts to do so and should not be responsible for law enforcement (keeping of public order) as this is the role of the police. Neither should they be liable for the actions of individual participants (or for the actions of non-participants).¹⁵ They should not be prosecuted for offenses committed by others without strong reliable evidence that they themselves were engaged in these violations¹⁶. This type of liability is excessive and not keeping in compliance with the internationally guaranteed right to freedom of assembly.
30. Similarly, Article 13a, referred to in Article 1 of the Draft Law, which imposes penalties on the leader for failing to prevent the disturbance of public order or not fulfilling “duties such as those stated in Article 10 par 3 or does not take measures such as those stated in Article 10 pars 4 and 5” is recommended to be removed. It is essential that law enforcement functions are the responsibility of the police and not of the organisers, leaders or participants. The role of the assembly organiser is not

¹³ OSCE/ODIHR-Venice Commission Guidelines on Freedom of Peaceful Assembly, 2nd edition, par 185

¹⁴ *Id.*, par 127

¹⁵ *Id.*, Section A – par 5.7.

¹⁶*Id.*, par 111; see also ECtHR case-law, *Ezelin v. France*, par 53.

similar to that of a law enforcement officer and the law can require only that s/he makes reasonable efforts to ensure the peaceful nature of the assembly by refraining from violence and appealing to assembly participants to refrain from violence but it can not require fulfilling the functions of the law enforcement. Article 13b also endues the leaders with the law enforcement powers by turning a participant's failure to obey the leader's request into a crime. This proposed article should also be removed: already existing laws that prohibit disorderly conduct, violence, or other criminal misconduct should be sufficient for this purpose.

31. Article 1 of the Draft Law referring to Article 10 par 3a requires the leader "to have, uninterruptedly, distinguishing characteristics, including an ID which contains the designation of the function as the leader of the assembly, the photograph of the leader of the assembly, name and surname of the leader of the assembly, the signature of the appropriate municipality, the seal of the municipality." This provision is recommended to be revised. It should be sufficient for the organizer / leader to have an identification document with him (ID card, passport or, for instance, driving license) together with a copy of the submitted notification. Requirement of the signature and the seal of the municipality is not clear: the legislation explicitly provides for a notification system that means that applicants do not need to seek authorization from the authorities to conduct the assembly. However, inclusion of this requirement may be considered as equaling the notification to the permission or approval to acquire from the authorities to conduct an assembly which is inadmissible under the international standards.

5. Termination of assembly

32. Generally, the termination of assemblies should be considered as a measure of last resort. As long as assemblies remain peaceful, they should be facilitated by the authorities. According to Article 1 of the Draft Law referring to Article 12 par 1, assemblies can be dispersed in case they pose "a threat to the life or health of individuals or to property of considerable value, or violates the provisions of this Act or of penal law, and the leader refuses to disband the assembly even though he/she has been warned that this step is necessary".
33. Article 1 of the Draft Law referring to Article 11 par 1 states that the notified municipality may allocate its representatives at the assembly, and such allocation is mandatory in case the expected number of participants exceeds 500 people or there is an anticipated risk of having the public order disturbed during the assembly. However, this provision does not define the role the municipality representatives would play, whether, for instance, they will act as observers to monitor the compliance of the assembly with the prior, permissible, restrictions imposed or be a mediator to address challenges that might raise during the assembly. Other functions above the outlined ones might prove to be problematic.
34. In principle, the reasons for dispersal shall be limited to a threat to public safety or danger of imminent violence and shall not take place prior to the law enforcement officials having taken all reasonable measures to facilitate and to protect the assembly from harm, i.e. unless there is an imminent threat of violence. Further, this provision will benefit from supplementary wording stating that response should be

proportionate to the anticipated threat. Legislation should provide for a clear demarcation between violent and non-violent demonstrators and those who individuals who commit unlawful acts. The entire assembly should not be terminated based on the acts of one person or a group of persons. The authorities should take appropriate action to remove these persons rather than terminating or dispersing the assembly or declaring it to be unlawful.

35. Indeed the OSCE/ODIHR-Venice Commission Guidelines, clearly point out that dispersal should not, therefore result where a small groups of participants in an assembly act in a violent manner. In such instances action should be taken against those persons. Similarly, if *agent provocateurs* infiltrate an otherwise peaceful assembly, the authorities should take appropriate action to remove the *agent provocateurs* rather than terminating or dispersing the assembly or declaring it to be unlawful¹⁷.

6. Effective remedy

36. As the OSCE/ODIHR-Venice Commission Guidelines state, the right to an effective remedy entails the right to appeal the substance of any restrictions or prohibitions on an assembly. Although an initial option of administrative review can reduce the burden on courts in case such a review fails to satisfy the applicant, there should be a mechanism for appeal to an independent court. Appeals should take place in a prompt and timely manner so that any revisions of and the final ruling on the decision made by the authorities are given prior to the date for the assembly provided in the notification¹⁸.
37. Article 1 of the Draft Law featuring Article 9 provides for the administrative procedure for making the decision on banning the assembly and the way how such a decision can be appealed to the higher administrative body in a prompt manner. However, it does not provide for the possibility to appeal against such a ban in court also in a prompt way, since Article 13 of the Law states that appeals shall be filed with the Supreme Administrative Court “within 3 days of the date of delivery of the decision” and “unless hindered from doing so by formal obstacles, the Court shall appoint the date of the hearing no later than within 7 days of the date of filing the complaint”. Legal remedies can not be viewed as effective if the relevant decisions are given in the appellate proceedings after the date on which the assemblies were held. “It is important for the effective enjoyment of the freedom of assembly that the applicable laws provide for reasonable time-limits within which the State authorities, when giving relevant decisions, should act. The applicable laws provided for the time-limits for the applicants for the submission of their requests for permission. In contrast, the authorities were not obliged by any legally binding time-frame to give their final decisions before the planned date of the demonstration.”¹⁹

¹⁷ OSCE/ODIHR-Venice Commission Guidelines on Freedom of Peaceful Assembly, 2nd edition, pars 112, 167.

¹⁸ *Id.*, par 137

¹⁹ ECtHR case-law, *Baczowski and others v. Poland*, par 83

38. Article 1 of the Draft Law referring to Article 12 pars 2 and 3 provides for a possibility to appeal against the decision to disperse the assembly afterwards while Article 12 par 1 of the Law states that “an assembly may be disbanded by the representative of the municipal authority, if the progress of that assembly poses a threat to the life or health of individuals or to property of considerable value, or violates the provisions of this Act or of penal law...”. This provision sets a relatively low threshold for terminating assemblies as merely “posing a threat to” disorder which may prove to be very subjective, rather than requiring objective evidence of actual disorder. Moreover, having a right to appeal within three days of dispersal does not provide much remedy unless the law explicitly provides for administrative repercussions for the authorities in case the court finds they illegally dispersed the assembly. The current wording does not appear to safeguard legal accountability for the authorities in this case.

[END OF TEXT]

ANNEX 1: Draft Law on Amendments to the Law on Assemblies

Art. 1

In the Law from 5 July 1990 – Law on Assemblies (Journal of Laws No 51, item 297, with further amendments) the following amendments are introduced:

- 1) in art. 3, para 2 is worded as follows:
 - “2. Persons who have weapons, explosive materials, pyrotechnic materials, hazardous fire materials or other dangerous tools with them, cannot participate in assemblies.”;
- 2) in art. 6 after para 2 paras 2a and 2b are added, worded as follows:
 - “2a. If the assembly is organized near the buildings which are under the protection of the Bureau for the Protection of the Government, the municipality informs the Chief of the Bureau for the Protection of the Government about the place, date, and the estimated number of participants of the assembly.
 - 2b. Assemblies organized by 2 or more organizers at the same time, in places or walking routes which are identical or partially coinciding, can take place, if it is possible to separate them or they can take place in a way that their conduct will not endanger life or health of persons or property to a large extent. If the separation or taking place of the assemblies is not possible, art 7a applies.”;
- 3) in art. 7:
 - a) para 1 is worded as follows:
 - “1. The organizer of a public assembly notifies the municipality in such a way, so that the information about the assembly reaches it no later than 6 days, and not earlier than 30 days prior to the date of assembly.”;
 - b) in para 2
 - point 1 is worded as follows:
 - “1) name, surname, date of birth, photograph and address of the organizer and the name and address of the legal entity or other organization, if the assembly is organized in its name,”,
 - after point 1, point 1a is added which is worded as follows:
 - “1a) name, surname, date of birth, photograph and address of the leader of the assembly, if the leader will not be the organizer of the assembly,”,

- point 3 is worded as follows:

“3) place and date, time of commencement, duration, estimated number of participants, and if movement of the participants of the assembly is planned, also the walking route with the indication of the place where it begins and ends,”

4) following art. 7, art. 7a is added which is worded as follows:

“Art. 7a. 1. If at the same time and place or on the same walking route 2 or more notifications for assemblies were provided it is not possible to separate them or for them to take place in such a way that their conduct does not endanger life or health of persons or property to a large extent, the municipality immediately summons the organizer of the assembly for which notification was provided later to amend the time and place of the assembly or the walking route of the participants.

2. The municipality attaches to the summons, the information about the time and place of the assembly or assemblies for which notification was provided earlier.

3. The organizer, such as the one mentioned in para 1, changes the time or place of the assembly or the walking route of the participants in such a way, so that the information about the change reaches the municipality no later than 4 days prior to the date of the assembly.”;

5) in art. 8 point 2 the full stop is substituted with a coma and point 3 is added which is worded as follows:

“3) the organizer of the assembly for which the notification was provided later, despite the summoning mentioned in art. 7a para 1, did not make the change of the time or place or the walking route in due time.”;

6) art. 9 is worded as follows:

“Art. 9.1. The decision regarding the prohibition of the public assembly is handed to the organizer in writing or via electronic communication within 3 days from the day of the notification. At the same time, the *voivod* receives a copy of the decision together with the files of the case.

2. An appeal is submitted directly to the *voivod* within 24 hours from the moment of receiving the decision mentioned in para 1.

3. Submitting an appeal does not suspend the enforcement of the decision.

4. The *voivod* considers the appeal promptly and in any case no more than 24 hours of receiving it.

5. The decision made as a result of the consideration of an appeal is handed to the organizer without delay in writing or via electronic communication.”;

7) in art. 10:

a) paras 2 and 3 are worded as follows:

“2. The leader is the organizer of the assembly, unless he charges somebody else with his duties, in writing. The document regarding the charge of these duties constitutes an attachment to the notification, which is mentioned in art. 7.

3. The leader is responsible for the lawful conduct of the assembly and is obliged to carry it out in such a way, so that to prevent damage intentionally caused by the participants, and takes measures prescribed by the law to achieve this aim.’;

b) following para 3 paras 3a and 3b are added, worded as follows:

“3a. Throughout the duration of the assembly, the leader is obliged to have, uninterruptedly, distinguishing characteristics, including an ID which contains:

- 1) the designation of the function as the leader of the assembly,
- 2) the photograph of the leader of the assembly,
- 3) name and surname of the leader of the assembly,
- 4) the signature of the appropriate municipality,
- 5) the seal of the municipality,

3b. The municipality equips the leader with the ID mentioned in para 3a.”;

8) in art. 11 para 1 and 2 are worded as follows:

“ 1. The municipality can delegate its representatives to the assembly, if however the number of participants exceeds 500 or there is a risk of disturbing public order during the assembly, the delegation of the representatives is mandatory.

2. The municipality ensures, to the extent that is needed and possible, police protection according to the procedure stipulated in the provisions of the law from 6 April 1990 on Police (Journal of Laws 2007, No 43, item 277, with further amendments), serving the adequate conduct of the assembly.”;

9) in art. 12 paras 2 and 3 are worded as follows:

“2. The dispersal of the assembly by the representative of the municipality by virtue of para 1 ensues from a verbal decision with immediate enforceability, preceded by a three-time warning to the participants of the assembly about the possibility of its dispersal, which is next announced to the leader or in case of the inability of contacting the leader – announced publicly to the participants of the assembly. The decision is handed to the organizer in writing within 72 hours from taking such decision.

3. The organizer and the participant of the assembly has the right to appeal the decision regarding the dispersal of the assembly within 3 day from the day of the dispersal; art. 9 para 5 applies accordingly.”;

10) following chapter 2, chapter 2a is added which is worded as follows:

Chapter 2a
Criminal provisions

“Art. 13a. A person who, while leading an assembly in order to prevent the disturbance of public order, does not fulfill duties such as those stated in Art. 10 para 3 or does not take measures such as those stated in art. 10 para 4 and 5,

is subject to a fine up to 7000zl.

Art. 13b. A person who does not obey the request of the leader, made by virtue of art. 10 para 4 or does not subordinate to an order of the leader made in carrying out his duties by virtue of art. 10 para 5

is subject to a fine up to 10 000 zl.

Art. 13c. Adjudicating in cases related to acts such as those stated in art. 13a and art. 13b takes place by virtue of provisions of the law from 24 August 2001 – Code on procedure in misdemeanor cases (Journal of Laws 2008, No 133, item 848, with further amendments).’.

Art. 2.

The law enters into force 30 days from the day of promulgation.

ANNEX 2: Law on Assemblies

ACT

of 5 July 1990

Law on Assemblies

Chapter 1

General Provisions

Art. 1

1. Each person may enjoy the freedom of peaceful assembly.
2. An assembly is a gathering of at least 15 people, convened in order to confer over an issue or with an aim to express jointly their position.

Art. 2.

Freedom of assembly may only be subject to limitations that are provided by law and necessary for the protection of security of State or public order, public health or morals, or the rights and freedoms of other people, and also for the protection of the Monuments of Extermination in the meaning of the Law of 7 May 1999 r. on the protection of sites of the former Nazi extermination camps (Journal of Laws [JoL] No. 41, item 412).

Art. 3.

1. The right to organise assemblies is granted to persons with full capacity to legal acts, to legal persons, other organisations, as well as groups of persons.
2. Persons carrying firearms, explosive materials or other dangerous devices shall be prohibited from participation in assemblies.

Art. 4.

The provisions of this Act do not apply to assemblies:

- 1) that are organised by State or local government authorities,
- 2) that are held within the activities of the Catholic Church, other Churches, and religious unions.

Chapter 2

Procedure in cases pertaining to assemblies

Art. 5.

1. The procedure in cases pertaining to assemblies is a commissioned function of commune authorities.
2. The authority competent *ratione loci* to examine appeals against decisions issued in cases referred to in point 1 above is the Voivode.

Art. 6.

1. Assemblies organised in the open in areas accessible to unspecified individuals, hereinafter referred to as “public assemblies”, must be reported in advance to the commune authority with competence *ratione loci* for the site of the assembly.
2. If the assembly is to be held in the neighbourhood of a diplomatic representation/mission, consular offices, special missions, or international organisations, which are covered by diplomatic immunities and privileges, the commune authority is obliged to notify the responsible Police commander and Ministry of Foreign Affairs.
3. The commune council may specify areas where organisation of an assembly does not require notification.

Art. 7.

1. The organiser of a public assembly shall notify the commune authorities so that the notification is delivered no later than 3 but no earlier than 30 days before the planned date of the assembly.
2. The notification should contain the following data:
 - 1) the name, first name, birth date and address of the organiser as well as the name and address of the legal person or other type of organisation, if the organiser is acting on its behalf
 - 2) the purpose, agenda, and language, in which participants of the assembly will communicate
 - 3) the place and date, starting hour, planned duration, expected number of participants and planned itinerary, if the agenda provides for a change of location during the assembly
 - 4) a description of the measures the organiser plans to employ towards securing a peaceful course of the assembly, and of measures, which the organiser requests from the commune authority

Art. 8.

The commune authority shall prohibit a public assembly, if:

- 1) the purpose or fact of holding of that assembly is against this Act or violates the provisions of penal law
- 2) the holding of that assembly may pose a threat to the life or health of individuals or to property of considerable value

Art. 9.

1. The decision prohibiting a public assembly should be delivered to the organiser within 3 days of the notification date, but no later than 24 hours before the planned starting date of the assembly.
2. An appeal should be lodged within 3 days of the date of delivery of the decision.
3. The lodging of appeal does not stop the execution of the decision.
4. The decision resulting from examination of an appeal should be delivered to the organiser within 3 days of the date of delivery of the appeal.

Art. 10.

1. Each public assembly should have a leader who opens the assembly, presides over its course, and dismisses the assembly.
2. The leader shall be the organiser of the assembly, unless the organiser puts another person in charge of the assembly, or participants of the assembly appoint another person leader of that assembly with the organiser's consent.
3. The leader of the assembly shall be responsible for its lawful progress, and shall take measures provided by law to this aim.
4. The leader may demand that a person, whose conduct violates provisions of the law or who hinders or frustrates the assembly, leave the site of the assembly. If the person fails to conform to the demand, the leader may call the police or municipal guards for assistance.
5. If the participants of an assembly fail to subordinate to the leader's orders given within performance of his/her duties, or the progress of the assembly is against this Act or violates the provisions of penal law, the leader shall disband the assembly.
6. Once the assembly is disbanded or dismissed, its participants shall be obliged to leave the site of the assembly without unjustified delay.

Art. 11.

1. The commune authority may delegate its representatives to an assembly.
2. When so requested by the organiser, the commune authority shall, to the extent required and possible, secure police protection under provisions of the Act of 6 April 1990 on the Police (JoL No. 30, item 179) to see to a proper progress of the assembly, and may delegate its representative to attend the assembly.
3. Upon arriving at the site of the assembly, the delegated representatives of the commune authority shall be obliged to produce their authorisation to the leader of the assembly.

Art. 12.

1. An assembly may be disbanded by the representative of the commune authority, if the progress of that assembly poses a threat to the life or health of individuals or to property of considerable value, or violates the provisions of this Act or of penal law, and the leader refuses to disband the assembly even though he/she has been warned that this step is necessary.
2. The disbandment of an assembly under point 1 above shall be effected by an oral decision preceded by three consecutive addresses to the participants, warning about the possibility of disbandment, and then communicated to the leader of the assembly; the decision is immediately enforceable. The decision in writing shall be delivered to the organiser within 24 hours of the moment of its taking.
3. The organiser and any participant of the assembly may appeal against the decision disbanding that assembly within 3 days of the date of such disbandment, provisions of Art. 9.4 apply accordingly.

Art. 13.

Complaints against decisions pertaining to assemblies shall be filed directly to the Supreme Administrative Court within 3 days of the date of delivery of the decision concerned; unless hindered from doing so by formal obstacles, the Court shall appoint the date of the hearing no later than within 7 days of the date of filing the complaint.

Chapter 3

Changes of valid provisions; transitional and definitive provisions

Art. 14.

In the Transgressions Code, Art. 52 § 1 is rewritten as follows:

§ 1. Whoever:

- 1) disturbs or attempts to disturb the organisation or progress of an assembly that has not been prohibited

- 2) convenes an assembly without the required notification, or presides over such assembly or over a prohibited assembly
- 3) presides over an assembly after its disbandment by its leader or a representative of the commune authority
- 4) illegally occupies or refuses to leave a site that is lawfully controlled by another person or organisation acting as the organiser or leader of an assembly
- 5) participates in an assembly while carrying firearms, explosives or other dangerous devices

- shall be liable to the penalty of detention for up to two weeks, limitation of liberty for up to two months, or fine

Art. 15.

In the Act of 17 May 1989 on the attitude of State to the Catholic Church in People's Republic of Poland (JoL No. 29, item 154), the following changes are introduced:

- 1) the title of the Act is rewritten as follows:

“on the attitude of State to the Catholic Church in Republic of Poland”

- 2) Art. 15.2 is rewritten as follows:

2. The practising of worship in public is not subject to notification, if it takes places:

- 1) in churches, chapels, church buildings and on church-owned land, or on other premises used for religious instruction or as the premises of church organisations

- 2) in other locations, with the exclusion of public roads and squares and of public utility premises, the public practising of worship on public roads, squares and in public utility premises shall be agreed with the competent authority managing or controlling such areas

- 3) in Art. 34.5, the wording “in state-owned buildings” shall be replaced with the wording “on public utility premises”

Art. 16.

In the Act of 17 May 1989 on the guaranties of the freedom of conscience and religion (JoL No. 29, item 155), Art. 29.1, the wording “in state-owned buildings” shall be replaced with the wording “on public utility premises”

Art. 17.

The provisions of this Act shall apply also to cases falling under this Act that are still pending on the day of its entering into force.

Art. 18.

The Act of 29 March 1962 on assemblies (JoL No. 20, item 89, z 1971 r. No. 12, item 115, of 1982 No. 14, item 113, of 1985 No. 36, item 167 and of 1989 No. 20, item 104 and No. 29, item 154) is hereby rendered invalid.

Art. 19.

This Act shall enter into force on the day of its promulgation.