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Limitations to the Right to Freedom of Assembly in Poland during the COVID-19 Pandemic: The Case of Women's Strike^{1,2}

Przemysław Osiewicz³

Abstract

The ongoing COVID-19 pandemic poses a threat not only to public health and human life, but also to civil rights and freedoms. Such a claim applies not only to authoritarian states, but also to democratic political structures. Significant restrictions on civil liberties were introduced under the pretext of ensuring security in at least several member states of the European Union. One of them is Poland. The main purpose of this paper is to examine causes, developments, and consequences of the limitations to the right to freedom of assembly in Poland influencing the activities of the social protest movement Women's Strike (Strajk Kobiet) during the ongoing pandemic. The text concludes recommendations both for the Women's Strike social movement and for the government. Their implementation should reduce the current tensions in Poland and enable the opening of constructive social dialogue.

Key words: neo-militant democracy; the right to freedom of assembly; Poland; COVID-19; protests; Women's Strike; contention; contentious politics; protest movement; anti-democratic measures.

Introduction

In Loewenstein's opinion, the primary sources of threat from anti-democratic forces are connected with the democratic ethos. These are tolerance, freedom of speech, freedom of the press, the right to peaceful assembly, free elections and equality (Loewenstein, 1939). All of the above-mentioned elements could be violated to weaken a democratic regime by its political enemies. Such a process, which took place in Europe in the 1930s, is also noticeable in the second decade of the twenty-first century (Rak, 2020a). The rise of populism and the radical right reshaped the political systems in some European states. For this reason, a number of scholars focus on various aspects of the so-called neo-militant democracies (Rak, 2020b; Rijpkema, 2018; Teitel, 2007).

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Civil rights and liberties have been gradually limited in Poland since 2015. The ruling party started introducing elements of military democracy with significant changes in the judiciary system, which in turn opened the way to changes concerning important ideological issues, including abortion regulations. The main purpose of this paper is to examine causes, developments, and consequences of the limitations to the right to freedom of assembly in Poland influencing the activities of the social protest movement Women's Strike (Strajk Kobiet) during the ongoing pandemic.

Freedom of assembly: the Polish legislation before the pandemic

After the fall of communism in Poland, the parliament adopted the Law on Assemblies (Act of 1990). Freedom of assembly was later guaranteed by the Constitution of the Republic of Poland of 1997. In 2012, the Polish parliament adopted law amending the Law on Assemblies of 1990 (Law amending, 2012), yet these amendments were rather of technical and procedural nature.

More significant changes were introduced after the electoral victory of the Law and Justice party (Prawo i Sprawiedliwość). In 2016, the Polish parliament adopted a set of amendments to the Law on Assemblies which enabled state authorities to prohibit assemblies if they coincided with the so-called cyclical or recurrent assemblies. Such assemblies were defined as public gatherings organized by the same entity at the same location at least four times a year or annually, for example, on national holidays. The legal changes favoured social gatherings connected with the ruling party. The Law and Justice party, for instance, was organising the so-called Smolensk monthly – a public gathering commemorating President Lech Kaczyński and other victims of the 2010 presidential plane crash. The 2016 amendments were used against the main opposition political parties and social movements like the Citizens of Poland (Obywatele RP) and the Committee for the Defence of Democracy (Komitet Obrony Demokracji) that were attempting to block these gatherings, because the Smolensk monthly was registered as a cyclical gathering.

Emergency measures introduced during the COVID-19 pandemic

Although the ruling party had previously attempted to impose limitations to freedom of assembly after 2015, it was the COVID-19 pandemic that provided them with the best opportunity to do so without any public debate. The Act of 2 March 2020 on special solutions related to preventing, counteracting and combating COVID-19 was approved by 416 out of 460 members of the lower house of parliament. All public assemblies could have been forbidden due to the pandemic threat.

The health minister declared a state of epidemic emergency in Poland on 12 March 2020. All mass public gatherings and assemblies were banned excluding those held by the state authorities because

the latter did not meet the legal definitional criteria for the banned public assemblies. What is more, on 24 March 2020 the government introduced severe constraints on freedom of movement. Citizens were allowed to leave their houses only in duly justified circumstances, for instance, to go to work or buy food. The police began controlling pedestrians and drivers in order to verify whether their movement was justified or not.

The government claimed that the main objective was to protect the safety of citizens. In the opinion of the main opposition political parties, namely Civic Coalition, the Polish Peoples' Party, and the Left; the government restricted freedom of movement and freedom of assembly in an unconstitutional manner. Instead of introducing a state of emergency on the basis of the 1997 Constitution, the government introduced significant limitations of civic freedoms under the ordinary law. If a state of emergency had been declared, the presidential elections would have had to be postponed. Such a scenario, however, was not in the political interest of President Andrzej Duda and the Law and Justice party. Prime Minister Mateusz Morawiecki stated that the elections could be held, despite the pandemic threat. As a consequence, the liberties were taken without declaring the state of emergency that would justify such extraordinary measures. Citizens, who were leaving their houses for purposes other than "meeting the necessary needs of everyday life", risked high fines and other kind of repercussions, including proceedings in court and detention. Protesting was not classified as a legitimate need.

Women's Strike as an expression of opposition to neo-militant democracy

Women's Strike is a Polish protest movement which was founded in 2016. It all started with setting up a Facebook profile. The group's foundation was a response to the rejection by parliament of the civil project to liberalize the abortion law. It is an informal, non-party initiative of women, both non-affiliated and belonging to various women's organizations (*Strajk kobiet*, 2020). The main goal of Women's Strike is to promote the respect for women's rights and interests. The movement began with massive anti-government protests, especially with the organization of the so-called Black Monday. The protests took place in 143 cities in Poland, and a total of over one hundred thousand demonstrators took part in them (Cocotas, 2017). In the Women's Strike, the principle of full autonomy of the local strike groups applies. This means that in the case of joint action, they have a favourable minimum, namely a common name, slogan, and basis for visual identification as well as formal and material support. The scheme and content of the activities of individual local groups is free from any interference. The group became particularly active in the spring of 2020, when the ruling party began preparations for significant changes in the abortion law in the initial stages of the

COVID-19 pandemic. According to the activists of the movement, the government was trying to use lockdown for political purposes and carry out unpopular, controversial changes (Walker, 2020).

Measures applied to block protests of Women's Strike

Women's Strike engaged in defending women's rights. During the pandemic, the ruling party initiated a legislative procedure aimed at tightening the already restrictive abortion laws. The draft law on the ban on abortion was presented in the parliament and was committed on 16 April 2020. According to Women's Strike, the protest movement formed during the 2016 Black Monday strike, the government tried to use the lockdown to introduce the highly controversial amendments in order to avoid mass protests.

On 14 April 2020 the protesters were driving their cars with posters and banners in the major Polish cities. They also stood in the streets observing social distancing or were silently queuing and holding posters in front of grocery shops. Such measures were legal and did not constitute violations of the sanitary regulations. Some women held umbrellas – a clear reference to the mass protests of 2016 when more than 100 thousand protesters had protested against abortion ban (Center for Reproductive Rights, 2016). Some supporters of Women's Strike put up posters and banners in windows of their apartments, on balconies, behind cars' windows, and in other visible places. The protest's organizers did their best to avoid potential repercussions for their supporters, especially high fines and detention. For this reason, they applied protest measures which were in line with the sanitary law and other limitations. The police, however, checked out the IDs of 24 protesters. Four of them were fined and six cases were referred to court. In addition, all persons were notified to sanitary inspectors who could impose much higher fines for alleged violations of the sanitary regulations. According to the police officials, the protesters were fined either for blocking traffic or for unjustified movement in the times of pandemic. Yet the actions undertaken by the police were unconstitutional and violated the right to freedom of assembly, because the state of emergency had not been declared (Malecki, 2020).

However, mass protests were yet to come. On 22 October 2020, the Constitutional Court issued a ruling that outlawed terminations on the grounds of severe health defects (*Poland abortion*, 2020). The Tribunal's decision caused a lot of controversy and led to a sudden outbreak of social discontent and mass protests. The Women's Strike thus became overnight the leading protest movement around which supporters of the maintenance of the abortion compromise or liberalization of the abortion law, representing various social groups. In hundreds of Polish cities and towns, thousands of people took to the streets to manifest their opposition to introducing such significant changes. However, the situation of the protesters was complicated by the fact that the epidemic situation in Poland was

deteriorating at the same time. The government and law enforcement used the sanitary restrictions in force to stifle protests. The police checked participants' identity documents, detained them, and used direct coercion measures. Some of the interventions were characterized by brutality, which was exceptional for Polish conditions, including beatings of demonstrators by ununiformed officers from anti-terrorist units (Beswick, 2020).

Conclusions and recommendations

Restrictions on the freedom of assembly cause a number of controversies in Poland. Opposition members interpret the introduced epidemic restrictions as an excuse to limit civil liberties and prevent protests against government policy. The decision of the Constitutional Tribunal, which tightened the applicable abortion law, only reassured them that the ruling party was using the pandemic to achieve its political goals. On the other hand, the approach of the police to the protesting members and supporters of the Women's Strike only confirmed that the government is not open to dialogue and seeking compromise.

The above facts confirm that there is a need for a new approach. The implementation of the recommendations below may help to bring closer positions of both sides. The first recommendation concerns initiating a social dialogue between representatives of pro-abortion and anti-abortion groups, as well as the most important political parties. The second recommendation concerns the suspension of the possibility of publishing the tribunal's judgment in the official journal until a compromise solution is found. The third recommendation concerns the refraining of the police from using excessive security measures such as tear gas and police batons, and direct coercive measures such as mass detention of protesters. The fourth recommendation concerns the temporary suspension of protests by the Women's Strike until a compromise is reached, especially due to the difficult epidemic situation. The fifth recommendation is about the lifting of double standards with regard to organized protests. The government cannot suppress the protests of the Women's Strike under the pretext of an epidemic threat, and at the same time tolerate mass demonstrations organized by sympathetic groups and organizations.

Implementation of the above recommendations will reduce social tensions and create favourable conditions for initiating and continuing constructive dialogue between the parties. The solutions could also be applied in other countries in the event of similar social tensions.

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