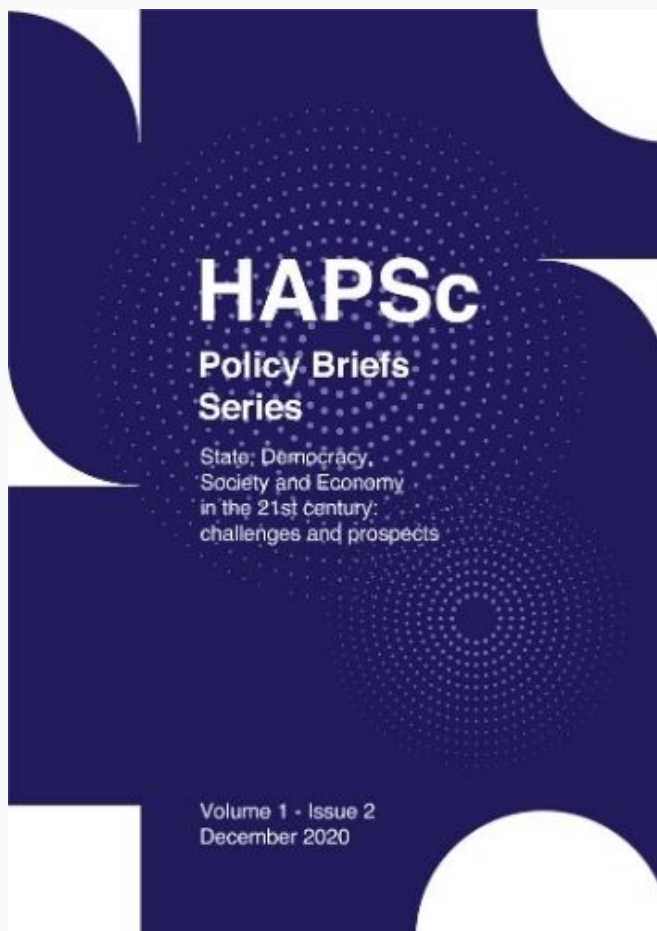


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The Banning of Extremist Political Parties as a Measures of Neo-Militant Democracy: The Experience of Post-Communist States^{1,2}

Maciej Skrzypek³

Abstract

The paper aims to determine which political parties in post-communist countries were considered hostile to the system and evaluate the systems' capacity to eliminate their enemies with political party banning. The analysis covers Bulgaria, Czech Republic, Estonia, Lithuania, Latvia, Poland, Romania, Slovakia, and Hungary. The study covers the period from their democratization to 2020.

Keywords: banning of extremist political parties; neo-militant democracy; democratization in post-communist states.

Introduction

The outlawing of political parties is one of the critical elements of the contemporary dilemma of democracy. On the one hand, restricting the exercise of fundamental rights and freedoms, including the right to be politically represented and participate in the decision-making process, is a sign of a shift from the democratic system towards authoritarianism. On the other hand, it is an indispensable tool of democracy in practical terms, which seeks to exclude from public life groups considered to be enemies of the system (Bourne, 2012: 2). Due to the lack of recognized definitions of the system's enemy, political elites intentionally create the image of enemies threatening democracy. The elimination of extremist parties and their activity limitation is a necessary element in transition, leading the authoritarian system towards consolidated democracy. According to Andreas Sajó, this results from political uncertainty and fears of repeated abuses by the ruling elite (Sajó, 2004: 214). The delegalization of political parties is most often presented as one of the keys and widely used measures of militant democracy (Capoccia, 2013). This research contributes empirically to the studies on militant democracy by determining the level of effectiveness of this measure in the context of reducing the possibilities of anti-democratic forces.

The paper aims to determine which political parties in post-communist countries were considered hostile to the system and evaluate the systems' capacity to eliminate their enemies with political party

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banning. The following research hypothesis will be verified: the greater the level of limitation of extremist parties' scope of activities, the greater the state's capacity to eliminate the system's enemies, which undermine democracy. The ban on political parties in the analyzed countries may become a useful tool for militant democracy. The analysis covers the EU Member States that started the systemic transition at the turn of the 1980s and 1990s: Bulgaria, Czech Republic, Estonia, Lithuania, Latvia, Poland, Romania, Slovakia, and Hungary. The study's initial point is the start of democratization in each of these states, while the final point is 2020. The latest Freedom House report will be used to assess the level of defense capability against extremists (Freedom House, 2020).

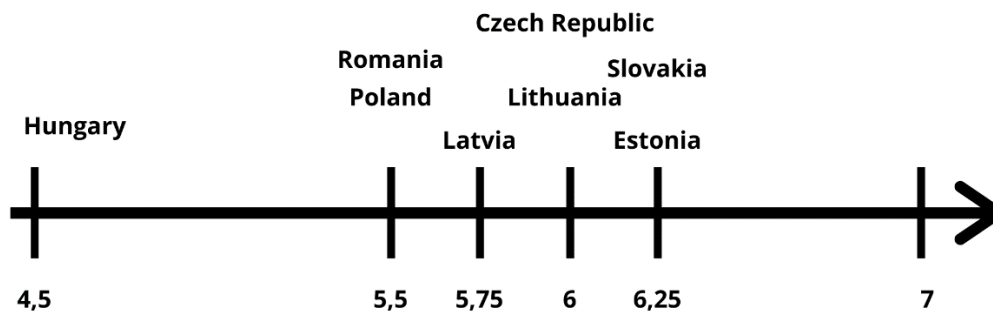
Conceptualizing the Banning of Political Parties in Militant Democracy

Militant democracy is a theoretical category created by Karl Loewenstein, who in the 1930s called for the introduction, through legislative measures, of tools capable of countering fascism by democracies (Loewenstein, 1937). Nowadays, militant democracy is understood as a form of the democratic system's ability to eliminate undemocratic forces (Cappocia, 2013), using, among others, bans of extremist parties. The category of militant democracy in banning extremist parties was used by Gur Bligh, making it the basis of the Weimar paradigm. In this perspective, the justification for banning the selected grouping draws on the fear a destruction of democracy and implementation of an undemocratic program. Bligh considered Nazi, fascist, communist, and Islamist groups to be such parties (Bligh, 2013: 1335-1336).

The presented research draws upon Bourne's and Fernando Casal Bértoa's theoretical framework. These researchers formulated the contemporary premises for banning extremist parties: anti-democratic ideologies, undemocratic internal organization, the name of the party, the party's orientation towards violence, issues of protecting the current order, and technical requirements regulating access to the democratic process. Finally, income 'incomplete democracies' are more likely to ban political parties than 'established democracies', and probably due to the former's underdeveloped commitments to constitutional liberalism and other 'defective' aspects of democratic practice (Bourne & Casal Bértoa, 2017: 17-21).

The Practice of the Banning of Political Parties in Post-Communist States

Freedom House report's data (Freedom House, 2020), which examines the systems' capacity to defend itself against anti-democratic extremist groups' threats, will be used to determine the level of effectiveness of the ban on political parties in the context of eliminating the enemies of the system. The results of the study are presented below.

Figure 1: Civil Society's scores

Source: Freedom House (2020).

In **Bulgaria**, the Constitution prohibits the existence of parties that promote or incite any form of discrimination (Constitution of the Republic of Bulgaria). It was confirmed by the relevant act, which indicated that political groups use democratic methods to achieve political goals. They must not violate universal values (Political Parties Act. 2005). In 1990, the Bulgarian Communist Party renamed itself into the Bulgarian Socialist Party, and, under that name, it is still one of the strongest parties on the Bulgarian political scene. On the other hand, in 2000, the United Macedonian Organization Ilinden-Pirin was banned, recognized by a court decision as a separatist organization. In 2006, this party was again refused registration.

In **Czech Republic**, the operation of political parties is governed by an Act of 1991. Czech legislation prohibits the existence of parties, which violate the Constitution and other laws, seek to overthrow the democratic foundations of the state, promote an anti-democratic agenda, threaten morality, public order, or the rights and freedoms of citizens (Zákon č. 424/1991, Art. 4). An example of extremist grouping is the Workers' Party, which was banned in February 2010. In the justification of the judgment, the Supreme Administrative Court indicated that it used Nazi symbols, proclaimed xenophobic, chauvinistic, homophobic slogans, and was also associated with illegal far-right organizations (Soud zrušil..., 2010). After its dissolution, representatives of this party founded the Workers' Party of Social Justice but did not change their program, making it possible to assess the party's banning as an ineffective tool. The Communist Party of Bohemia and Moravia is not classified as an enemy of democracy. This party openly associates with the values of the Communist Party of Czechoslovakia (Naše strana), which does not affect the recognition of its legality.

In **Estonia**, parties that act to change the constitutional order or Estonia's territorial integrity are forbidden. Paramilitary organizations are not allowed to support political parties (Political Parties

Act). Estonian Communist Party, after being registered in 1991, later on, became part of the United Left Party of Estonia and still exists. An extremist party is the Estonian Conservative People's Party (Freedom House, 2020).

According to Freedom House, **Hungary** has the lowest level of ability to defend itself against extremist parties. Criteria for banning political parties are not clearly defined there. The introduction to the relevant law states that the party's social goal is to provide an organizational framework for the formation and expression of the will of the people and citizens' participation in political life (1989. évi XXXIII. Törvény). In 2009, the Hungarian Guard, a paramilitary organization established in 2007 by the leadership of the Jobbik party, was banned. In 2008, a court in Budapest dissolved the Hungarian Guard, finding its activities contrary to the Hungarian Constitution's provisions. The judgment was upheld by a higher court (Jogerős ítélet mondja...). Following this court decision, former members established the New Hungarian Guard Movement without changing their program. An example of an attempt to undermine the party's legality was adopting an amendment to the Constitution in 2011. At the initiative of the ruling party Fidesz, the National Assembly added to the Constitution a provision that the Hungarian Socialist Party is recognized as the legal successor of the Hungarian Socialist Workers' Party and is also responsible for crimes and offenses, made during the communist period (Magyarország Alaptörvénye, art. 4). Ultimately, no steps were taken to ban this party, but this solution should be classified as a political struggle tool to eliminate the system's enemies.

In **Latvia**, parties that organize their paramilitaries and put the constitutional and public order at risk are banned (Politisko partiju likums). In 1991, the Communist Party of Latvia was banned due to the alleged acting against the state's interests. Its former members founded the Socialist Party of Latvia which refers to the heritage of local communists.

In **Lithuania**, it is forbidden to create and run political parties that promote or practice any forms of national, racial, religious, or social inequity and hatred methods of authoritarian or totalitarian rule, use violence as a tool of political struggle, violate human rights and freedoms, and threaten public order (Republic of Lithuania Law on Political Parties). In 1991, the Communist Party of Lithuania was banned, as its existence was considered contrary to the Lithuanian *raison d'état*.

In **Poland**, political parties shape their structures and principles of operation in accordance with democracy (Dz.U. 1997 nr 98 poz. 604, art. 8). The Constitution of the Republic of Poland regulates banning political parties that refer in their programs totalitarian methods and practices of Nazism, fascism and communism, those whose program or activity presupposes or permits racial and national

hatred, the use of violence in order to obtain power or influence on state policy or provides for the confidentiality of structures or membership (The Constitution of the Republic of Poland). Since the beginning of the systemic transition in 1989, no party has been banned. However, in January 1990, the Polish United Workers' Party was disbanded. In 2002, the Communist Party of Poland was established. Nevertheless, it distances itself from totalitarian methods and practices in its programming documents (Statute of the Communist Party of Poland). In the past, there have been attempts to ban it (Poseł PiS doniósł...), but in 2020, all court proceedings against its members were discontinued. In the last Freedom House report, the Confederation, which currently has 11 members of parliament, was recognized as an extremist party (Freedom House, 2020). This view is not shared by other parliamentary parties and the public, which recognize its legality.

In **Romania**, it is forbidden to operate political parties that violate the constitutional order, threaten public order and territorial integrity (Law no. 14/2003 on political parties). In 2013, the registration of the New Romanian Communist Party, which directly referred to the Communist Party of Romania's tradition, was refused. In the justification of the judgment, the court referred directly to the provisions of the Act on National Security of 1991, which expressly prohibits the existence of communist parties.

In **Slovakia**, there are no direct regulations regarding the grounds for banning political parties. In general, political rights, including the right to form political parties, regulated in the Constitution, are respected. However, the exceptions are actions contrary to the constitutional order, public order, and *raison d'etat* (Ústava Slovenskej Republiky). In 2006, the Slovak Community-National Party, which was found to be contrary to the Constitution, was banned. In 2010, its former leader, Martin Kotleba, established the Our Slovakia People's Party. The reason for dissolution was the request by the Prosecutor General's Office in 2017, arguing its motion with extremist views of its members and violating the constitutional order. In 2019, the application was rejected due to the lack of relevant evidence in the case (Najvyšší súd rozhodol...). Similar accusations were made against the Slovak National Party members, but no such measures were taken against this group (Ingyen nevezte fasisztának...). The Communist Party of Slovakia is still active.

Conclusions and Recommendations

Freedom House reports define the ability to defend against extremists in the analyzed countries on a similar level. The examples of the Czech Workers' Party and the Slovak Community-National Party suggest a low level of effectiveness in eliminating enemies of democracy. The example of the Hungarian social democracy confirms that large groups are not banned, despite the accusations made

against them. No country has defined an extremist party model, but all of them adopt similar criteria at the declarative level - a threat to the constitutional and public order, and the use of violence to achieve political goals. The provisions of the Constitution and national laws constituted the basis for the ban. Based on this analysis, the models for banning of extremist parties are the following: (1) the exclusion of groups that directly originated and referred to the traditions of the ruling communist parties after the end of World War II, (2) the banning of parties considered to be extreme right, (3) exclusion of extreme left-wing and right-wing parties, (4) no party is banned. In the context of post-communist parties, it is worth pointing to three approaches, which are as follows: evolution towards social democracy, illegalization, and legalization. Thus, countries with similar experiences of the oppressive system started the process of systemic transition almost simultaneously, used different outlawing models, and showed different attitudes towards post-communist parties. However, it is impossible to determine which model carries a higher level of effectiveness at this stage. A more significant role than the adopted strategy is played by the values that guide the political community. However, this is an issue that needs to be discussed separately. The model (3), which does not distinguish between the ideological profiles, can be considered as an effective means of a new militant democracy at the declarative level. The example of Estonia proves the low level of effectiveness of the model (4). The Cases of the Workers' Party and the Slovak Community-National Party suggest the need to monitor former members of these groups' activities in the formation of new parties. In all these countries, especially in Hungary, it is necessary to increase the effectiveness of the implementation of the means promoted in the legal solutions.

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