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The Effects of Crises in the European Union as a Manifestation of the Militant Democracy Rule Implementation[2]

Keywords: militant democracy, financial crisis, refugee crisis, coronavirus pandemic, EU
Słowa kluczowe: demokracja opancerzona, kryzys finansowy, kryzys uchodźczy, pandemia koronawirusa, UE

Abstract

In the history of the European Union, there are three main crises: financial crisis, the so-called refugee crisis, and the recent coronavirus pandemic. Since the financial crisis, the process of modern democracies taking over the characteristics of non-democratic regimes has become noticeable, and subsequent crises are only exacerbating it. A useful theoretical category for explaining this phenomenon is the category of militant democracy, which was first used by Karl Loewenstein, who applied it to the Weimar Republic. The article aims to present in general how successive crises have contributed to accelerating the militant process by the EU Member States.

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Streszczenie

**Skutki kryzysów w Unii Europejskiej jako przejaw
implementacji zasady demokracji opancerzonej**

W historii Unii Europejskiej można wskazać na trzy główne kryzysy: kryzys finanso-
wy, tzw. kryzys uchodźczy i obecnie pandemię koronawirusa. Od momentu kryzysu fi-
nansowego, zaczęto dostrzegać, że współczesne demokracje zaczynają przejmować ce-
chy charakterystyczne dla reżimów niedemokratycznych, a kolejne kryzysy wydają się
jedynie to wzmacniać. Użyteczną kategorią do wyjaśnienia tego zjawiska jest kategoria
demokracji opancerzonej, która po raz pierwszy została użyta przez Karla Loewenstein,
który odnosił ją do Republiki Weimarskiej. Celem tego artykułu jest ogólne zaprezen-
towanie, w jaki sposób kolejne kryzysy przyczyniły się do przyspieszenia procesu opan-
cerzania się demokracji w państwach członkowskich.

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I. Introduction and Theoretical Background

Three major crises can be identified in the history of the European Union. These
are flashpoints that have made a major impact on accelerating the implementa-
tion of militant democracy rule in the Member States such as, respectively, the
financial crisis, the so-called refugee crisis, as well as the coronavirus pandem-
ic. From the moment of the first crisis, researchers began to see that modern
democracies were beginning to take over the characteristic of non-democrat-
ic regimes. The category which allows explaining this process is militant de-
mocracy. It first appeared in Karl Loewenstein's work[3] and referred to the We-
imar Republic. The researcher sought to explain the reasons for its failure in
the fight against Nazism. Currently, this category is used to define a democracy
that acts as a defensive democracy, and therefore ready to defend itself against
any threat, but also offensive, that is, a democracy capable of attacking and de-

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[3]   K. Loewenstein, *Militant Democracy and Fundamental Rights I*, "The American Political
Science Review" 1937a, vol. XXXI, No. 3; K. Loewenstein, *Militant Democracy and Fundamental
Rights II*, "The American Political Science Review" 1937b, vol. XXXI, No. 4.

stroying or overpowering an enemy if necessary[4]. Militant democracy is the kind of political system in which parliament[5] and judiciary are equipped with legal means to restrict individual democratic freedom to defend democracy, and therefore its survival, against those who are considered its internal and external enemies[6]. In the context of militant democracy and the violation of constitutionally guaranteed freedoms, which should be respected and protected, it is worth noting that there is a difference between formal and substantive constitutions. Karl Loewenstein distinguished their three types:

1. normative, which occupy the most important place in the hierarchy of positive law and are fully respected;
2. nominal, characteristics of which are the inability to implement their standards, despite goodwill expressed, because of existing social, economic, or cultural conditions;
3. semantic, that is, formalizing the reigns of an individual, political party, legislative assembly, or a military junta[7].

Among the restrictions of militant democracy, which can be used to study the process of implementing the militant democracy rule are limitations of freedom of the press[8], religious freedom[9], assemblies[10], speech[11], association[12], active[13] and passive electoral law[14], referendum organization[15], regulations re-

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[4] R. Bäcker, J. Rak, *Trajektoria trwania opancerzonych demokracji*, "Studia nad Autorytaryzmem i Totalitaryzmem" 2019, vol. 41, No. 3, pp. 64–65.

[5] J. Marszałek-Kawa, *The Institutional Position and Functions of the Sejm of the Republic of Poland after the Accession to the European Union*, Odessa 2019.

[6] R. Bäcker, J. Rak, op.cit., p. 68.

[7] K. Loewenstein, *Verfassunglehre*, Tübingen 1969.

[8] G. Capoccia, *Defending Democracy Reactions to Extremism in Interwar Europe*, Baltimore-London, 2005, pp. 57–61.

[9] J.-W. Müller, *Militant Democracy*, in *The Oxford Handbook of Comparative Constitutional Law*, eds. M. Rosenfeld, A. Sajó, New York 2012, p. 1119.

[10] M. Mareš, *Czech Militant Democracy in Action: Dissolution of the Workers' Party and the Wider Context of This Act*, "East European Politics and Societies" 2012, vol. 33(26), p. 34.

[11] I. Ijabs, *After the Referendum: Militant Democracy and Nation-Building in Latvia*, "East European Politics and Societies and Cultures" 2016, vol. 2(30), pp. 288–231.

[12] M. Mareš, op.cit. p. 36.

[13] I. Ijabs, op.cit., p. 289.

[14] Ibidem.

[15] Ibidem, p. 288.

lated to terrorism and counteracting this phenomenon[16], restrictions on the registration and activities of political parties[17], in the acquisition of citizenship[18], in access to public employment[19] or relating to anti-extremism [20], freedom of movement[21], and the independence of the judiciary[22]. These indicators make it much easier to study the militant process and, as it turns out, are particularly revealing during crises.

II. Crises in the European Union

The most serious crisis in the history of the European Union was the European debt crisis, it was then that there were imposed socially unpopular cuts which led to a significant rise in populist movements and anti-system public sentiment. The activity of these movements began to be seen by state authorities as a threat to liberal democratic systems[23].

After the financial crisis, another major crisis was the influx of refugees, which lasted several years, but it began in 2015 when a record number of asylum applications were submitted[24]. At that time, the process of nationalization became very clear, for example, groups opposed to the reception of refugees and migrants, often using populist discourse, began to win elections, xeno-

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[16]   P. Macklem, *Militant Democracy, Legal Pluralism, and the Paradox of Self-determination*, "International Journal of Constitutional Law" 2006, vol. 3(4), pp. 488–489.

[17]   M. Mareš, op.cit. p. 36.

[18]   I. Ijabs, op.cit., p. 289.

[19]   M. Mareš, op.cit. p. 36.

[20]   G. Capoccia, op.cit., pp. 57–61; Sajó, op.cit., p. 2280.

[21]   A. Sajó, *From Militant Democracy to the Preventive State'*, "Cardozo Law" 2005, vol. 5(27), p. 2280.

[22]   A. Kirshner, *A Theory of Militant Democracy: The Ethics of Combatting Political Extremism*, New Haven-London 2014, p. 21.

[23]   J. Rak, *Theorizing Cultures of Political Violence in Times of Austerity: Studying Social Movements in Comparative Perspective*, Abingdon 2018; J. Rak, *The Dynamics of the 15-M Movement's Culture of Political Violence*, [in:] *Poland and Spain in Late Modern and Contemporary Civilisation and Culture*, eds. M. Mizerska-wrotkowska, J.L. Orella Martínez, Madrid 2018, pp. 229–256.

[24]   M. Dahl, A. Dziudzik, *Państwa Unii Europejskiej wobec kryzysu imigracyjnego z 2015 roku*, Unia Europejska.pl 2017, No, 3, pp. 17–25.

phobic and nationalist attitudes intensified among the citizens of the Member States[25]. Moreover, countries have begun to treat refugees as a threat to democracy and have begun to restrict their rights.

Before the spread of coronavirus, previously indicated restrictions appeared at different frequencies in all Member States[26].

During the current pandemic there are mainly restrictions on: religious freedom, as exampled by any regulations on participation in religious rites, celebrations such as weddings or funerals, then restrictions on assembly, freedom of movement (for example, restrictions placed by the Member States in connection with Christmas, such as travel bans between municipalities, etc.), but also any regulations related to arrivals and trips abroad, which have appeared since the beginning of the pandemic and are still used today, of course modified. In addition to these restrictions, which are officially announced, there are many local restrictions, that is, not applicable in the whole country, but only in a given city, in a given territory e.g. restrictions on freedom of the press, speech. In this case, inter alia, there have been instances of censorship of statements by people who undermine the meaning of the restrictions introduced or deny the existence of a pandemic at all.

III. Conclusions

In conclusion, for the first time since the financial crisis, it has become clear that modern democracies are beginning to acquire more and more features of non-democratic regimes. The refugee crisis has contributed to an increase in nationalist and xenophobic attitudes, and through populist discourse in

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[25] J. Miecznikowska, *Prawicowe i lewicowe partie populistyczne po wyborach do Parlamentu Europejskiego w 2014 roku na przykładzie Wolnościowej Partii Austrii oraz Partii Lewicy w Niemczech*, "Rocznik Integracji Europejskiej" 2015, No. 9, pp. 527–549.

[26] For example: J. Rak, *Conceptualizing the Theoretical Category of Neo-militant Democracy: The Case of Hungary*, "Polish Political Science Yearbook" 2020, vol. 49, pp. 61–70; K. Rezmer--Płotka, *Stanovitsâ li Pol'ša voinstvuûŝej demokratiej?*, [in:] *Problemy stran postsovetskogo prostranstva, Central'noj i Ûgo-Vostočnoj Evropy, sbornik naučnyh statej*. Vyp. 4, eds. A.A. Slin'ko, Voronež 2020, pp. 252–264; P. Osiewicz, M. Skrzypek, *Is Spain becoming a militant democracy? Empirical evidence from Freedom House Reports*, "Aportes. Revista De Historia Contemporánea" 2020, vol. 35, No. 103, pp. 7–33.

the successive Member States, a gradual exchange of political elites has begun to take place. Groups and leaders preaching nationalist slogans began to gain popularity. The implementation of militant democracy rule has accelerated significantly since the emergence of the coronavirus in the world. Restrictions that have so far appeared less frequently or at all are becoming a permanent feature of social and political life. Some questions are introduced for safety, health, and which are an instrument in the hands of the governing bodies. Here it can recall the difference between formal and substantive constitutions that Loewenstein exhibited by distinguishing three types of them.

In the context of this article, it should be emphasized that there have been many more crises and difficulties in the European Union, it is sufficient to mention, for example, Brexit. However, the article presents three main ones, which covered all Member States, and their effects were and still are the most serious. This short article is of a review nature and as such is intended to provide an impulse for further in-depth research into the implementation of militant democracy rule, especially in exceptional circumstances, which are certainly further crises. Although conditions have changed significantly since the days of Karl Loewenstein, with appropriate research, it is possible to develop new indicators and a much more up-to-date category of neo-militant democracy, also taking into account specific conditions such as crises.

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