

Kamila Rezmer-Płotka¹

**The Sovereignty of the Political Nation Under Threat?
Portugal Between Neo- and Quasi-Militant Democracy²**

Keywords: militant democracy, neo-militant democracy, quasi-militant democracy, Portugal

Słowa kluczowe: demokracja opancerzona, nowa demokracja opancerzona, demokracja quasi-opancerzona, Portugalia

Abstract

In this paper the main assumption is that Portugal becomes a neo-militant democracy since the first major finance crisis in the European Union, which occurred in 2008–2009 years. This process has also accelerated significantly at the time of the so-called refugee crisis and the coronavirus pandemic. The clue of the assumption is the introduction of restrictions on the rights and freedoms of citizens, especially visible during crises, as well as the demobilization of social movements which began in connection with the beginning of anti-democratic tendencies. Based on the analysis, it can be observed that Portugal becomes a neo-militant democracy to an increasing extent. This may be indicated by introduced and existing legal regulations limiting the rights and freedoms of citizens.

¹ ORCID ID: 0000-0002-1458-5076, M.A., Nicolaus Copernicus University. E-mail: kamila.rezmer@onet.pl.

² This work was supported by the National Science Centre, Poland, under Grant 2018/31/B/HSS/01410 [Contentious Politics and Neo-Militant Democracy].

Streszczenie**Czy suwerenność narodu politycznego jest zagrożona?
Portugalia między nową a quasi-opancerzoną demokracją**

W tym artykule głównym założeniem jest to, że Portugalia staje się nową demokracją opancerzoną od czasu zaistnienia pierwszego poważnego kryzysu finansowego w Unii Europejskiej, który wystąpił w latach 2008–2009. Dostrzeżono, że proces ten znacznie przyspieszył również w czasie tzw. kryzysu uchodźczego i pandemii koronawirusa. Istotę tak postawionego założenia stanowi wprowadzenie ograniczeń praw i wolności obywateli, szczególnie widocznych w czasie kryzysów, a także demobilizacja ruchów społecznych, zapoczątkowana w związku z nadejściem tendencji antydemokratycznych. Na podstawie przeprowadzonej analizy można zauważyć, że Portugalia w coraz większym stopniu staje się nową demokracją opancerzoną. Mogą na to wskazywać m.in. wprowadzone i istniejące regulacje prawne ograniczające prawa i wolności obywateli.

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I. Introduction and theoretical background

For the first time, the category of militant democracy was used by Karl Loewenstein looking for the reason for the defeat of the Weimar Republic in the clash with Nazism. He defines it as a political regime in which parliament and the judiciary are equipped with legal means to restrict individual democratic freedoms in order to defend democracy against those who are considered its enemies. Enemies of democracy are those to seek to undermine it³.

Due to the changing socio-political realities, the category has been adapted to the current situation and neo-militant democracy is now used to name

³ K. Loewenstein, *Militant Democracy and Fundamental Rights I*, "The American Political Science Review" 1937, no. 3, pp. 417–432; G. Molier, B. Rijpkema *Germany's New Militant Democracy Regime: National Democratic Party II and the German Federal Constitutional Courts' 'Potentiality' Criterion for Party Bans: Bundesverfassungsgericht, Judgment of 17 January 2017, 2 BvB 1/13, National Democratic Party III*, "European Constitutional Law Review" 2018, no. 2, pp. 394–409.

contemporary political structures⁴. Some countries also began to manifest features characteristic of quasi militant-democracy, i.e. when the ruling subjects restrict fundamental rights not to protect democracy but to self-destruct it and meet their own political interest and agenda⁵. Quasi-militant democracy relies on its resemblance to neo-militant democracy. The difference lies in the purpose of using the restrictions. Neo-militant democrats use them to protect the sovereignty of a political nation, whereas quasi-militant democrats aim to undermine it⁶.

In this paper the main assumption is that Portugal becomes a neo-militant democracy since the first major finance crisis in the European Union, which occurred in 2008–2009 years. The article is intended to serve as an introduction to deeper analyses and precise research, indicating only the direction and possibilities. With reference to the assumption made, the research question is as follows: what premises allow us to assume that Portugal drift towards a neo-militant democracy?

This process has also accelerated significantly at the time of the so-called refugee crisis and the coronavirus pandemic⁷. Although Portugal is considered a stable parliamentary democracy with a multiparty political system and regular transfers of power between political parties⁸, existing and introduced legal regulations point to a drift towards a neo-militant democracy.

The reason behind is that it falls into the pattern of a modern form of militant democracy. Jan-Werner Müller claims that the latter is the effect of an upsurge of racism in a number of countries and widespread disquiet about religion and new forms of authoritarian politics⁹. It meets a set of theoretical conditions of becom-

⁴ J. Rak, *Conceptualising the Theoretical Category of Neo-militant Democracy: The Case of Hungary*, "Polish Political Science Yearbook" 2020, no. 2, pp. 61–70.

⁵ J. Rak, *Quasi-Militant Democracy as a New Form of Sacred in Poland during the Corona Crisis*, "Journal for the Study of Religions and Ideologies" 2020, no. 19, pp. 111–128.

⁶ *Neo-militant Democracies in the Post-communist Member States of the European Union*, eds. J. Rak, R. Bäcker, London and New York 2022.

⁷ K. Rezmer-Plotka *The Effects of Crises in the European Union as a Manifestation of the Militant Democracy Rule Implementation*, "Przegląd Prawa Konstytucyjnego" 2020, no. 6, pp. 615–621.

⁸ Freedom House, *Portugal*. Available at, <https://freedomhouse.org/country/portugal>.

⁹ J.W. Müller, *Protecting Popular Self-Government from the People? New Normative Perspectives on Militant Democracy*, "Annual Review of Political Science" 2016, no. 19, pp. 249–265.

ing militant democracy by a state and evidence in the form of legal regulations implemented or existing in Portugal in 2008–2021 inter alia Constitution and bills. The study draws upon a source analysis and argues that Portugal becomes a neo-militant democracy in several key areas, i.e., freedom of the press, religious freedom, naturalization, which entails a question whether becoming a neo-militant democracy is a temporal or new constant trend in Portuguese politics.

Becoming a neo- and quasi-militant democracy is a process that can be observed and analyzed based on a set of criteria resulting from the operationalization of the main theoretical category. Indicators with which it is possible to study modern militant democracies include restrictions on citizens' rights and freedoms related inter alia to independent judiciary¹⁰, freedom of the press¹¹, and religious freedom¹². The selected examples of restrictions are important and crucial because they relate to institutions that guarantee respect and respect for citizens' rights.

In the case of Portugal, particularly interesting is a period between 2008 and 2021, when external stimuli have emerged to foster the creation of enemies of the nation and the state in political discourse. This is important from the perspective of understanding neo- and quasi-militant democracy, because it allows us to recognize the definition of the enemy and thus at the same time explain division between “we” and “they” created within the state. The process and the adopted caesura are related to the protests that began to appear in connection with the financial crisis¹³, until 2021, when rights and freedoms were significantly restricted due to the coronavirus pandemic since Portugal applied a state of emergency¹⁴. The introduction of this constitutional measure is a legal justification for many restrictions.

¹⁰ A. Kirshner, *A Theory of Militant Democracy: The Ethics of Combatting Political Extremism*, New Haven and London 2014, p. 21.

¹¹ G. Capoccia, *Defending Democracy Reactions to Extremism in Interwar Europe*, Baltimore, London 2005, pp. 57–61.

¹² J.W. Müller, *Militant Democracy*, [in:] *The Oxford Handbook of Comparative Constitutional Law*, eds. M. Rosenfeld, A. Sajó, New York 2012, p. 1119.

¹³ J. Rak, *Relations between the installation of democracy and the anti-austerity protest behavior*, Spanish indignados in comparative perspective, “Aportes Revista De Historia Contemporánea” 2019, no. 99.

¹⁴ *State of Calamity and State of Emergency*, Available at, <https://www.vda.pt/en/publications/insights/state-of-calamity-and-state-of-emergency/21881> (8.10.2022).

The clue of the assumption is the introduction of restrictions on the rights and freedoms of citizens, especially visible during crises, as well as the demobilization of social movements which began in connection with the beginning of anti-democratic tendencies. Portugal, despite reaching high positions in the rankings of democratic countries, exhibits many features characteristic of neo-militant democracy.

In order to locate Portugal on a continuum between neo- and quasi-militant democracy, its activities are translated into the theoretical grounds. For this purpose, violations in key areas for a democratic state will be determined and analyzed in terms of their impact on the sovereignty of the Portuguese political nation. The analysis will be conducted within the framework of the continuum. It assumes several types of militant democracy, including militant democracy, neo-militant democracy and quasi-militant democracy. Criteria for analysis are all restrictions on the rights and freedoms of citizens that are characteristic of a political regime in which democratic tools are used to fight the enemy of the system. The study's argumentation assumes that using them will allow for precise depicting the current shift in Portuguese politics.

II. Selected examples of restrictions

In Portugal, there is the Religious Freedom Act, which, despite the constitutionally guaranteed equality of religions, benefits are provided for religions that have been established in the state for at least 30 years or recognized internationally for at least 60 years. This means that during registration, which allows, for example, tax exemption, receiving government subsidies may conclude "mutual interest" agreements with the state on issues such as education or culture etc., selected religions may get a higher status, i.e. "religion settled in the country"¹⁵. In this way, religious freedom is not fully realized and at the same time there is discrimination against minorities. This means limits the sovereignty of the political nation represented by these minorities.

In addition, as indicated by the Council of Europe, for example, in its 2019 report, the actions taken by this state to combat corruption among judges and

¹⁵ *Religious Freedom Act*, <https://2009-2017.state.gov/documents/organization/171715.pdf> (8.10.2022).

prosecutors are still insufficient as further abuses continue to be revealed¹⁶. In this way, the independence of the judiciary is regularly violated. Violations of the independence of the judiciary do not allow the full realization of the sovereignty of the political nation, because citizens are not guaranteed the right to obtain fair and free from the influence of third parties judgments. Moreover, there are violations of press freedom, e.g. by disclosing information about the surveillance of journalists covering corruption scandals, excluding them from certain government press conferences or sports events. During protests against government restrictions related to the coronavirus pandemic, there were threats to insult journalists¹⁷. In this way, there is an attempt to restrict the freedom of the press by preventing journalists from exposing crimes and restricting citizens' access to information.

The premises and examples indicated above in the article may indicate that Portugal, like other EU Member States as presented by numerous studies¹⁸, exhibits the characteristic features of neo-militant democracy.

III. Conclusions

The described examples indicate not only the existence of indicators characteristic of neo-militant democracy, but also violations in key areas of the democratic state. The independence of the judiciary and the freedom of the press guarantee the security of citizens, government control, access to information, fair and equal treatment and respect for constitutionally guaranteed

¹⁶ Council of Europe, *Fourth Evaluation Round. Corruption Prevention in Respect of Members of Parliament, Judges and Prosecutors. Interim Compliance Report. Portugal*, <https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/1680954185> (8.10.2022).

¹⁷ Reporters without borders, *Portugal*, Available at, <https://rsf.org/en/portugal> (8.10.2022).

¹⁸ For example: M. Skrzypek, *Between Neo-militant and Quasi-militant Democracy: Restrictions on Freedoms of Speech and the Press in Austria, Finland, and Sweden in 2008–2019*, "European Politics and Society", <https://doi.org/10.1080/23745118.2022.2063229>; J. Rak, *The Sovereignty of the Visegrád Group Political Nations in 2008–2019: From Abusing Neo-Militant Democracy to Quasi-Militant Democracy*, "Parliamentary Studies" 2021, no. 31, 65–84; M. Skrzypek, *The Banning of Extremist Political Parties as a Measures of Neo-Militant Democracy*, "The Experience of Post-Communist States" 2020, no. 1, pp. 67–73.

freedoms. In this way, the institutions of a democratic state are used to limit the sovereignty of the political nation, which testifies to the mechanisms of neo-militant democracy. While religious freedom is important because of the regulation of church-state relations with other faiths, which relate, for example, to public finances and the influence of the church on areas such as education and culture. Failure to respect it and violations in this area may translate into the rights and freedoms of minorities, and thus also naturalization (there may be discrimination based on religion and hindering obtaining citizenship). In this case, the existing legislation limits the sovereignty of the political nation and leads to unjustified we-they divisions, the enemy becomes minorities and non-preferred religions. This mechanism, although characteristic of neo-militant democracy, due to the creation of an internal enemy indicates a shift towards quasi-militant democracy since the part of the Portuguese political nation becomes the enemy.

Based on the analysis, it can be observed that Portugal becomes a neo-militant democracy to an increasing extent. This may be indicated by introduced and existing legal regulations limiting the rights and freedoms of citizens. However, the system no longer seeks only to defend the democratic order, because the enemy may be invisible as in the case of a virus or internal, e.g. ethnic minorities for the needs of populist discourse. Treating a part of a political nation as an enemy may lead to internal conflicts and destabilization within the state. In this way, the creation of social divisions and the pursuit of self-destruction of the system by democratic means.

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