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ABUSING A NEO-MILITANT DEMOCRACY OR BECOMING A QUASI-MILITANT DEMOCRACY: THE CASE STUDY OF DENMARK IN TIMES OF CRISIS

In the Member States of the European Union, there is a noticeable process of regular limitation of civil rights and freedoms, which, according to researchers, takes place since the 2008 serious financial crisis. The introduced restrictions may indicate the process of neo-militant democracy, which was first mentioned by Karl Loewenstein in his works. Subsequent crises, inter alia the so-called the refugee crisis and the coronavirus pandemic have accelerated the process. As a result, states began to look for ways to justify the introduced restrictions, including using solutions provided for in national legal solutions. In most cases, "the state of emergency" or "the state of natural disaster" began to be used, which allow for a significant restriction of citizens' freedom for the purposes of their safety and public order. In Denmark, however, such a form of prevention has never been such a form of prevention, and for this reason, work has begun on changes in the law, allowing the ruling to use solutions that have existed for years in the national orders of other Member States. The aim of the article is to resolve the following research question: Where is Denmark on a continuum determined by the two processes: abusing a neo-militant democracy and becoming a quasi-militant democracy to justify the introduced restrictions before adopting a new legal solution. The analysis draws upon the method of qualitative source analysis. The main source of regulation which has been analyzed is the Danish constitution, and amended the Danish Epidemic Act.

This research contributes to the understanding of new militant democracies that limit the rights and freedoms of citizens through legal regulations. The study also makes it possible to update and significantly expand the previously used concept of militant democracy, which initially referred to the Weimar Republic.

The main argument is that the use of "the state of emergency" or "the state of natural disaster" in Denmark may allow for a significant limitation of the rights and freedoms of citizens, which on the one hand is aimed at counteracting the serious threat of the coronavirus pandemic, and on the other hand is a solution favoring democratic backsliding. It is also an increase in the powers of governments and a legal tool for introducing undemocratic solutions

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Introduction

When the militant democracy category was first used, it referred to the Weimar Republic and was defined 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 [1, p. 418, 2].

Although the socio-political realities have changed since then, the works of many researchers, including J. Rak, R. Bäcker, M. Skrzypek, P. Osiewicz and others pointed out that the processes of militant democracy implementation and distortion are still taking place. However, due to other conditions, it is rather said about a neo-militant democracy, the existence of which may be evidenced by the restrictions introduced by modern states in the field of restrictions on contemporary democratic freedoms. However, the actions of some countries began to go beyond the characteristics of neo-militant democracy and began using democratic institutions and existing procedures within the system to progressively implement elements of an authoritarian regime and create appearances of action in accordance with existing legal means.

In this case, the regime itself becomes the enemy in quasi-militant democracy. Governments use democratic tools to self-destruct the democracy regime [5,7].

During the coronavirus pandemic, restrictions on the above-mentioned rights and freedoms began to be introduced on an unprecedented scale, and often in a way that was raising doubts. The study uses the qualitative source analysis method to answer the research question: Where is Denmark on a continuum determined by the two processes: abusing a neo-militant democracy and becoming a quasi-militant democracy? The main source of regulation which has been analyzed is the Danish constitution, but also the amendments in the Danish Epidemic Act. The ideal neo- and quasi-militant types of democracy and a continuum of abusing a neo-militant democracy and becoming a quasi-militant democracy will serve as the research tools.

Restrictions during the pandemic and legal regulations

During both the first and subsequent waves of the pandemic in the Member States of the European Union, there were mainly restrictions on the press (e.g. the freedom to express unpopular views, contrary to the line adopted by governments), religion (e.g. the possibility of worship and participation in services), assembly (e.g. by specifying the maximum number of participants in assemblies that can participate in them), voting rights (e.g. by changing the election formula in some countries), moving (within or outside the country, here the situation was dynamic and the restrictions also depended on which country the person was returning from or wanted to get to)[6]. In order to implement each of the solutions, the states were, in a way, forced to refer to domestic legal regulations because of the possibility of undermining the introduced restrictions.

In Denmark, the legal basis for limiting the rights and freedoms of a citizen was primarily the Constitution [8], specifically par. 71, par. 72, par. 73, par. 77 and par. 79. In par. 71, it regulates the issue of personal freedom, which is inviolable and nobody be deprived of it due to political, religious beliefs and origin. Only courts and judges may decide on deprivation of this liberty, and judicial review is exercised on a two-instance basis. In turn, par. 72 regulates, inter alia, the secret of correspondence, radio, telegraph and telephone communication and the inviolability of the apartment, and in par. 73 established that ownership is inviolable. Par. 77 is a guarantee of the right to public express one's views through print, word and writing, but conditioned by legal liability. Par. 79, regulates the freedom of non-armed assemblies, which may take place with the participation of the police at the same time and the prohibition of their organization may only be due to security reasons for social peace. The above-mentioned provisions constituted the main legal basis for a neo-militant democracy that seeks to protect democracy from its enemies, but they proved to be insufficient. There was still a lack of regulation that would actually justify the actions taken by the government during the pandemic.

Emergency measures and new law

Due to the increasingly difficult epidemiological situation, "the state of natural disaster" or "the state of natural disaster" was introduced in successive Member States, which were to provide a specific legal basis for introducing further restrictions and requiring citizens to comply with them in order to prevent further spread of the virus. However, the Constitution of Denmark of June 5, 1953 [8] did not provide for such solutions. Therefore, it was decided to take immediate action to regulate this matter. Thus on 12 March 2020, the Danish Parliament adopted an amendment to the Danish Epidemic Act authorizing the Minister for Health to take measures to combat the COVID-19 epidemic in Denmark [9,10]. The introduced legal act allowed, inter alia, closing shops and restaurants, regulated public transport, but also related to gatherings. There has also been a proposal from the government to allow police to inspect the homes of people suspected of spreading the virus, even without court approval. This solution would be in contradiction primarily with par. 72 of the Constitution, which was mentioned earlier. However, it was rejected in the Folketing [11].

In the following weeks, further amendments were passed, introducing more restrictions. In this way, in the next months, inter alia, prohibition or limitation of access to facilities to which there is general public access [9], the possibility of imposing determining a certain number of people who can stay in the indicated facilities, e.g. depending on its size, the possibility of prohibiting the organization of and participation in large assemblies, arrangements, events, concerts, parties etc. [9], and even a total ban on gatherings in closed areas or in specific places, such as beaches, stations, airports, where the risk of infection has been assessed as very high [9], the government also obtained the power to initiate compulsory treatment, the possibility of prohibiting access to means of transport [9], or the prohibition of disembarkation from cruise ships and other ships which are not in regular service by more than 100 passengers in all Danish ports without special

permission from the authorities [9], subsequent changes also concerned the obligation to provide information by enterprises and carriers [9], and even the possibility for the government to issue specific rules for securing the supply of goods [9], The Minister of Health was empowered to assess the necessity to issue certain provisions, and par. 27 on compensation for enterprises, and instead the government announced special schemes and aid threshold [9], subsequent amendments have also significantly expanded the access of police and authorities to coercive measures, without a court order [9]. These are just the main and one of the most important limitations resulting from subsequent amendments, introduced solutions and threads. The introduced restrictions were to be introduced in proportion to the threat and were aimed at completely eliminating or limiting the spread of the coronavirus. However, on the basis of the introduced restrictions, it can be noticed that the measures that were initially really directed at the invisible enemy, in subsequent changes led to the creation of the enemy in the form of citizens. Restrictions have become characteristics measures for neo-militant democracy, which have led to the restriction of citizens' rights and freedoms, including one of the most important democratic rights, i.e. freedom of assembly.

Conclusions

The pandemic has become another crisis that accelerated the process of abusing a neo-militant democracy. The introduced restrictions are not always selected adequately to the threat that has emerged. Even in the case of introducing "the state of natural disaster" or "the state of emergency", many regulations raise numerous doubts. A good example is the extension of the competences of the security services, which may lead to the abuse of force and illegal solutions against citizens. The restrictions are also to a large extent a challenge to political rights guaranteed by national and international legal regulations.

During the first and subsequent waves of the pandemic, restrictions characteristic of neo-militant democracies were introduced on a much larger scale than in the case of previous crises, i.e. financial and the so-called refugee crisis. The actions taken have therefore contributed to democratic backsliding and it is possible that in the long run, some of the European Union member states may even move from neo-militant democracy to quasi-militant democracy. In the case of Denmark, we can also talk about neo-militant democracy. Mainly due to the fact that some of the restrictions are periodic and withdrawn, but the idea of the amendment, which the parliament did not agree to, concerning the violation of one of the most important articles of the Constitution, i.e. allow police to inspect the homes of people suspected of spreading the virus, even without court approval is a potential shift towards a quasi-militant democracy.

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Резмер-Плотка К. Зловживання нео-мілітарною демократією або становлення квазі-мілітарної демократії: кейс Данії під час кризи

У державах-членах Європейського Союзу відчувається процес регулярного обмеження громадянських прав і свобод, який, на думку дослідників, відбувається після серйозної фінансової кризи 2008 року. Запроваджені обмеження можуть свідчити про процес становлення нео-мілітарної демократії, про який вперше згадав Карл Левенштейн у своїх працях. Наступні кризи, зокрема так звана криза біженців та пандемія коронавірусу, прискорили цей процес. У результаті держави ЄС почали шукати можливості обґрунтування введених обмежень, у тому числі з використанням рішень, передбачених національними правовими системами. У більшості випадків стали використовуватися «надзвичайний стан» або «стан стихійного лиха», що дозволяють істотно обмежити свободу громадян з метою їх безпеки та збереження громадського порядку. У Данії, однак, така форма запобігання ніколи не використовувалась, і внаслідок цього було розпочато роботу над змінами в законодавстві, що дозволили б використовувати рішення, що роками існували в національному законодавстві інших держав-членів ЄС. Метою статті є пошук відповіді на питання щодо визначення місця Данії на континуумі, що знаходиться між двома процесами: зловживання нео-мілітарною демократією та перетворення у квазі-мілітарну демократію для виправдання введених обмежень перед прийняттям нового правового рішення. Аналіз спирається на метод якісного аналізу джерел. Основні джерела, які було піддано аналізу – Конституція Данії та внесені зміни до Закону Данії про епідемії.

Це дослідження покликане поглибити розуміння нових мілітарних демократій, що обмежують права і свободи громадян методами правового регулювання. Дослідження також дає змогу оновити та суттєво розширити вживану раніше концепцію мілітарної демократії, що спочатку стосувалась лише Веймарської республіки.

Основний аргумент полягає в тому, що використання «надзвичайного стану» або «стану стихійного лиха» в Данії може призвести до суттєвого обмеження прав і свобод громадян, що, з одного боку, спрямоване на протидію серйозній загрозі пандемії коронавірусу, а, з іншого боку, є рішенням, що сприяє демократичному відступу. Це також сприяє збільшенню повноважень урядів і є правовим інструментом для впровадження недемократичних рішень.

Ключові слова: Данія, пандемія, обмеження, нео-мілітарна демократія, громадянські права.