



## The Sovereignty of the Visegrád Group Political Nations in 2008–2019: From Abusing Neo-Militant Democracy to Quasi-Militant Democracy

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**Abstract.** The article, by drawing on the theory of militant democracy and qualitative source analysis, focuses on the relation between the national law and militant democracy in the Visegrád Group countries (Hungary, the Czech Republic, Slovakia, and Poland) and the impact that it had on the sovereignty of these political nations in 2008–2019. It is essential to understand what protective measures were used and which of them were targeted at protecting democratic social structures. The study shows the presence of neo- and quasi-militant democracy measures in the national legislation of each V4 country. The neo-militant measures were outdated, since they concerned protection from ideas and political groups that were not widely supported in Europe. The regulations enforced did not protect the political nations from the rule of anti-democratic forces. They were insensitive to new populist groups and hybrid interferences. Quasi-militant measures were used to shape the political nations in a discretionary way and undermine their sovereignty. On the one hand, anti-democratic actors were considered enemies of democracy. On the other hand, the regulations in force led to the exclusion of democratic forces from the political scene. In other words, anyone could become an enemy of democracy if their views and actions did not fit in with the ruling parties' political agendas or were clearly against their interests.

**Keywords:** neo-militant democracy, quasi-militant democracy contentious politics, Hungary, the Czech Republic, Slovakia, Poland, Visegrád Group.

### Vyšegrado politinių tautų suverenumas 2008–2019 m: nuo piktnaudžiavimo neokaringąja demokratija iki pusiau karingosios demokratijos

**Santrauka.** Straipsnyje, remiantis karingosios demokratijos teorija ir kokybine šaltinių analize, siekiama išsiaiškinti, koks Vyšegrado šalyse (Vengrija, Čekija, Slovakija, Lenkija) buvo nacionalinės teisės ir neokaringosios demokratijos santykis ir kaip jis paveikė šių politinių tautų suverenumą 2008–2019 metais. Svarbu suprasti, kokių apsaugos priemonių buvo imtasi ir kuriomis iš jų buvo siekiama apsaugoti demokratines socialines struktūras Višegrado šalyse. Tyrimo rezultatai atskleidė, kad kiekvienos iš Višegrado šalių nacionalinėje teisėje tiriamuoju laikotarpiu buvo numatytos neokaringosios ir pusiau karingosios demokratijos priemonės. Neokaringosios priemonės jau

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buvo nebeaktualios, nes buvo nukreiptos į apsaugą nuo idėjų ir politinių grupių, kurios tiek Vyšegrado šalyse, tiek visoje Europoje nebuvo plačiai remiamos. Tiriamuoju laikotarpiu veikiančios reglamentai Vyšegrado šalyse nepadėjo jų politinėms tautoms apsisaugoti nuo antidemokratiškų jėgų išsigalėjimo, nepadėjo veiksmingai neutralizuoti naujų populistinių grupių ir hibridinės intervencijos. Pusiau karingųjų priemonių taikymas formuojant politinę tautą buvo paliktas savieigai, ir tai pakenkė Višegrado šalių suverenumui. Viena vertus, antidemokratiškai veikiančios subjektai buvo laikomi demokratijos priešais. Kita vertus, taikant veikiančius reglamentus, iš politinės sferos buvo pašalintos demokratinės jėgos. Kitaip tariant, kiekvienas, kurio pažiūros ir veiksmai nesutapo su valdančiųjų partijų politine darbotarke arba aiškiai prieštaravo jų interesams, galėjo tapti demokratijos priešu.

**Reikšminiai žodžiai:** neokaringoji demokratija, pusiau karingoji demokratija, ginčytina politika, Vengrija, Čekija, Slovakija, Lenkija, Vyšegrado grupė.

## Introduction

Political scientists, philosophers and legal scholars direct their scholarly attention to the possibilities of protecting and consolidating democracy by drawing the limits of political participation under the rule of militant democracy. This self-defensive mechanism involves restricting the fundamental rights of those who seek to undermine or overthrow democracy.<sup>1</sup> Karl Loewenstein created the theoretical category of militant democracy in the 1930s to account for why the German democracy had become vulnerable to subversive movements.<sup>2</sup> Loewenstein argued that the lack of militancy of the Weimar Republic 'stands out in the post-war predicament of democracy both as an illustration and as a warning.'<sup>3</sup> He pointed to democratic fundamentalism in state structures as a factor weakening democracy. Thus, Loewenstein treated the absolute and unlimited observance of democratic rights and freedoms as generating a field for their abuse. By standing for unrestricted speech, press, assembly, and association, democratic fundamentalism allows creating and strengthening of not only democratic but also openly anti-democratic groups.<sup>4</sup> At the same time, the principle of militant democracy rests on the assumption that anti-democratic actors should not be allowed to exercise democratic freedoms. By drawing upon these arguments, Loewenstein proposed anti-democratic legislative measures against enemies of democracy in the form of restrictions imposed on democratic liberties.

In the 21st century, it is still necessary to reflect on the implementation of the principle of militant democracy, the susceptibility of democracy to subversive forces, the effectiveness of regulations in the limiting of political participation, and the limits of democratic fundamentalism.<sup>5</sup> The revival of the category of militant democracy in social sciences and humanities is a result of the parallels, noticed by researchers, between interwar fascism and contemporary populism.<sup>6</sup> Despite these apparent similarities, the modern threats against which democracy defends itself have their own specificity. In particular,

<sup>1</sup> See Wagrandl, U. Transnational Militant Democracy. *Global Constitutionalism*, 2018, Vol. 7, No. 2, p. 145, <https://doi.org/10.1017/S2045381718000084>.

<sup>2</sup> Loewenstein, K. Militant Democracy and Fundamental Rights, II. *The American Political Science Review*, 1937, Vol. 31, No. 4, p. 651, <https://doi.org/10.2307/1948103>.

<sup>3</sup> Loewenstein, K. Militant Democracy and Fundamental Rights, I. *The American Political Science Review*, 1937, Vol. 31, No. 3, p. 426, <https://doi.org/10.2307/1948164>.

<sup>4</sup> Loewenstein, K. *Militant Democracy and Fundamental Rights*, I, p. 430.

<sup>5</sup> See, e.g., Osiewicz, P.; Skrzypek, M. Is Spain Becoming a Militant Democracy? Empirical Evidence from Freedom House Reports. *Aportes. Revista de Historia Contemporánea (Madrid, Ed. Actas)*, 2020, Vol. 35, No. 103, p. 7–33. Retrieved from <https://revistaaportes.com/index.php/aportes/article/view/526/296>; Rezmer-Plotka, K. Contentious Politics in Defense of Neo-Militant Democracy in Poland: The Rationale Behind Fighting a Quasi-Militant Democracy. *HAPSc Policy Briefs Series*, 2021, Vol. 2, No. 1, p. 24–29, <https://doi.org/10.12681/hapscpbs.27652>.

<sup>6</sup> See, e.g., Kaltwasser, C. R.; Taggart, P. Dealing with Populists in Government: A Framework for Analysis. *Democratisation*, 2016, Vol. 23, No. 2, p. 201–220, <https://doi.org/10.1080/13510347.2015.1058785>; Mietzner, M. Fighting Illiberalism with Illiberalism: Islamist Populism and Democratic Deconsolidation in Indonesia. *Pacific Affairs*, 2018, Vol. 91, No. 2, p. 261–282, <https://doi.org/10.5509/2018912261>.

political actors who destroy democracy from within are not overtly anti-democratic. Anti-democratic actors use democratic rhetoric based on references to democratic values. After legally assuming parliaments and governments, they maintain public support, develop anti-democratic political agendas, expand their own competencies and privileges, and decrease the quality of democracy with their political decisions, thus contributing to democratic backsliding.<sup>7</sup> Political structures established by such actors are called ‘new forms of authoritarian politics (...) that do not officially break with democracy and continue to hold more or less free and fair elections.’<sup>8</sup> Studies on new post-Loewentainian militant democracies, also called neo-militant democracies, require an explanation of the sources of susceptibility to this type of systemic transposition despite the common use of Loewenstein’s limitations.

This article focuses on relationships between militant democracy measures and the sovereignty of the political nations of the Visegrád Group (also called ‘European Quartet’, the ‘Visegrád Four’ or simply ‘V4’) from 2008 to 2019. It covers the positioning of national legislation to neo-militant democracy, designating enemies of democracy by traditional, Loewentainian, means of militant democracy, and the resulting impact of the legislation on the sovereignty of the political nations in the Visegrád Group countries. The latter accessed the European Union in 2004 after their close collaboration on establishing parliamentary democracy and respect for human rights. However, after these successful efforts, the V4 democracies began to be considered illiberal and acquired built-in but still weak and untested protective mechanisms.<sup>9</sup> Hungary turned out to be vulnerable to ‘Orbánism’, Poland suffered from conservative sentiments fuelled by xenophobia, the Czech Republic encountered Euroscepticism, and Slovakia faced a political crisis and confronted the necessity to search for new political elites.<sup>10</sup> These struggles resulted in democratic deviations in the electoral process, the increasing of political corruption, and the ideological radicalisation of political parties.<sup>11</sup> Therefore, the post-2008 challenges of the great economic and social crisis were both a serious challenge and a test for the V4 countries. They had just met the Copenhagen political criteria, i.e., their political structures were characterised by the presence of institutions guaranteeing stable democracy as well as the rule of law, and respect for human rights and the rights of minorities, and threats to their sustainability had already appeared.<sup>12</sup> Accordingly, the study addresses the following research questions: how did the Visegrád Group countries position their national legislation to neo-militant democracy from 2008 to 2019? How did it influence the sovereignty of the V4 political nations? It is essential to understand what protective measures were used and which of them were targeted at protecting democratic social structures and which were not.

The main argument is that neo- and quasi-militant democracy measures were present in the national legislation of each V4 country. Neo-militant measures were outdated because they concerned protection from ideas and political groups that were not widely supported in Europe. They considered Nazi, fascist, communist, and violent political subjects as enemies of democracy. At the same time, the applied regulations did not protect the political nations from the rule of active anti-democratic forces. They

<sup>7</sup> See Skrzypek, M. Democratic Backsliding in Poland on Example Draft Amendments in Electoral Code During the COVID-19 Pandemic. *Polish Political Science Yearbook*, 2021, Vol. 50, No. 2, p. 37–50, <https://doi.org/10.15804/ppsy202105>.

<sup>8</sup> Müller, J.-W. Protecting Popular Self-Government from the People? New Normative Perspectives on Militant Democracy. *Annual Review of Political Science*, 2016, Vol. 19, No. 1, p. 251, <https://doi.org/10.1146/annurev-polisci-043014-124054>.

<sup>9</sup> See Bakke, E.; Sitter, N. The EU’s Enfants Terribles: Democratic Backsliding in Central Europe since 2010. *Perspectives on Politics*, 2020, Online First View, p. 1–16, <https://doi.org/10.1017/S1537592720001292>. Cf. Steuer, M. Militant Democracy on the Rise: Consequences of Legal Restrictions on Extreme Speech in the Czech Republic, Slovakia, and Hungary. *Review of Central and East European Law*, 2019, Vol. 44, No. 2, p. 162–201, <https://doi.org/10.1163/15730352-04402003>.

<sup>10</sup> See Haydanka, Y. Trajectories of Democratic Transits in the Visegrad Group: Between Theory and Practice. *Europolity-Continuity and Change in European Governance*, 2021, Vol. 15, No. 1, p. 177. Retrieved from <http://europolity.eu/wp-content/uploads/2021/10/Vol-15-no1-8.-Haydanka.pdf>. Also, see Nič, M. The Visegrád Group in the EU: 2016 as a Turning-Point? *European View*, 2016, Vol. 15, No. 2, p. 281–290, <https://doi.org/10.1007/s12290-016-0422-6>.

<sup>11</sup> See, e.g., Haydanka, Y. *Trajectories of Democratic Transits in the Visegrad Group: Between Theory and Practice*, p. 177.

<sup>12</sup> See Holesch, A.; Kyriazi, A. Democratic Backsliding in the European Union: The Role of the Hungarian-Polish Coalition. *East European Politics*, 2022, Vol. 38, No. 1, p. 1–20, <https://doi.org/10.1080/21599165.2020.1865319>.

were insensitive to new populist groups and actors interfering in state politics that were real enemies of democracy. Quasi-militant measures were used to shape the political nations in a discretionary way and undermine their sovereignty. On the one hand, anti-democratic actors were considered enemies of democracy. On the other hand, the regulations in force lead to the exclusion of democratic forces from the political scene. In other words, anyone could become an enemy of democracy if their views and actions did not fit in with the ruling parties' political agendas or were clearly against their interests.

Current studies account for how and why the V4 political regimes transformed over time. They focus on the specificity of democratic configuration, development of post-communist countries,<sup>13</sup> and sharing the experience of democratic transition.<sup>14</sup> Researchers trace the trajectories of democratisation and de-democratisation (also called democratic backsliding) and point out the illiberal turn.<sup>15</sup> The most recent research indicates that populists attempt to realise an anti-pluralist reform agenda, which results in ongoing democratic backsliding.<sup>16</sup> This article contributes empirically to the research field by identifying and evaluating self-defensive mechanisms of democracies. At the same time, it draws scholarly attention to the potential influence of the use, abuse, and misuse of these precautions on the sovereignty of the political nations.

The article is organised into three sections. The first section introduces a theoretical framework for the analysis. It differentiates between neo- and quasi-militant democracy in terms of the consequences of implementing Loewensteinian militant democracy restrictions. The difference between 'quasi-' and 'neo-' forms lies in the impact the regulations have on the sovereignty of political nations. The second section presents a background and methodology for the study. It accounts for time caesuras of the analysis, case selection, research methods, techniques, tools, and source selection. The third section addresses the research questions as regards each state. It reveals which restrictions of democratic liberties were included in the national legislation of V4 countries during the post-2008 political crisis, reflects on the characteristics of those anti-democratic measures, and evaluates their impact on the sovereignty of the V4 political nations. The last section draws conclusions from comparing efforts of these political nations to protect and weaken democracies and their social structures under siege.

## 1. Theoretical framework: militant democracy and the sovereignty of political nations

This part of the article establishes a theoretical framework for the analysis. It defines relationships between the contemporary forms of militant democracy, i.e., neo- and quasi-militant democracies, and the sovereignty of political nations. Then it presents anti-democratic measures used by neo- and quasi-militant democracies to influence the sovereignty of political nations.

A neo-militant democracy is a self-defence rule implemented in a democratic system. The political subjects that can legally enforce the law are government, parliament, and judiciary.<sup>17</sup> They restrict individual democratic liberties to protect the democratic order against those considered the enemies of democracy.<sup>18</sup> At the same time, in a neo-militant democracy, these anti-democratic measures serve to

<sup>13</sup> See Norkus, Z. *On Baltic Slovenia and Adriatic Lithuania: A Qualitative Comparative Analysis of Patterns in Post-Communist Transformation*. Vilnius / Budapest: Apostrofa / CEU Press, 2012.

<sup>14</sup> See Lexmann, M. A New Paradigm for Sharing Transition Experience Within the EU's Contested Democracy Support? *International Issues & Slovak Foreign Policy Affairs*, 2016, Vol. 25, No. 3–4, p. 3–26. Retrieved from <https://www.jstor.org/stable/26591966>.

<sup>15</sup> See Bustikova, L.; Guasti, P. The Illiberal Turn or Swerve in Central Europe?. *Politics and Governance*, 2017, Vol. 5, No. 4, p. 166–176, <https://doi.org/10.17645/pag.v5i4.1156>.

<sup>16</sup> See Bauer, M. W.; Becker, S. Democratic Backsliding, Populism, and Public Administration. *Perspectives on Public Management and Governance*, 2020, Vol. 3, No. 1, p. 19–31, <https://doi.org/10.1093/ppmgov/gvz026>.

<sup>17</sup> See Brinkmann, G. Militant Democracy and Radicals in the West German Civil Service. *The Modern Law Review*, 1983, Vol. 46, No. 5, p. 586. Retrieved from <https://www.jstor.org/stable/1095888>

<sup>18</sup> Cf. Pedahzur, A.; Weinberg, L. Modern European Democracy and Its Enemies: The Threat of the Extreme Right. *Totalitarian Movements and Political Religions*, 2001, Vol. 2, No. 1, p. 52–72, <https://doi.org/10.1080/714005438>.

defend, preserve or expand the sovereignty of political nations. A political nation in a democratic regime functions as a set of equals who are part of the society and can freely and independently decide on the significant matters of the state. The sovereignty of a political nation is its ability to make final political decisions. This ability can gradually change over time. A political nation as a sovereign takes on the political role of the supreme ruler and, at the same time, is not under anyone else's authority.<sup>19</sup>

Nevertheless, these legally implemented anti-democratic measures can also be abused and used to the detriment of democracy, which is characteristic of a quasi-militant democracy. When such rules are implemented in democracies, they begin losing their essentiality and drifting towards autocracies. Accordingly, a quasi-militant democracy emerges when political actors impose Loewensteinian restrictions to challenge, undermine, and eliminate the sovereignty of political nations. In such a situation, in contrast to a neo-militant democracy, Loewensteinian means do not constitute a self-defence mechanism of democracy. Instead, they become a weapon in the hands of the enemies of democracy that seek to weaken or overthrow it. Anti-democrats take advantage of Loewensteinian means to expand the scope of their own sovereignty and pursue their political agenda without limitations. It comes at the expense of the sovereignty of political nations. Clashes between democratic and anti-democratic actors are constantly negotiating levels of their political sovereignty. In order to differentiate between aims and consequences of anti-democratic restrictions of civil liberties by democrats and anti-democrats, the term 'quasi-militant democracy' is used.<sup>20</sup>

Loewensteinian militant democracy measures include restrictions of democratic liberties of free speech, press, association, assembly, and organisation in political parties.<sup>21</sup> These restrictions are significant for the study since they are the exercise of the right to target common enemies.<sup>22</sup> The inclusion of the category of the enemy of democracy into the theoretical framework for studying neo- and quasi-militant democracies is necessary for the identification and evaluation of attempts to shape the sovereignty of political nations.

The influence can take two general forms. The first one is peculiar to a neo-militant democracy and beneficial to the sovereignty of a political nation. Although a political nation is inclusive, the extent of inclusiveness is limited. Those who put the political nation in jeopardy are enemies of democracy irrespective of their political attitudes towards the ruling. The second type of influence is characteristic of a quasi-militant democracy and harmful to the sovereignty of a political nation. The national legislation assumes that the enemies of democracy are members of a political nation and excludes them from political decision-making or deprives them of possibilities to deliberate. Accordingly, some people are deprived of their rights to political participation not because they threaten democracy or its social structure.<sup>23</sup> Unless excluded, they would be in opposition to the political agenda of the ruling subjects or even endanger their political position.

<sup>19</sup> See more Bäcker, R. Kategoria narodu politycznego. In: *Polska i Europa w perspektywie politologicznej. Księga jubileuszowa dedykowana profesorowi Konstantemu Adamowi Wojtaszczykowski z okazji 45-lecia pracy akademickiej. Tom II* / Eds. J. Wojnicki, J. Miecznikowska, Ł. Zamęcki, Warszawa: Oficyna Wydawnicza ASPRA-JR, 2020, s. 35–46.

<sup>20</sup> Cf. Rak, J.; Bäcker, R. Theorising Struggles Between Neo-Militant Democracies and Their Enemies. In: *Neo-Militant Democracies in Post-Communist Member States of the European Union* / Eds. J. Rak, R. Bäcker. London and New York: Routledge, 2022, p. 7, <https://doi.org/10.4324/9781003245162>.

<sup>21</sup> Cf. Mareš, M. Czech Militant Democracy in Action: Dissolution of the Workers' Party and the Wider Context of This Act. *East European Politics and Societies*, 2012, Vol. 26, No. 1, p. 36, <https://doi.org/10.1177/0888325411408070>; Barabash, Y.; Berchenko, H. Freedom of Speech under Militant Democracy: The History of Struggle against Separatism and Communism in Ukraine. *Baltic Journal of European Studies*, 2019, Vol. 9, No. 3, p. 16, <https://doi.org/10.1515/bjes-2019-0019>; Casal Bértoa, F.; Van Biezen, I. Party Regulation and Party Politics in Post-Communist Europe. *East European Politics*, 2014, Vol. 30, No. 3, p. 303, <https://doi.org/10.1080/21599165.2014.938738>.

<sup>22</sup> See Khramova, T.; Troitskaya, A. Constitutional Defence Against the "Enemies" of Democracy: Theoretical Considerations and the Russian Experience. *Russian Law Journal*, 2020, Vol. 8, No. 2, p. 29, <https://doi.org/10.17589/2309-8678-2020-8-2-28-48>.

<sup>23</sup> Cf. Cavanaugh, K.; Hughes, E. Rethinking What is Necessary in a Democratic Society: Militant Democracy and the Turkish State. *Human Rights Quarterly*, 2016, Vol. 38, No. 3, p. 625, <https://doi.org/10.1353/hrq.2016.0045>.

To sum up, the difference between a neo-militant democracy and a quasi-militant democracy lies in how the restrictions of democratic liberties impact the sovereignty of a political nation. Whereas the former defends, preserves or expands this sovereignty, the latter challenges, undermines or eliminates it. In a neo-militant democracy, democratic actors avoid extending their area of power competencies at the expense of a political nation's area of power competencies. In turn, in a quasi-militant democracy, anti-democratic actors develop their power competencies and reduce the political nation's power competencies.

Unlike other theoretical frameworks used to investigate anti-democratic restrictions, the dyad of neo- and quasi-militant democracies allows a researcher to delve analytically into the reasons for the implementation of anti-democratic regulations. In contrast to militant democracy, these two categories are useful for differentiating between the beneficial and harmful impact of the limitations on the sovereignty of political nations. This theoretical approach enables a researcher to explain why applying the same legal measures may have different quality consequences for political nations.

## 2. Background and methodological assumptions

This part of the article justifies methodological assumptions for the study. It commences with specifying the research subject and accounting for its boundaries. The analysis of the influence of anti-democratic restrictions on the sovereignty of the V4 political nations covers the period from the end of the global financial crisis of 2007–2008 to the outbreak of the worldwide coronavirus pandemic at the beginning of 2020. The study focuses on neo- and quasi-militant democracy rules rather than multi-level democratic backsliding processes. The engagement in the theory of militant democracy is critical to differentiate between the overt and hidden influence of the restrictions of civil liberties on the sovereignty of political nations. Moreover, by distinguishing between the actual and implied influence, the theory allows a researcher to comprehend the nature of legal means used by democratic and anti-democratic actors and address the research questions.

It was a data-informed methodological decision to examine the period from 2008 to 2019. It is noteworthy that European societies were hit by the hardest adverse social and economic crisis-generated effects since the Great Depression. The ruling elites were blamed for lowering living standards. The imposition of austerity policies by governments and the European Union has increased social discontent because of the loss of income and decreased social security. Europe was flooded with a great wave of political mobilisation against politicians and the European troika, the decision group constituted by the European Commission (EC), the European Central Bank (ECB), and the International Monetary Fund (IMF), associated with austerity programmes. Austerity policies were beneficial to creditors, asset holders, and real estate owners but harmful to ordinary people dependent on public services, social transfer payments as well as those employed in the public sector.<sup>24</sup> The establishment and institutionalisation of a common austerity agenda triggered the emergence and popularity of populist movements and parties. Nevertheless, the left-wing anti-austerity movements rarely had sufficient resources to institutionalise themselves. As a result of the inevitable and crisis-induced exchange of political elites, the right-wing parties took the floor. The electorate of the latter comprised not only the sizeable upper-middle class but also rural residents and blue collars, who lost their income as a consequence of modernisation, globalisation, and austerity policies.<sup>25</sup> With the start of the rule by the right-wing parties, the democratic backsliding phase on the trajectory of European democracies began.<sup>26</sup> Therefore, in the Loewensteinian sense, there was a vital need to protect democracies from their enemies.

<sup>24</sup> See Bieling, H.-J. Austerity-Induced Populism: The Rise and Transformation of the New Right. In: *The Changing Politics and Policy of Austerity* / Eds. S. McBride, B. Evans, D. Plehve. Bristol: Bristol University Press and Policy Press, 2021, p. 213–229.

<sup>25</sup> *Ibidem*.

<sup>26</sup> See Rezmer-Płotka, K. The Effects of Crises in the European Union as a Manifestation of the Militant Democracy Rule Implementation. *Przegląd Prawa Konstytucyjnego*, 2020, Vol. 6, No. 58, p. 619, <https://doi.org/10.15804/ppk.2020.06.50>.

Nevertheless, militant democracy measures were unused, misused, outdated or turned out to be inefficient because they allowed political groups that were openly or covertly anti-democratic to enter and gain a majority in the parliaments and governments of European countries.<sup>27</sup> In addition, the ruling elites introduced new measures of protection against alleged or actual enemies of democracy under, e.g., anti-extremist and anti-terrorist laws.<sup>28</sup>

The coronavirus pandemic opened a new phase on the trajectory of European democracies.<sup>29</sup> New restrictions placed on civil rights and freedoms were discursively legitimised by the need to save health and life.<sup>30</sup> Although some of the regulations were in line with the goals characteristic of a neo-militant democracy, the quasi-militant democratic goals of others were to expand the power competencies of the rulers.<sup>31</sup> The dissimilarity and specificity of this new phase require a separate analysis, including a comparative one, which is beyond the scope of this paper. In addition, the COVID-19-driven phase is ongoing and thus still worth observing before formulating final conclusions.

The study concerns the V4 countries. The Visegrád Group is a regional form of cooperation between four Central European countries: Poland, the Czech Republic, Slovakia, and Hungary. The selection of cases results from the attempt to compare states that have social and political structures homogenous in terms of historical experience with European integration and the rule of law. It will allow for empirical generalisation of the conclusions obtained and theorisation. The V4 aims to deepen cooperation within European integration between its members. The initial goal of its establishment was precisely to support each other in the efforts to join the structures of the EU, which took place in 2004. The emphasis was placed on building parliamentary democracy and respect for human rights. The post-2008 economic and social crisis challenges were an uneasy and vital test for the states that had just met the Copenhagen political criteria.

To collect data on the positioning of national legislation to a neo-militant democracy, designating enemies of democracy with traditional militant democracy measures, and the resulting impact on the sovereignty of political nations, I use a qualitative source analysis method. The corpus of sources includes the national legislation of the V4 countries. This choice of sources is theory-driven since, through national legislation, the ruling subjects impose militant democracy measures, define who is the enemy of democracy, and shape the sovereignty of political nations. The analysis includes legal acts concerning the restrictions of democratic liberties of free speech, press, association, assembly, and organisation in political parties, which are Loewensteinian militant democracy measures.

### 3. Research results: negotiating the sovereignty of the V4 political nations

This section tackles the research questions of how the V4 countries positioned their national legislation to neo-militant democracy from 2008 to 2019 and how it influenced the sovereignty of the political nations. The analysis shows that the V4 countries restricted democratic liberties of free speech, the press, association, assembly, and organisation in political parties in the period under scrutiny. They also strengthened or changed the limitations over time. These restrictions had the purpose to shape the sovereignty of the political nations. Their imposition was an expression of the current fears of the ruling subjects. While some defined enemies to defend this sovereignty, others sought to attack and limit it by

<sup>27</sup> See Skrzypek, M. The Banning of Extremist Political Parties as a Measures of Neo-Militant Democracy: The Experience of Post-Communist States. *HAPSc Policy Briefs Series*, 2020, Vol. 1, No. 2, p. 67–73, <https://doi.org/10.12681/hapscpbs.26450>.

<sup>28</sup> See Rezmer-Plotka, K. Policy on Public Assemblies in Times of Crisis: Recommendations Concerning the Strategy of Militant Democracy. *HAPSc Policy Briefs Series*, 2020, Vol. 1, No. 2, p. 201–207, <https://doi.org/10.12681/hapscpbs.26459>.

<sup>29</sup> Cf. Steuer, M. Militant Democracy and COVID-19: Protecting the Regime, Protecting Rights? *Hong Kong Journal of Law and Public Affairs*, 2020, Vol. 2, p. 131–145.

<sup>30</sup> Cf. Urbanovics, A; Sasvári, P; Teleki, B. Evaluation of the COVID-19 Regulations in the Visegrad Group. *Transforming Government: People, Process and Policy*, 2021, Vol. 15, No. 4, p. 645–657, <https://doi.org/10.1108/TG-08-2020-0228>.

<sup>31</sup> See, e.g., Rak, J. Self-Defense Mechanisms of Democracy during the Crisis: The Baltic States in Comparative Perspective. *HAPSc Policy Briefs Series*, 2021, Vol. 2, No. 1, p. 18, <https://doi.org/10.12681/hapscpbs.27647>.

targeting anti-democratic restrictions at democratic actors. The theoretical framework of neo- and quasi-militant democracy is useful to examine this difference in those rules included in national legislation.

### 3. 1. Restrictions of the freedoms of speech and press

The Constitution of the Republic of Poland ensures the freedoms of speech and press.<sup>32</sup> However, the right to express opinions and acquire, and disseminate information is granted to everyone under several conditions.<sup>33</sup> Restrictions can be imposed only by law and, when necessary, in a democratic state to protect state security, public order, the environment, public health, morals or freedoms and rights of others. These limitations cannot violate the essence of freedoms and rights.<sup>34</sup> In addition, the externalisation of beliefs can be subject to statutory restrictions necessary to protect public security, order, health, public morality or the fundamental rights and freedoms of others.<sup>35</sup>

The Polish Criminal Code penalises public propagation of fascism or totalitarian system, incitement to hatred based on national, ethnic, racial, or religious differences by a fine or imprisonment.<sup>36</sup> Public insulting of the President,<sup>37</sup> a public official,<sup>38</sup> or anyone because of their national, ethnic, racial or religious affiliation is subject to imprisonment.<sup>39</sup>

In the Czech Republic, everyone has the right to express an opinion in speech, writing, the press, pictures or any other form.<sup>40</sup> Restrictions are applied through legal provisions with respect for fundamental rights and freedoms.<sup>41</sup> Accordingly, broadcasters cannot participate in broadcasting commercial communications containing discrimination of race, colour, language, beliefs, religion, political or other mentality, national or social origin, property, gender, disability, age, sexual orientation, national or ethnic origin.<sup>42</sup> Discrimination means an act, including omission, where one person is treated less favourably than another is, has been or would be treated in a comparable situation on the grounds of the discussed criteria.<sup>43</sup> Defamation of a nation, race, ethnicity, or other groups of persons,<sup>44</sup> inciting hatred of a group of people or limiting their rights and freedoms,<sup>45</sup> establishing, supporting, and promoting a movement aimed at abolishing human rights and freedoms<sup>46</sup> is punishable by imprisonment.

<sup>32</sup> *The Constitution of the Republic of Poland, Article 14, Paragraph 1.* Retrieved from <https://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm> [accessed 02/01/2022].

<sup>33</sup> *The Constitution of the Republic of Poland, Article 54, Paragraph 1.* Retrieved from <https://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm> [accessed 02.01.2022].

<sup>34</sup> *The Constitution of the Republic of Poland, Article 31, paragraph 3.* Retrieved from <https://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm> [accessed 02/01/2022].

<sup>35</sup> *Ustawa z dnia 17 maja 1989 r. o gwarancjach wolności sumienia i wyznania, Article 3.* Retrieved from <http://isip.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU19890290155> [accessed 02/01/2022].

<sup>36</sup> *Ustawa z dnia 6 czerwca 1997 r. – Kodeks karny, Article 256.* Retrieved from <http://prawo.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU19970880553> [accessed 03/01/2022].

<sup>37</sup> *Ustawa z dnia 6 czerwca 1997 r. – Kodeks karny, Article 135, Paragraph 2.* Retrieved from <http://prawo.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU19970880553> [accessed 03/01/2022].

<sup>38</sup> *Ustawa z dnia 6 czerwca 1997 r. – Kodeks karny, Article 226.* Retrieved from <http://prawo.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU19970880553> [accessed 03/01/2022].

<sup>39</sup> *Ustawa z dnia 6 czerwca 1997 r. – Kodeks karny, Article 257.* Retrieved from <http://prawo.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU19970880553> [accessed 03/01/2022].

<sup>40</sup> *The Charter of Fundamental Rights and Basic Freedoms, Article 17.* Retrieved from [https://www.usoud.cz/fileadmin/user\\_upload/ustavni\\_soud\\_www/Pravni\\_uprava/A/Listina\\_English\\_version.pdf](https://www.usoud.cz/fileadmin/user_upload/ustavni_soud_www/Pravni_uprava/A/Listina_English_version.pdf) [accessed 07/01/2022].

<sup>41</sup> *The Charter of Fundamental Rights and Basic Freedoms, Article 4.* Retrieved from [https://www.usoud.cz/fileadmin/user\\_upload/ustavni\\_soud\\_www/Pravni\\_uprava/A/Listina\\_English\\_version.pdf](https://www.usoud.cz/fileadmin/user_upload/ustavni_soud_www/Pravni_uprava/A/Listina_English_version.pdf) [accessed 07/01/2022].

<sup>42</sup> *Zákon o provozování rozhlasového a televizního vysílání a o změně dalších zákonů, Article 48, Paragraph 1.* Retrieved from <https://www.zakonyprolidi.cz/cs/2001-231?text=diskriminace> [accessed 06/02/2022].

<sup>43</sup> *Anti-Discrimination Act, Article 2, Paragraph 3.* Retrieved from [https://www.legislationline.org/download/id/4959/file/Czech\\_anti-discrimination\\_act198-2009\\_en.pdf](https://www.legislationline.org/download/id/4959/file/Czech_anti-discrimination_act198-2009_en.pdf) [accessed 08/01/2022].

<sup>44</sup> *Zákon trestní zákoník, Article 355.* Retrieved from <https://www.zakonyprolidi.cz/cs/2009-40?text=terorismus> [accessed 08/01/2022].

<sup>45</sup> *Zákon trestní zákoník, Article 366.* Retrieved from <https://www.zakonyprolidi.cz/cs/2009-40?text=terorismus> [accessed 08/01/2022].

<sup>46</sup> *Zákon trestní zákoník, Article 403.* Retrieved from <https://www.zakonyprolidi.cz/cs/2009-40?text=terorismus> [accessed: 08.01.2022].



Slovakia provides its citizens with freedoms of speech and press. Every person has the right to express their opinion in words, writing, print images or by using any other means.<sup>47</sup> Nevertheless, the defamation and hatred of a nation, race or belief; the supporting of propaganda or its spreading by expressing of own opinion for a group using violence; and the production, dissemination, and possession of extremist materials is forbidden and punishable by imprisonment.<sup>48</sup> In addition, freedom of expression may be restricted to the extent necessary to achieve the purpose of criminal proceedings with due respect for the dignity of individuals and their privacy and be decided by a judge for pre-trial proceedings.<sup>49</sup>

In Slovakia, no person shall be discriminated against or favoured because of race, nationality, ethnic and social origin, gender, sexual orientation, opinion, belief, religion, disability, age, marital or family status, colour, language, political affiliation or other conviction, property, lineage or any other status. Discrimination means direct and indirect discrimination, sexual harassment, and incitement to discrimination.<sup>50</sup>

These restrictions on the freedoms of speech and press were in force from 2008 to 2019 in Poland, the Czech Republic, and Slovakia. They were not subject to changes significant from the perspective of militant democracy.

Like in the other V4 countries, in Hungary, the freedoms of speech and press are guaranteed. However, the freedom of the press was restricted, on 9 November 2010, with Act CIV of 2010 on the Freedom of the Press and the Fundamental Rules of Media Content. It must be noted that the Act does not say that every expression which may be treated as harmful to the constitutional order, public morals, and dignity is illegal,<sup>51</sup> which may differ between the civil rights of supporters and opponents of the ruling party. Moreover, on 11 March 2013, Hungary limited freedom of speech in the name of combating hate speech. The Fourth Amendment to the Fundamental Law states that the right to freedom of expression shall not be exercised to violate the human dignity of other people, the dignity of the Hungarian nation or any national, ethnic, racial or religious community. The members of protected communities can enforce their claims in court against the expression of an opinion which is harmful to their community or invokes the violation of their human dignity.<sup>52</sup> Humiliation is prohibited as well.<sup>53</sup> On 28 June 2018, the Seventh Amendment to the Fundamental Law imposed further restrictions. Accordingly, exercising the right to freedom of expression shall not impair the private and family life and home of others.<sup>54</sup>

To sum up, in all the V4 states, national legislators considered freedoms and rights of others the legal grounds for restricting freedoms of speech and press. Moreover, in Poland, those democratic liberties could be limited to protect state security, public security, public order, environment, public health, morals, and morality. In turn, Hungarians defended, though in a discriminatory manner, constitutional order, public morals, human dignity, the dignity of the Hungarian nation, national, ethnic, racial, and religious communities, private and family life, and the home of others. Nevertheless, these defended values were

<sup>47</sup> *The Constitution of the Slovak Republic, Articles 24, 26*. Retrieved from [https://www.constituteproject.org/constitution/Slovakia\\_2014.pdf](https://www.constituteproject.org/constitution/Slovakia_2014.pdf) [accessed 10/01/2022].

<sup>48</sup> *Zákon 300/2005, Articles 421–424*. Retrieved from [https://www.legislationline.org/download/id/3763/file/Slovakia\\_CC\\_2005\\_en.pdf](https://www.legislationline.org/download/id/3763/file/Slovakia_CC_2005_en.pdf) [accessed 12/01/2022].

<sup>49</sup> *Code of Criminal Procedure of the Slovak Republic, Article 2*. Retrieved from [https://www.legislationline.org/download/id/8295/file/Slovakia\\_CPC\\_2005\\_excerpts\\_en.pdf](https://www.legislationline.org/download/id/8295/file/Slovakia_CPC_2005_excerpts_en.pdf) [accessed: 11/01/2022].

<sup>50</sup> *The Constitution of the Slovak Republic, Article 12, Paragraph 2*. Retrieved from [https://www.constituteproject.org/constitution/Slovakia\\_2014.pdf](https://www.constituteproject.org/constitution/Slovakia_2014.pdf) [accessed 10/01/2022]; *Act No. 365/2004 Coll, Articles 2, 2a*. Retrieved from [https://www.legislationline.org/download/id/6849/file/Slovakia\\_Antidiscrimination\\_Act\\_2004\\_am2008\\_en.pdf](https://www.legislationline.org/download/id/6849/file/Slovakia_Antidiscrimination_Act_2004_am2008_en.pdf) [accessed 11/01/2022].

<sup>51</sup> *Press and Media Act. Act CIV of 2010 on the Freedom of the Press and the Fundamental Rules of Media Content*. Retrieved from [http://nmhh.hu/dokumentum/162262/smtv\\_110803\\_en\\_final.pdf](http://nmhh.hu/dokumentum/162262/smtv_110803_en_final.pdf) [accessed 05/01/2022].

<sup>52</sup> *Fundamental Law of Hungary, Article 9*. Retrieved from [https://www.legislationline.org/download/id/8205/file/Hungary\\_Fundamental\\_Law\\_as\\_of\\_2019\\_en.pdf](https://www.legislationline.org/download/id/8205/file/Hungary_Fundamental_Law_as_of_2019_en.pdf) [accessed 05/01/2022].

<sup>53</sup> *Act C of 2012 on the Criminal Code, Articles 225, 226*. Retrieved from [https://www.legislationline.org/download/id/5619/file/Hungary\\_Criminal\\_Code\\_of\\_2012\\_en.pdf](https://www.legislationline.org/download/id/5619/file/Hungary_Criminal_Code_of_2012_en.pdf) [accessed: 08/02/2022].

<sup>54</sup> *Fundamental Law of Hungary, Article 6*. Retrieved from [https://www.legislationline.org/download/id/8205/file/Hungary\\_Fundamental\\_Law\\_as\\_of\\_2019\\_en.pdf](https://www.legislationline.org/download/id/8205/file/Hungary_Fundamental_Law_as_of_2019_en.pdf) [accessed 05/01/2022].

not defined, and their protection was shaped by the practice of the ruling camps.<sup>55</sup> The period of crisis caused by the pandemic has exposed the weaknesses of these legal solutions. They turned out to be quasi-militant democratic tools. The restrictions were abused to limit the freedom of the expression of opponents of the ruling parties. The references to the preservation or restoration of public order, morality, and health justified limitations in deliberation.<sup>56</sup> Thus, these restrictions served the ruling camps to limit the sovereignty of the political nations. They constituted an inclusive category of the enemy of the nation and, at the same time, facilitated the exclusion from the political scene of those individuals who did not support the ruling parties' political agenda.

Anti-discriminatory regulations were present in all the V4 countries. However, in the Czech Republic and Slovakia, the primary neo-militant democratic focus was on the individual protection of citizens. Czechs safeguarded non-discrimination against race, colour, language, beliefs, religion, political or other mentality, property, gender, sexual orientation, disability, age, social, national, and ethnic origin. Like Czechs, Slovaks stood for non-discrimination against race, colour, language, beliefs, religion, political affiliation or other conviction, opinion, property, gender, sexual orientation, disability, age, marital or family status, status, lineage, social, national, and ethnic, and origin.

Finally, Poles banned the propagation of fascism, totalitarian system, insulting public officials, and incitement to hatred because of national, ethnic, racial or religious differences. In turn, Czechs prohibited the supporting and promoting of groupings who seek to abolish human rights and freedoms. Slovaks did not allow supporting or spreading propaganda by expressing of own opinion for a group using violence. In addition, in Slovakia, the production, dissemination, and possession of extremist materials were forbidden. Nevertheless, as practice shows, the V4 political nations are not inclined to propagate or support fascist groups, those using violence as well as those openly seeking to limit democratic rights and freedoms and totalitarian regimes. At the same time, exclusion from the political scene of individuals with extreme views is not complete. It does not cover the propagation of openly or covertly anti-democratic populist movements that are particularly dangerous to democracy. Units supporting electoral meddlers are also beyond its reach. Hence, while these regulations should be treated as neo- and not quasi-militant democracy measures, their effectiveness may be limited.

### 3. 2. *Restrictions of freedom of assembly*

In Poland, the freedom of peaceful assembly and participation in such assemblies are guaranteed constitutionally. However, the constitution allows for its limitation.<sup>57</sup> According to the Law on Assemblies, freedom of assembly may be subject only to restrictions provided for by law and necessary to protect state security, public order, public health, morality, and the rights and freedoms of others.<sup>58</sup> When organisational issues are concerned, persons with full legal capacity, legal entities, other organisations, and groups of persons have the right to organise assemblies.<sup>59</sup> Assemblies held in public places must be

<sup>55</sup> See more Steuer, M. Militant Democracy on the Rise: Consequences of Legal Restrictions on Extreme Speech in the Czech Republic, Slovakia and Hungary. *Review of Central and East European Law*, 2019, Vol. 44, No. 2, p. 162–201, <https://doi.org/10.1163/15730352-04402003>; Rak, J. Partisan Journalists on Duty: Political Gnosticism as a Means of Legitimizing Quasi-Militant Democracy in Crisis-Driven Poland. *Siyasal: Journal of Political Sciences*, 2021, Vol. 30, No. 2, p. 207–224, <https://doi.org/10.26650/siyasal.2021.30.979419>.

<sup>56</sup> See more Rezmer-Plotka, K. *Contentious Politics in Defense of Neo-Militant Democracy in Poland: The Rationale Behind Fighting a Quasi-Militant Democracy*, p. 24–29; Steuer, M. *Militant Democracy and COVID-19: Protecting the Regime*, p. 131–145.

<sup>57</sup> *The Constitution of the Republic of Poland, Article 57*. Retrieved from <https://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm> [accessed 03/01/2022].

<sup>58</sup> *Act of 5 July 1990 Law on Assemblies, Article 2*. Retrieved from <https://www.legislationline.org/documents/action/popup/id/6733> [accessed 04/01/2022].

<sup>59</sup> *Act of 5 July 1990 Law on Assemblies, Article 3*. Retrieved from <https://www.legislationline.org/documents/action/popup/id/6733> [accessed 04/01/2022].

notified in advance to local authorities.<sup>60</sup> The latter may prohibit an assembly if its purpose is contrary to law, violates public order, the safety of others, or threatens property.<sup>61</sup>

In 2012, amendments to the Polish Law on Assemblies introduced further restrictions. Since then, a person with firearms, explosives or other dangerous items cannot attend public assemblies. The organiser of a public assembly is obliged to inform the commune authorities no later than three days before the planned date of the meeting and provide the details, purpose, date, and place of the meeting. In addition, two or more gatherings organised simultaneously in one area can be held if it is possible to separate them.<sup>62</sup>

The Polish Law on Assemblies was changed in 2015, and it replaced the previous law. Importantly, its provisions do not apply to assemblies organised by organs of public authority and held as part of the activities of churches and other religious associations.<sup>63</sup> It defines an assembly as a grouping of people in the open gathered to serve joint deliberations or express a joint position on public matters. A spontaneous assembly is an assembly that takes place in relation to the occurrence of a sudden and unpredictable event related to the public sphere. The organiser of an assembly shall notify the commune authorities no later than six days before the planned date of the meeting. A representative of the commune authorities can dissolve the latter if its course threatens the life or health of people, significant property sizes or violates the provisions of law.<sup>64</sup> After these changes, the regulations did not apply to gatherings held by the state authorities, including the ruling party, and the pandemic-induced ban imposed on assemblies did not apply to party activities.

In 2016, the Polish Law on Assemblies was amended. The relevant adjustment states that if notifications have been made of the intention to organise two or more assemblies which are to be organised even at least in the same place and time, in particular at a distance of fewer than 100 meters between the assemblies, and it is not possible to organise them in such a way that their course does not endanger life or health of people or property of considerable size, on priority in choosing the place and time of the assembly the order in which notifications are submitted decides.<sup>65</sup> These technical changes privileged public assemblies organised by the ruling party, including commemorating the Smolensk disaster. It was a result of the limiting of the possibility of organising a counterdemonstration by opponents of the ruling party. This new regulation led to a reduction in political pluralism and a symbolic takeover of public space. The possibility of manifesting in one place and time views contrary to those promoted by the ruling party was limited. Thus, the act hindered the possibility of deliberation.

The Constitution of the Czech Republic also guarantees the right to peaceful assembly. This right may be limited by law to protect a democratic society, the rights and freedoms of others, public order, health, morals, property or state security. However, an assembly shall not be made to rely on the grant of permission by a public administrative authority.<sup>66</sup>

Slovaks have the freedom of peaceful assembly constitutionally guaranteed.<sup>67</sup> The assembly does not

<sup>60</sup> *Act of 5 July 1990 Law on Assemblies, Article 6.* Retrieved from <https://www.legislationline.org/documents/action/popup/id/6733> [accessed 04/01/2022].

<sup>61</sup> *Act of 5 July 1990 Law on Assemblies, Article 8.* Retrieved from <https://www.legislationline.org/documents/action/popup/id/6733> [accessed 04/01/2022].

<sup>62</sup> *Act of 9 October 2012 on Amending the Law – Law on Assemblies, Articles 1–7.* Retrieved from [https://www.legislationline.org/download/id/4827/file/Law\\_amending\\_%20Law%20on%20assemblies1990\\_2012\\_en.pdf](https://www.legislationline.org/download/id/4827/file/Law_amending_%20Law%20on%20assemblies1990_2012_en.pdf) [accessed 03/01/2022].

<sup>63</sup> *Act of 24 July 2015 Law on Assemblies, Article 2.* Retrieved from <http://prawo.sejm.gov.pl/isap.nsf/download.xsp/WDU20150001485/U/D20151485Lj.pdf> [accessed 03/01/2022].

<sup>64</sup> *Act of 24 July 2015 Law on Assemblies.* Retrieved from <http://prawo.sejm.gov.pl/isap.nsf/download.xsp/WDU20150001485/U/D20151485Lj.pdf> [accessed 03/01/2022].

<sup>65</sup> *Act of 13 December 2016 on Amending the Law – Law on Assemblies, Article 1.* Retrieved from <http://prawo.sejm.gov.pl/isap.nsf/download.xsp/WDU20170000579/O/D20170579.pdf> [accessed 04/01/2022].

<sup>66</sup> *The Constitution of the Czech Republic, Article 19.* Retrieved from <http://public.psp.cz/en/docs/laws/constitution.html> [accessed 05/01/2022].

<sup>67</sup> *The Constitution of the Slovak Republic, Article 28.* Retrieved from [https://www.constituteproject.org/constitution/Slovakia\\_2014.pdf](https://www.constituteproject.org/constitution/Slovakia_2014.pdf) [accessed 10/01/2022].

require prior authorisation by a public authority. Notification of assemblies to the local municipality is required under the law. The municipality can prohibit the assembly if, among other things, it incites violence or hatred or may disturb the traffic. If the assembly deviates from the stated purpose, it may be dispersed.<sup>68</sup>

The Hungarian Constitution of 1949 recognised the right to peaceful assembly and ensured the free exercise thereof.<sup>69</sup> The Fundamental Law of Hungary maintained it.<sup>70</sup> Nevertheless, on 28 June 2018, the Seventh Amendment to the Fundamental Law imposed limitations. Accordingly, the exercising of the right to freedom of assembly shall not impair the private and family life and home of others.<sup>71</sup> Until 2 October 2018, the law enforcement service was obliged to disperse an assembly if participants were armed, carried weapons or if it was organised in an armed manner.<sup>72</sup> However, after 2 October 2018, the police guaranteed that public order was ensured and maintained. Under a suspicion that assembly participants are infringing the law, they can be expelled.<sup>73</sup>

In Poland, the Czech Republic, and Slovakia, freedom of assembly was limited to protect the rights and freedoms of others, a democratic society, public order, health, morals, property, public safety, and state security. Hungary emphasised the protection of public order and law. Furthermore, Slovaks prohibited assemblies that incite violence, and hatred, disturb traffic or have different goals than those declared. The values to be protected there are the same as the conditions for restricting freedoms of speech and press. The ruling camps may easily abuse them to pursue their own political goals by excluding selected individuals or groups from the political scene. Public assemblies often cause obstacles to traffic, which, however, in democratic societies, is treated as a cost inherent in the realisation of this freedom. The recognition of this side effect of the exercise of civil liberty as the basis for its restriction is treated as a measure of repression.<sup>74</sup> Accordingly, these restrictions undermined the sovereignty of the political nations, which is peculiar to a quasi-militant democracy.

In Hungary, in 2018, freedom of peaceful assembly was restricted to protect private and family life and home. However, it might have been a response to the increasingly used form of protest called *escrache*. The latter is a direct-action assembly that gained popularity during the post-2008 wave of anti-austerity mobilisation. It draws upon publicly condemning and harassing public figures. Protesters gather around public figures' homes, chant, sing protest songs, and shame them. Undoubtedly, *escrache* is burdensome for public figures and their neighbours. However, the history of contentious politics shows that European political nations have never been willing to abuse this form of protest. Instead, it is a manifestation of extreme powerlessness to the actions taken to the detriment of the majority of society. The introduction of this restriction in Hungary meant a weakening of the sovereignty of the political nation. Freedom of assembly was taken away from those who opposed the ruling politicians and resorted to a form of protest that was socially costly. It requires considerable organisational expenditure and confidence among a large group of people that it is necessary to resort to the ultimate means of crossing the border between the private and the public. Therefore, the limitation was a classic quasi-militant democratic means used to exclude the ruling party's opponents from the political scene.

<sup>68</sup> *Zákon o právu shromažďovacím, Aarticle 1*. Retrieved from <https://www.zakonyprolidi.cz/cs/1990-84> [accessed 11/01/2022].

<sup>69</sup> *Hungarian Constitution of 1949, Article 62*. Retrieved from <https://www2.ohchr.org/english/bodies/cescr/docs/E.C.12.HUN.3-Annex2.pdf> [accessed 05/01/2022].

<sup>70</sup> *Fundamental Law of Hungary, Article 8*. Retrieved from [https://www.legislationline.org/download/id/8205/file/Hungary\\_Fundamental\\_Law\\_as\\_of\\_2019\\_en.pdf](https://www.legislationline.org/download/id/8205/file/Hungary_Fundamental_Law_as_of_2019_en.pdf) [accessed 05/01/2022].

<sup>71</sup> *Fundamental Law of Hungary, Article 6*. Retrieved from [https://www.legislationline.org/download/id/8205/file/Hungary\\_Fundamental\\_Law\\_as\\_of\\_2019\\_en.pdf](https://www.legislationline.org/download/id/8205/file/Hungary_Fundamental_Law_as_of_2019_en.pdf) [accessed 05/01/2022].

<sup>72</sup> *Right to Freedom of Assembly Act. 1989. évi III. törvény a gyűlekezési jogról, Article 14*. Retrieved from [http://njt.hu/cgi\\_bin/njt\\_doc.cgi?docid=10540.245094#foot1](http://njt.hu/cgi_bin/njt_doc.cgi?docid=10540.245094#foot1) [accessed 05/01/2022].

<sup>73</sup> *Right to Freedom of Assembly Act. 2018. évi LV. törvény, Article 7*. Retrieved from [http://njt.hu/cgi\\_bin/njt\\_doc.cgi?docid=209700.357568](http://njt.hu/cgi_bin/njt_doc.cgi?docid=209700.357568) [accessed 05/01/2022].

<sup>74</sup> See Della Porta, D.; Tarrow, S. Interactive Diffusion: The Coevolution of Police and Protest Behavior with an Application to Transnational Contention. *Comparative Political Studies*, 2012, Vol. 45, No. 1, p. 138, <https://doi.org/10.1177/0010414011425665>.

Further restrictions imposed in 2018 in Hungary involved bans of assemblies whose participants were armed, carried weapons, and organised in an armed manner. Poland implemented a similar limitation in 2012. These were neo-militant democracy measures, which were to provide physical protection to the political nations participating in public assemblies, observers of contentious performances, and property.

### *3. 3. Restrictions of freedoms of association, creation and functioning of political parties*

The Polish Constitution ensures freedom for the creation and functioning of political parties and associations.<sup>75</sup> Political parties shall be founded on the principle of voluntariness and upon the equality of Polish citizens. Their purpose shall be to influence the formulation of the policy of Poland by democratic means. Political parties and other organisations which refer in their programmes to the totalitarian methods and practices of Nazism, fascism, and communism, as well as those whose programme or activity, presupposes or allows racial and national hatred, the use of violence to gain power or influence state policy or provides for the confidentiality of structures or membership are forbidden.<sup>76</sup>

In the Czech Republic, the right of association is constitutionally guaranteed. Everybody has the right to associate together with others in clubs, societies, and other associations. Czech citizens can establish political parties, political movements, and associations. However, this democratic liberty can be restricted when it is necessary in a democratic society to protect the state, public security, public order, the rights and freedoms of others, and prevent crime.<sup>77</sup>

In addition, Czechs ban political parties and political movements whose activity violates the constitution or other laws, seeking to remove the democratic foundations of the state, seize, and retain power in a way preventing other parties and movements from competing for power through constitutional means or to restrain equality of civil rights, having no democratic articles, no democratically elected bodies, having programmes or activities that endanger morality, public order, civil rights, and freedoms.<sup>78</sup>

The right to freely associate is guaranteed in Slovakia as well. Everyone has the right to associate with others in clubs, societies, or other associations. Like in the other V4 countries, citizens have the right to establish political parties, movements, and associations. Political parties, political movements, clubs, societies, and other associations are separated from the state. The freedom of association and the right to register political parties can be restricted if it is necessary to protect democratic society, state security, public order, the rights and freedoms of others, and prevent criminal acts.<sup>79</sup> Moreover, in Slovakia, everyone has the right to freely associate with others to protect their economic and social interests. Nevertheless, the activity of trade union organisations and the founding and operation of other associations protecting economic and social interests can be restricted by law if such a measure is necessary to protect

<sup>75</sup> *The Constitution of the Republic of Poland, Articles 11–12*. Retrieved from <https://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm> [accessed 04/01/2022]; *Act of 27 June 1997 on Political Parties*. Retrieved from <https://www.sejm.gov.pl/prawo/partiepol/kon12.htm> [accessed 04/01/2022].

<sup>76</sup> *The Constitution of the Republic of Poland, Article 13*. Retrieved from <https://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm> [accessed 04/01/2022].

<sup>77</sup> *The Constitution of the Czech Republic, Article 20*. Retrieved from <http://public.psp.cz/en/docs/laws/constitution.html> [accessed 05/01/2022].

<sup>78</sup> *Law 424/1991 on Association in Political Parties and Political Movements, Article 4*. Retrieved from [https://www.legislationline.org/download/id/3871/file/Czech\\_Law\\_on\\_Association\\_in\\_Political\\_Parties\\_1991\\_Am\\_2006\\_en.pdf](https://www.legislationline.org/download/id/3871/file/Czech_Law_on_Association_in_Political_Parties_1991_Am_2006_en.pdf) [accessed 05/01/2022].

<sup>79</sup> See *The Constitution of the Slovak Republic, Article 28*. Retrieved from [https://www.constituteproject.org/constitution/Slovakia\\_2014.pdf](https://www.constituteproject.org/constitution/Slovakia_2014.pdf) [accessed 10/01/2022]; *Law of July 2nd, 1997 on Non-Profit Organisations Providing Generally Beneficial Services*. Retrieved from [https://www.legislationline.org/download/id/7620/file/Law\\_non-profit\\_organizations\\_providing\\_generally\\_beneficial\\_services\\_1997\\_am2013\\_en.pdf](https://www.legislationline.org/download/id/7620/file/Law_non-profit_organizations_providing_generally_beneficial_services_1997_am2013_en.pdf) [accessed 10/01/2022]; *Act No. 34/2002 on Foundations*. Retrieved from [https://www.legislationline.org/download/id/7619/file/Slovak\\_Law\\_foundations\\_2001\\_am2013\\_en.pdf](https://www.legislationline.org/download/id/7619/file/Slovak_Law_foundations_2001_am2013_en.pdf) [accessed 10/01/2022]; *Law of March 27th, 1990 on the Right of Association As Amended by later Acts up to Act No. 274/2009*. Retrieved from [https://www.legislationline.org/download/id/4847/file/Slovakia\\_Law%20on%20Associations1990%20as%20of%202009\\_en.pdf](https://www.legislationline.org/download/id/4847/file/Slovakia_Law%20on%20Associations1990%20as%20of%202009_en.pdf) [accessed 10/01/2022]; *Party Law and Finance in Slovakia*. Retrieved from <http://www.partylaw.leidenuniv.nl/uploads/wp2312.pdf> [accessed 12/01/2022].

the mentioned values. Another restriction deprives judges, prosecutors, members of the armed forces, armed corps, and members and employees of the fire and rescue brigades of this right.<sup>80</sup>

In Slovakia, the comprehensive development of citizens, but not denizens, belonging to national minorities or ethnic groups is guaranteed, particularly the right to develop their own culture together with other members of the minority or ethnic group, the right to associate in national minority associations, and the right to establish and maintain educational and cultural institutions. Accordingly, the Slovak political nation is inclusive. The exercise of the democratic freedoms of citizens belonging to national minorities and ethnic groups cannot endanger the sovereignty and territorial integrity of Slovakia and discriminate against its other inhabitants.<sup>81</sup>

In Hungary, during the entire time period in question, the freedoms of association and political party registration were ensured with the right to set up organisations whose objectives were not prohibited by law and join such organisations. Banned were armed organisations with political goals. Moreover, professional staff members of the Hungarian Defence Forces, the police, and the national security services cannot join political parties or engage in political activities.<sup>82</sup> Hungarian regulations of political party registration, operating, campaign financing, and electoral rules encourage Hungarians to set up new political parties. However, as practice thoroughly analysed by Anna von Notz reveals, it results in the creation of ‘sham parties’. The latter ‘clog up the ballot and mislead the electorate by presenting fake options, and it is a welcome tool for fragmenting the opposition.’<sup>83</sup> In this case, the militant democracy restrictions were insufficient, and the legal structure made a democracy vulnerable to anti-democratic forces.

On 27 June 2017, Hungary implemented new restrictions. Associations and foundations that receive at least 7.2 million HUF annually from a foreign source were obliged to register with the court as an organisation receiving foreign funding, report their foreign funding annually, and use the label ‘organisation receiving foreign funding’ on their website and publications. Moreover, the list of foreign-funded NGOs is published on a government website.<sup>84</sup> The practices are highly stigmatising and comparable to that used for years in authoritarian Russia.

To sum up, the Czech Republic and Slovakia restrict freedom of association and organisation in political parties when those groupings are criminal, endanger the rights and freedoms of others, morality, state security, public security, and public order, democratic society, democracy; and have non-democratic articles, programmes, activities, and undemocratically elected bodies. Slovakia’s further restrictions were inclusive since they included the members of minorities and ethnic groups with citizenship to the Slovak

<sup>80</sup> See *The Constitution of the Slovak Republic, Article 28*. Retrieved from [https://www.constituteproject.org/constitution/Slovakia\\_2014.pdf](https://www.constituteproject.org/constitution/Slovakia_2014.pdf) [accessed 10/01/2022]; *Law of July 2nd, 1997 on Non-Profit Organisations Providing Generally Beneficial Services*. Retrieved from [https://www.legislationline.org/download/id/7620/file/Law\\_non-profit\\_organizations\\_providing\\_generally\\_beneficial\\_services\\_1997\\_am2013\\_en.pdf](https://www.legislationline.org/download/id/7620/file/Law_non-profit_organizations_providing_generally_beneficial_services_1997_am2013_en.pdf) [accessed 10/01/2022]; *Act No. 34/2002 on Foundations*. Retrieved from [https://www.legislationline.org/download/id/7619/file/Slovak\\_Law\\_foundations\\_2001\\_am2013\\_en.pdf](https://www.legislationline.org/download/id/7619/file/Slovak_Law_foundations_2001_am2013_en.pdf) [accessed 10/01/2022]; *Law of March 27th, 1990 on the Right of Association As Amended by later Acts up to Act No. 274/2009*. Retrieved from [https://www.legislationline.org/download/id/4847/file/Slovakia\\_Law%20on%20Associations1990%20as%20of%202009\\_en.pdf](https://www.legislationline.org/download/id/4847/file/Slovakia_Law%20on%20Associations1990%20as%20of%202009_en.pdf) [accessed 10/01/2022].

<sup>81</sup> See *The Constitution of the Slovak Republic, Article 28*. Retrieved from [https://www.constituteproject.org/constitution/Slovakia\\_2014.pdf](https://www.constituteproject.org/constitution/Slovakia_2014.pdf) [accessed 10/01/2022]; *Law of July 2nd, 1997 on Non-Profit Organisations Providing Generally Beneficial Services*. Retrieved from [https://www.legislationline.org/download/id/7620/file/Law\\_non-profit\\_organizations\\_providing\\_generally\\_beneficial\\_services\\_1997\\_am2013\\_en.pdf](https://www.legislationline.org/download/id/7620/file/Law_non-profit_organizations_providing_generally_beneficial_services_1997_am2013_en.pdf) [accessed 10/01/2022]; *Act No. 34/2002 on Foundations*. Retrieved from [https://www.legislationline.org/download/id/7619/file/Slovak\\_Law\\_foundations\\_2001\\_am2013\\_en.pdf](https://www.legislationline.org/download/id/7619/file/Slovak_Law_foundations_2001_am2013_en.pdf) [accessed: 10.01.2022]; *Law of March 27th, 1990 on the Right of Association As Amended by later Acts up to Act No. 274/2009*. Retrieved from [https://www.legislationline.org/download/id/4847/file/Slovakia\\_Law%20on%20Associations1990%20as%20of%202009\\_en.pdf](https://www.legislationline.org/download/id/4847/file/Slovakia_Law%20on%20Associations1990%20as%20of%202009_en.pdf) [accessed 10/01/2022].

<sup>82</sup> See *Hungarian Constitution of 1949, Article 63*. Retrieved from <https://www2.ohchr.org/english/bodies/cescr/docs/E.C.12.HUN.3-Annex2.pdf> [accessed 05/01/2022]; *Fundamental Law of Hungary, Articles 8, 45, 46*. Retrieved from [https://www.legislationline.org/download/id/8205/file/Hungary\\_Fundamental\\_Law\\_as\\_of\\_2019\\_en.pdf](https://www.legislationline.org/download/id/8205/file/Hungary_Fundamental_Law_as_of_2019_en.pdf) [accessed 05/01/2022].

<sup>83</sup> von Notz, A. How to Abolish Democracy: Electoral System, Party Regulation and Opposition Rights in Hungary and Poland. *VerfBlog*, 2018/12/10. Retrieved from <https://verfassungsblog.de/how-to-abolish-democracy-electoral-system-party-regulation-and-opposition-rights-in-hungary-and-poland/> [accessed 12/02/2022].

<sup>84</sup> *Law on the Transparency of Organisations Supported from Abroad, Article 1*. Retrieved from [https://www.helsinki.hu/wp-content/uploads/14967\\_NGO\\_bill\\_20170407\\_with\\_reasoning.pdf](https://www.helsinki.hu/wp-content/uploads/14967_NGO_bill_20170407_with_reasoning.pdf) [accessed 06/01/2022].

political nation. They could associate unless they endangered the sovereignty and territorial integrity of Slovakia and discriminate against its other inhabitants. Nonetheless, as with the restrictions on freedom of speech, press and assembly, a broad and imprecise approach to the values that underpinned them opened the way for abuse. Despite guarantees, it was possible to freely exclude members of the political nations from political decision-making, which was related to the limitation of the sovereignty of the political nations. It was peculiar to a quasi-militant democracy.

Poland had more specific regulations concerning non- and anti-democratic entities than the Czech Republic and Slovakia. A neo-militant democratic means assumed banning political parties and other organisations that refer in their programmes to the totalitarian methods and practices of Nazism, fascism, communism, as well as those whose programme or activity presupposes or allows racial and national hatred, the use of violence to gain power, influences state policy, provides for the confidentiality of structures or membership. In Hungary, banned were armed organisations with political objectives. These were weak neo-militant democracy measures because, although their purpose was to protect the sovereignty of the political nations, the scope of restricted political entities was narrow. The covertly anti-democratic parties could operate without hindrance. Moreover, quasi-militant democracy measures made it possible to create an appearance of choice, blurred support for parties other than the ruling party, and strengthened the latter's position. It resulted in a decrease in the political nation's participation in decision-making processes. At the same time, in Hungary, quasi-militant democracy measures were used against the associations independent from the state funding and the ruling party.

## Conclusions

The research finds out that neo- and quasi-militant democracy measures co-existed in the national legislation of each V4 country. Militant democracy measures ensured weak and insufficient protection to fully realise the political nations' sovereignty potentials. Neo-militant democracy tools were often outdated, since they protected democracy from ideas and political groups that were not widely supported in Europe. This type of neo-militant democracy measures resulted from the common historical experience of the region, World War II, and communism. These means were introduced after the political transition and remained unchanged even though they addressed the outdated threats. They should be seen as a symbolic commemoration of the sources of limitation of the sovereignty of the political nations rather than an actual protective means of democracy. Accordingly, some of the current regulations did not guard the political nations from the rule of anti-democratic forces.

Moreover, the neo-militant democracy means were abused to pretend to protect democracy. Therefore, in debatable cases, it was essential to capture the actual impact of legal measures on the sovereignty of the political nations to expose their quasi-militant democracy importance. It is these regulations that allowed anti-democratic entities to gain and maintain power. At the same time, they facilitated democratic backsliding.

Undoubtedly, however, the states do not have effective militant democracy tools to control this influence, as evidenced by the lack of adequate restrictions. In addition, it is difficult to assess the role of electoral meddling in permanent election campaigns. The limitations of democratic freedoms remained insensitive to new populist groups or hybrid interferences. In addition, neo-militant democracy means protected individuals, but the scope of the defence rarely extended to the entire political nations.

Quasi-militant democracy tools, as practice shows, could be freely abused and used by anti-democratic forces to shape the V4 political nations in a discretionary way. While some of them, especially restrictions of freedom of assembly in Poland and Hungary, are overtly anti-oppositional, most means could be used against rivalling political groupings and movements if the circumstances are conducive. When some part of the political nation that does not support the ruling camp is deprived of the possibility of

deliberating and participating in decision-making processes, the political nation as a whole is not sovereign.

Finally yet importantly, the eclectic figure of an enemy emerging from rather general definitions of restrictions and values being protected, is characteristic of all V4 countries. On the one hand, democratic liberties may be restricted to defend the democratic order and its social structure. It means that anti-democratic actors are enemies of democracy. On the other hand, the regulations in force lead to the exclusion of democratic forces from the political scene. It entails the quest to objectify the political nation politically. In other words, anyone can legally become an enemy of democracy if their views and actions do not fit in with the ruling parties' political agendas or are clearly against their interests. Depending on the rationale for providing legal definitions of enemies of democracy, legal acts can facilitate the development of either neo- or quasi-militant democracy.

In the V4 countries, there is a gradual but increased weakening of the sovereignty of the political nations. The time of recovering from the great economic and social crisis has exposed the weaknesses of the existing legal and political structures. The region is struggling with external and internal threats to democracy. The current measures to protect democracy require immediate modernisation. At the same time, however, change will not take place if the political nations passively accept the weakening of their political sovereignty. The ruling parties that have become enemies of democracy are testing the extent to which they can limit the subjectivity of the ruled. Apparently technical changes, such as the exclusion of state assemblies from the category of public gatherings or the protection of privacy from condemnatory protests, often go unnoticed. It usually takes place during deliberately triggered media scandals about substitute topics. As a result, outdated and no longer useful neo-militant democracy measures co-exist with quasi-militant democracy measures. The challenge facing the V4 political nations now is the struggle for tools to strengthen their political sovereignty. The consequences of this fight are difficult to predict because its field is another crisis, this time caused by the coronavirus pandemic.

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