

# A HYBRID STRATEGY OF RESTRICTING FREEDOM OF ASSEMBLY IN MODERN MILITANT DEMOCRACIES. EXPERIENCES FROM AUSTRIA, FINLAND, AND SWEDEN

Maciej SKRZYPEK<sup>1</sup>

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*This comparative study draws on empirical analysis of restrictions on freedom of assembly implemented in national legislation and used in practice. The study aims to identify and account for how in consolidated democracies, authority states implement a hybrid strategy of restricting freedom of assembly since the economic crisis of 2008 triggered a wave of social mobilization across Europe. The final turning point is 2019, the moment before the outbreak of the COVID-19 pandemic. Comparative studies draw on qualitative analysis of sources: national legislation and NGOs' reports. This research uncovers restrictions on public assemblies implemented in consolidated democracy and evaluates their scope and effectiveness in combating social groups recognized as enemies of democracy. Moreover, it determines how they changed over time, which is significant to explain the distinction between national legislation and protection provisions. This comparative study contributes to the research on the limitation of the above-mentioned civil rights and freedoms in consolidated democracies.*

**Key words:** neo-militant democracy; quasi-militant democracy; freedom of assembly; restrictions; public gatherings.

## 1 INTRODUCTION<sup>2</sup>

Freedom of assembly, as one of the fundamental principles in democratic regimes, allows citizens to express their values and demands in public space. During their legal protection development, this freedom became part of the catalogue of constitutional rights protected by national regulations. Nowadays, numbers of public gatherings in consolidated democracies confirm that civil society's level of self-organization is very high and became a common practice to manifest political demands (e.g., 15-M Movement in Spain, Yellow vests protests

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<sup>1</sup> Maciej SKRZYPEK, PhD Student. Adam Mickiewicz University in Poznań, ORCID: 0000-0002-8018-1854. Contact: [maciej.skrzypek@amu.edu.pl](mailto:maciej.skrzypek@amu.edu.pl).

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in France), especially after the economic crisis in 2008, which was an economic storm that has upended European finance and politics. Moreover, economic collapse increased pressures to reduce discretionary governmental spending (Prebilič 2013, 62). However, protests concern not only socio-economic issues but are still used to express adherence to history and tradition (e.g., Independence March in Poland). In the face of probably the highest civil society's awareness and using freedom of assembly in history, it is necessary to reflect on why and how in consolidated democracies, the homeland of human rights and freedoms protection, governments decided to limit this freedom. It must be recognized that guaranteeing freedom of assembly does not exclude adopting some restrictions to protect public health, public order, and institutions of democracy. The most vivid examples of abusing freedom of assembly are the attempts of anti-democratic forces to organize public gatherings to undermine rules and foundations of liberal democracy. To combat enemies of democracy, authority states may use restrictions to guarantee democratic self-preservation in national legislation and practice. On the other hand, they may use restrictions to limit citizens' opportunities to manifest their opinions and demands, which they recognize as a danger to a democratic system. Restrictions on freedom of assembly are a characteristic means of neo-militant democracy that allow officers of public administration and local municipality to limit some fundamental rights and civil freedom in the act of self-defence against enemies of democracy. However, when restrictions are used to limit citizens' sovereignty, these measures should be classified as quasi-militant democracy instruments, as they are used to reduce political nation sovereignty (Bäcker 2020). The study aims to identify and account for how authority states in consolidated democracies implement a hybrid strategy of restricting freedom of assembly, as a hybrid of neo-militant democracy and quasi-militant democracy. Research is based on experiences from Austria, Finland, and Sweden following the 2008 economic crisis. Since the economic regression, there has been a wave of social mobilization across Europe, which has had a significant impact on forms of contentious politics and the formation of new social movements (Della Porta 2015; Peterson et al 2015; Grover 2011; Grasso and Giugni 2016; Kern et al 2015). New forms of social mobilization required the adoption of new measures by European governments, e.g., restrictions on simultaneous gatherings. Moreover, regulations of participation in gatherings became stricter, e.g., the use of selected materials was banned. The final point is 2019, just before the outbreak of the COVID-19 pandemic. During the next waves of the pandemic, the extraordinary situation-imposed restrictions on public gatherings. The latter was implemented to protect public health. The study uncovers restrictions on public assemblies implemented in consolidated democracy and evaluates their scope and effectiveness in combating enemies of democracy. Moreover, it determines how they changed over time, which is significant in explaining the distinction between national legislation provisions and protecting this freedom in practice.

This study is based on a comparison of restrictions of freedom of assembly in Austria, Finland, and Sweden. In the moment of accession to the European Union (EU) in 1995, these states had stable institutions that guaranteed democracy, the rule of law, human rights, and respected and protected minorities. Meeting the condition for accession was the effect of stability development and consolidation of the rules of liberal democracy after World War II. Therefore, all of these states should be recognized as examples of how the political community made solid foundations for protecting fundamental rights and freedoms while limiting effective participation in public life by anti-democratic forces. Apart from their shared experience with European integration, the validity of the proposed comparative analysis is supported by the Democracy Index report, which recognizes these three states as full democracies (Democracy Index 2019). The

term 'full democracy' should be interpreted as synonymous with a *consolidated democracy*, which Juan Linz and Alfred Stepan (1996) understood as a situation when "democracy is the only game in town," and its survival is not endangered. A surviving democracy means that certain rights and freedoms, including the freedom of assembly, are well-protected.

Considering the above observations, the author formulated research questions such as: in reference to freedom of assembly, which rules of neo-militant democracy and which instruments of quasi-militant democracy were implemented and fixed in consolidated democracies? This question allows for the formulation of a hypothesis that implementing a hybrid strategy restricting freedom of assembly is especially dangerous for consolidated democracies. The hybrid approach uses both neo-militant democracy and its opponent, quasi-militant democracy. On 'a hybrid trap' of limiting certain rights and freedoms are mainly exposed consolidated democracies, where legal provisions are complied with rules of neo-militant democracy – limiting anti-democratic force's rights and freedoms. However, in the face of taking overpower by populists, new restrictions are used 1) against selected social groups, like ethnic/sexual/religion minorities, 2) to deteriorate democratic institutions for expanding the power of ruling elites. The difference between these ideal types is the result of the aim of restrictions. Neo-militant democracy measures are used to protect the political system against enemies of democracy. In turn, instruments of quasi-militant democracy allow ruling elites to expand the scope of their power to reduce the level of the sovereignty of a political nation, especially their political opponents. Mixed approaches led to violations of freedom of assembly in practice, at different levels in each country, despite legal frameworks protecting it, by wavering between combating enemies of democracy and reducing citizens' possibilities of manifesting their opinion and demands.

## 2 LITERATURE REVIEW AND THEORETICAL BACKGROUNDS

Implementing restrictions on public gatherings was postulated by Karl Loewenstein, a German émigré scholar and the father of studies on militant democracy, who claimed that these regulations allow the government to combat enemies of democracy. Loewenstein (1937) introduced this theoretical category in two articles published in the *American Political Science Review* in 1937, as an explicit reaction to fascist threats in Europe. He postulated equipping democracies with means, which would enable them to stand up against their enemies. His research was continued inter alia by Alexander S. Kirshner (2014), who claimed that the restrictions of certain rights and freedoms take place solely to defend democratic values while respecting the right to participate in public life. In referring to restrictions of freedom of assembly, Kirshner argued that these practices should respect citizens' right to participate in public life, but he didn't formulate any detailed solutions. In turn, Giovanni Capoccia (2013) proposed understanding militant democracy as the "use of legal restrictions on political expression and participation to curb extremist actors in democratic regimes". In his approach, restrictions of freedom of assembly may be adopted only to combat extremist groups. Carlo Invernizzi Accetti and Ian Zuckerman (2017, 195) criticized this idea for the alleged use of militant democracy to cover authoritarian politics and expand executive power by political elites. In their view, restrictions of freedom of assembly may put citizens' sovereignty in jeopardy and eliminate opportunities to oppose the government during public gatherings.

Roman Bäcker and Joanna Rak (2019, 65) assumed that the essential features of militant democracy rest on the self-defence ability of democracy from being destroyed by anti-democratic forces. A comprehensive catalogue of militant democracies' significant features includes legislative measures abusing freedom of peaceful assembly. Bäcker also stated that this category legitimizes the use of legal measures limiting the scope of the sovereignty of a political nation by limiting political rights and freedoms (Bäcker 2020). Moreover, in the context of modern research on militant democracies, Rak (2020, 63) recommends using the adjective "new" to keep modern regimes separate from those analysed by Loewenstein in the 1930s. Conceptually embedded in Bäcker's and Rak's approaches, the analysis draws on the differentiation between the declaratory and practical aspects of neo-militant democracy implementation.

The ideal types of neo- and quasi-militant democracy allow researchers to define the consequences of limitations of freedom of assembly more precisely. Bäcker and Rak (2019) explained that the essential features of neo-militant democracy derive from the self-defence ability of political regimes from being destroyed by anti-democratic forces. In turn, quasi-militant democracy attempts to expand the power competencies of the ruling elite while reducing the level of the sovereignty of the political nation (Bäcker 2020). This approach differentiates between the real intentions of enemies of democracy and its defenders. Restrictions on freedom of assembly, in the case of neo-militant democracy, serve the defenders of democracy in combating political groups that are the enemies of democracy. In quasi-militant democracy, the same restrictions are used to expand the power competencies of the ruling elite while reducing the level of the sovereignty of the political nation. It is worth noting that linking these ideal types is possible in practice because 1) a border between them is thin and fluid; 2) recognizing instruments as neo- or quasi-militant democracy based on remarks about their consequences for functioning democratic system. So, I called the phenomenon of linking opponents' approaches in consolidated democratic regimes the "hybrid strategy of restrictions in modern militant democracy". Growing its use results from the increasing popularity of populist politicians, which prefer illiberal governance and reduce protection of certain rights and freedoms. At the same time, they are incapable of introducing institutional changes to the political system. Therefore, it is worth introducing another sub-category to a conceptual framework of militant democracy studies for identity subtypes located between quasi- and neo-militant democracy, because of changes in approaches to limiting certain rights and freedoms within modern political structures.

To sum up, militant democracy is defined as a set of tools used to ensure the survival of democratic systems against anti-democratic forces in fear of annihilating the political regime. In turn, neo-militant democracy is understood as a modern type of militant democracy with a broad catalogue of instruments to protect democracy. Its opposite, quasi-militant democracy, is a strategy of using these instruments to consolidate the power of ruling elites by reducing political nation sovereignty. In the context of freedom of assembly, in consolidated democracies, authorities use neo-militant democracy, including restrictions on public gatherings, considering anti-democratic forces. Abusing power by limitations and adopting extra duties on these freedoms by the ruling elite to reduce the opportunity to manifest against their policy is typical for quasi-militant democracy. However, after the economic crisis, we observe the growing possibilities of occurring hybrid strategy by using similar restrictions with different consequences for democratic regimes.

### 3 MATERIALS AND METHODS

After the literature review, it is necessary to indicate how to identify and account for the effectiveness of implemented restrictions in Austria, Finland, and Sweden. The author decided to use comparative studies drawn on qualitative analysis of sources: national legislation and NGOs' reports – Freedom House and Right of Peaceful Assembly, collation of declarative level, presenting in legal frameworks, with practical level, displaying documents of independent NGOs working on the protection of certain rights and freedoms and monitoring it globally. In total, 14 legal acts and 7 reports were analysed. In the context of regulations, the study rests on the purposeful selection of acts that regulate freedom of assembly. The starting point is 2008, when the economic crisis triggered a wave of social mobilization across Europe, giving rise to anti-austerity movements (Rak 2018). The final point is 2019, just before the outbreak of the Coronavirus crisis. Then, restrictions on public gatherings, as a globally common practice, were imposed to protect public health and were extorted by the extraordinary situation. Therefore, the phenomenon during the pandemic period necessitates separate research. The results of my study may be a valuable reference for analysing limitations on freedom of assembly in the face of a global pandemic.

Adopting neo-militant democracy measures in national legislation does not guarantee their use in practice. Max Steuer (2019, 5) explained that the result of using militant democracy means depends on the values of the political community. This statement motivated the following questions: (1) What is the scope and effectiveness of the implementation of neo-militant democracy measures? (2) Who can be excluded from participation in public gatherings? (3) Under what conditions can a gathering be classified as illegal? An answer to Question 1 allows me to set the scope and level of the effectiveness of these regulations in practice. According to the main principles of militant democracy, restrictions can only be used against enemies of democracy. An answer to Question 2 helps to verify who is classified as an enemy of democracy in these countries in the context of public gatherings. Finally, an answer to Question 3 allows me to determine the conditions under which an assembly is cancelled or dissolved. For these questions, it is necessary to point out that restrictions on freedom of assembly, which serve only to eliminate the democracy's enemies, including extremist groups and anti-democratic forces, are regarded as neo-militant democracy solutions. In turn, those limiting the possibility of issuing public claims by using freedoms of assembly are means of quasi-militant democracy. The study differentiates between neo-militant democracy and its opposite, i.e., quasi-militant democracy. A continuum with the extreme points of neo- and quasi-militant democracy serves to differentiate between the consequences of implementing given measures of militant democracy.

### 4 FREEDOM OF ASSEMBLY AS A FUNDAMENTAL RIGHT AND CIVIC FREEDOM

Freedom of assembly, alongside freedom of speech and expression, is an attribute of citizens that allows them to participate in the democratic decision-making process. Its importance for contemporary democratic systems is evidenced by its foundation in international law (Universal Declaration of Human Rights of 10 December 1948, Art. 20). Karl Vašák, a French lawyer, classified the right to assembly as one of the first-generation human rights. According to Art. 21 of the International Covenant on Civil and Political Rights, demonstrations promoting military activities, national, religious, and racial hatred should be

forbidden. Given such incidents, it is reasonable to apply obligatory restrictions. Optional limitations applied in other cases are considered justified when required to protect and maintain security and public order. In democratic systems, it is generally recognized as the duty of authorities to protect society against anti-democratic forces. Therefore, the right to assembly is often restricted in the event of initiatives organized by extremist circles. This practice takes the form of preventive measures typical of neo-militant democracies.

Venice Commission and OSCE, in their last report of Freedom on Peaceful Assembly, defined assembly as a means of the intentional gathering of several individuals in a publicly accessible place for a common expressive purpose. The definition includes planned and organized assemblies, unplanned and spontaneous assemblies, static and moving assemblies (OSCE 2020, 7). The term 'peaceful' covers the conduct that may annoy or give offence to individuals or groups opposing the ideas or claims that the assembly seeks to promote (ibid., 8). In the context of restrictions, the Venice Commission and OSCE claimed that any restrictions imposed on assemblies must have a formal basis in law and be based on at least one legitimate ground prescribed by relevant international and regional human rights instruments. The legal criteria include national security, public safety, public order, the protection of public health or morals, and the protection of the rights and freedoms of others. These grounds should not be supplemented by additional provisions in domestic legislation and should be narrowly interpreted by the state authority (ibid., 11). Public assemblies are of particular importance during political tensions or when citizens make demands for social change. Participation in public assemblies is a political right, the realization of which can give a public voice to those without access to their legislative bodies, those who lack representation through elections, or those with little or no opportunity to voice their opinions through the media.

To sum up, neo-militant democracy means, such as restrictions of freedom of assembly, may be adopted only to combat enemies of democracy, which is consistent with international law. Other purposes of restrictions are indicative of quasi-militant democracy, as their use violates the right to peaceful assembly by limiting opportunities to make public demands.

#### 4.1 Freedom of assembly in Austria

In Austria, the Constitution guarantees the right to association and assembly (Austria Federal Constitutional Law, 10.7). Federal authority is responsible for preserving the rights of the Länder (countries) to assemble (Art.13). Detailed regulations are introduced by the Assembly Act (Versammlungsgesetz). According to Art. 2, meetings and assemblies whose purpose violates criminal laws or whose holding endangers public safety or the public good is to be prohibited by the authority (Versammlungsgesetz 1953, 2. 1). Moreover, armed persons cannot take part in assemblies (ibid., 9a). Meetings held against these provisions must be prohibited by the authority and dissolved according to circumstances (ibid., 12.1). As soon as a meeting has been declared dissolved, everyone present is obliged to leave the meeting place immediately and disperse. In the event of disobedience, dissolution can be enforced using coercive means (ibid., 14). This Act was amended many times, but in 2018-2019, the Austrian authority adopted two amendments particularly important for freedom of assembly. In 2012, legislative authority changed the wording of Art. 19 and implemented imprisonment for up to six weeks or a fine in the case of the act's provisions violation (Sicherheitsbehörden-Neustrukturierungs-Gesetz – SNG). In 2014, Austria added Art. 19a. As stated, anyone who attends a meeting contrary

to the prohibition in Art. 9 Paragraph 1 and is armed or has other items with them under Section 9a will be punished by the ordinary court with up to six months imprisonment or a fine (Verwaltungsgerichtsbarkeits-Anpassungsgesetz-Inneres).

In 2015, the Human Rights Committee addressed the right to peaceful assembly in Austria briefly. It expressed its concern that: *some provisions of the 2015 Amendments to the Law on the Recognition of Islamic Religious Communities may be discriminatory and unduly restrict the enjoyment of the right to freedom of religion in community with others, as well as the rights to association and assembly* (Human Rights Committee 2015). In fact, Art. 25 of Islam Law states that *the authority may prohibit gatherings and events of religious purposes, which pose an immediate danger to the interests of public security, order or health or national security or the rights and freedoms of others* (Islam Law 2015, 27). However, these restrictions result from other regulations and meet international standards about freedom of assembly. Therefore, they are the traditional means of neo-militant democracy. Before 2008, practices of restricting freedom of assembly in Austria were appealed to the European Court of Human Rights (ECHR), inter alia in 2006. The case of Öllinger against Austria concerned the banning of a gathering at a cemetery on All Saints' Day intended to counter another gathering in memory of the killed SS soldiers by commemorating Jews killed by the SS (Austria 2020). The police prohibited the meeting, but the organizer claimed that it was a spontaneous event and appealed this decision. In 2000, the Constitutional Court dismissed a complaint by the applicant, which emphasized that the main purpose of his assembly was to remind the public of the crimes committed by the SS and to commemorate the Salzburg Jews murdered by them. The meeting was classified as a counterdemonstration to the ceremony of Comradeship IV. In justification, ECHR emphasized that the Austrian authority gave too little weight to the applicant's interest while giving too much weight to the interest of cemetery users and failed to strike a fair balance between the competing interests. Moreover, ECHR noted that *the violation appears to constitute a single incident resulting from the particular circumstances of the case* (Resolution CM/ResDH/ 2010/36). These restrictions limited the political nation's sovereignty and were peculiar to quasi-militant democracy measures. Although it is outside the scope of this paper, the ECHR's decisions were precedent and significant for other allegations against restrictions of freedom of assembly.

According to Freedom House' reports, in Austria, freedom of assembly is protected in the constitution and in practice (Freedom House Austria, 2020). In their general remarks, the organization did not point to its abuses. Nevertheless, in 2017, the SPÖ's (Sozialdemokratische Partei Österreichs) opposition criticized the strong police presence and tactics during the anti-government protests in December 2017. Ruth Simsa (2019, 6), resting on information from her interviewees, noticed that freedom of assembly had been restricted by the extension of the notification period for assemblies and the establishment of the so-called protected zones. It is indicative of quasi-militant democracy measures since it limited opportunities to organize spontaneous gatherings in their area.

To sum up, in Austria, national regulations implemented neo-militant democracy measures and were used in practice. By drawing on Steuer's thesis about the relation between militant democracy and values of political community (Steuer 2019, 5), it can be pointed out that authority in Austria respects and protects freedom of assembly. However, the cited NGOs' reports and media reports uncover violations of freedom of assembly. It shows that quasi-militant democracy means were also used in practice, which allows formulating a conclusion about occurring an above hybrid model in Austria. Local and state

authorities used quasi-militant measures to limit opportunities to issue citizens' demands that might have delegitimized the rulings' agenda and actions. When the effectiveness of implemented restrictions is concerned, it is worth highlighting that NGOs pointed to the strong protection of the political group that wanted to undermine legal provisions. Austria's legislation excluded peaceful assembly participants, which endangered public order and health, including armed people. These provisions indicate that enemies of democracy were the armed participants and others who put public order and health at risk. Finally, when the character of the assembly was recognized as dangerous to public order, the gathering could be dissolved, which may have led to the violation of freedom of assembly by arbitrary decisions of authority. The category of "endangering public order" is broad and establishes possibilities of abuse by local and state authorities, which is conducive to quasi-militant democracy means. However, it is not only in Austria's case but a common practice in consolidated democracies, international law, and a result of state authority' decisions.

#### 4.2 Freedom of assembly in Finland

The Constitution of Finland guarantees the right to arrange meetings and demonstrations without a permit, as well as the right to participate in them (The Constitution of Finland, 13). More details are established in the Assembly Act. A public meeting is defined as a demonstration, or other assembly arranged for the exercise of the freedom of assembly, open for participation or observation also to persons who have not been expressly invited to it (Assembly Act, 2.2). Gatherings shall be arranged peacefully, without compromising the safety of the participants or bystanders and without infringing their rights. When arranging an event, care shall be taken that the assembly does not cause significant damage to the environment (ibid., 3.1). The public authority shall promote the freedom of assembly by protecting the right to assembly (ibid., 4). For public meetings, the organizer must notify the local police at least six hours before the meeting begins. Late notification is possible if the organization of the meeting does not cause significant disruption to public order (ibid., 7.1). In a public assembly, banners, insignia, loudspeakers, and other regular meeting equipment may be used, and temporary constructions can be erected. Several public gatherings cannot take place in the same location at the same time. Public meetings must not compromise human safety, cause significant damage to the environment or damage to property, unjustified inconvenience to bystanders, and traffic (ibid., 10). Provisions of the Assembly Act are compliant with international law and fall into the pattern of neo-militant democracy measures because restrictions implemented by this law do not abuse freedom of assembly, according to constitutional provisions. Moreover, the Assembly Act guarantees the effective protection of these freedoms, which was proved by NGOs' reports. Its provisions allow the police to exclude participants that endanger public order and health from an event. The Assembly Act allows for cancelling gatherings only in the case of violating constitutional order.

In December 2018, the Finnish government rejected its own proposal to amend the Act on Assemblies following complaints by opposition political parties. The ruling camp proposed that the organizers of public assemblies are obliged to notify the police of the meeting at least three days, rather than six hours, in advance. Finally, the amendment lengthens the advance notification period from six hours to one day (Lag om ändring av 7 § i lagen om sammankomster). The lengthened time to three days for assembly notification may be the basis for the rejection of several applications and reducing the numbers of official meetings, which is a quasi-militant democracy means. Considering the opposition's opinion

resulted in shortening this time to one day. It reduced opportunities to abuse freedom of assembly, but still expanded power competencies of the authority.

The Assembly Act also regulates the duty of the police to safeguard the exercise of the freedom of assembly. The police shall monitor whether the arranger and chairperson carry out their duties under this Act and, if necessary, take measures to maintain order and security at a public meeting or event (Assembly Act, 19.1). Detailed regulations about the duty of the police were implemented in the Police Act. According to Art. 27, the police have the right to use the necessary forms of force, which may be considered justified as a dangerous situation develops, including public gatherings (Police Act, 27.1). Other regulations about freedom of assembly were adopted in the Public Order Act. The latter prohibits organizing a performance in a public place if it violates the law, poses a risk to human health or property, or causes significant disruption to public order (Public Order Act, 7. 3).

The authors of Freedom House reports stated that freedom of assembly in Finland is fully respected (Freedom House Finland 2018–2020). According to the Right of Peaceful Assembly's data, the Human Rights Committee in its 2013 Concluding Observations did not indicate any violations of this freedom in Finland. Similarly, in 2017, UN Human Rights Council also did not address the right to peaceful assembly (Finland 2020). These remarks show that freedom of assembly is well-protected and guaranteed in practice. Accordingly, neo-militant democracy means were effective as long as they reduced opportunities for violations. To summarize, in general, restrictions on freedom of assembly in national regulations and practice took the form of neo-militant democracy means in Finland. However, provisions on banning counter manifestations in the same place and time were a quasi-militant democracy means because they limited opportunities to enjoy the freedom of assembly without violating other provisions of the Assembly Act. There is no doubt that this provision can be used against enemies of democracy, inter alia, extremists, but Finland's legislative does not guarantee using it only in that way. The dismissal of the amendment to the Assembly Act in its original wording in 2018 confirmed that attempts to implement quasi-militant democracy decreased, but that the potential threat to reduce opportunities to organize spontaneous gatherings in the future might occur, resulting in a hybrid strategy of modern militant democracy. NGOs reports confirmed the effectiveness of provisions about public gatherings and pointed out that Finland did not violate this freedom. Exclusion from assembly and dissolving public gatherings occur in the regulations of public order protection. If participants cannot guarantee to obey the domestic law, the local authority can exclude them and/or dissolve the gathering. The situation is identical to that of Austria. Finland's regulations were not more detailed, but serious abuses of power by the authority in practice did not emerge in 2008-2019, which shows that, unlike Austria, quasi-militant democracy means were used in Finland, and the effectiveness of neo-militant democracy measures was higher in Finland than in Austria. Finland's case confirms that militant democracy restrictions of public gatherings may be adopted when a political community respects and seeks to protect freedom of assembly.

### 4.3 Freedom of assembly in Sweden

The Basic Laws of Sweden guarantee freedom of assembly and protest. Restrictions may be adopted to preserve public order and safety at a meeting or demonstration or regarding the circulation of traffic. These freedoms may otherwise be limited only to protect public security or to combat an epidemic (The Basic Laws of Sweden, ch. 2.24). Limits on the personal freedoms mentioned above may only be imposed if the measure meets objectives acceptable in a democratic society. A limitation may never exceed what is necessary or goes so far as to “constitute a threat to the formation of opinions or one of the foundations of democracy” (ibid., ch 2.21). More detailed regulations were implemented by the Order Act (Ordningslagen). The rights to assembly and protest may be limited only as prescribed by law, mainly on the grounds of public order and safety, and only if necessary and proportionate. According to Art. 4, public meetings and public events may not be organized in public places without permission (ibid., 4). This does not apply to spontaneous events.

In 2009, the Swedish legislative authority amended Art. 20 of these regulations by stating that pyrotechnics may not be used without the permission of the police in a public assembly (Lag om ändring i ordningslagen 1993, 1617, 2009, 2). Subsequent amendments were adopted in 2015. Art. 62 of this law changed the wording of Art. 4 of the Order Act by establishing that an application for permission to organize a public assembly must be submitted to the police authority at least one week before the meeting. Notifications to the relevant authority must take place at least five days before the scheduled meeting (ibid., 1617, 62), which shortened the time to notify public gatherings. The last amendments to the Order Act were made in 2019. Amendment to Art. 18 prohibits the consumption of alcohol during public gatherings. This prohibition may be lifted by the relevant authority. According to the amendment to Art. 29, in the absence of consent to the organization of the meeting, the organizer may be punished by imprisonment of up to six months (ibid., 1617, 2). NGOs reports noted that freedom of assembly is respected in Sweden (Freedom House Sweden 2018–2020; Sweden 2020). However, Freedom House drew attention to the sporadic use of violence against far-right demonstrators and counter-protesters (Freedom House Sweden 2018–2020). It shows that despite general respect for freedom of assembly, in a consolidated democracy, sporadic examples of abusing power and violation of this freedom may occur. It is necessary to determine when sporadic cases become common practice and what leads to this situation.

To sum up, in Sweden, neo-militant democracy means were implemented in national legislation and used in practice. No NGOs reported serious violations of freedom of assembly. Lack of complaints to ECHR or other courts confirms the high effectiveness of the regulations whose scope did not infringe this freedom. It is a result of a well-developed political community, inter alia, political elites that do not misuse their power competencies. Accordingly, regulations limiting public gathering drew upon political nation’s values and democratic standards. Excluding participants from the gathering is possible in the case of danger to public order, using illegal materials, such as pyrotechnics without permission, as well as weapons. These circumstances also justify dissolving an assembly. The catalogue contains the duty of formal authorization and time to apply for it, i.e., five days before assembly. In practice, these provisions could lead to violations of freedom of assembly, but it did not happen. It reveals that quasi-militant democracy means are not used in Sweden. However, organizing gatherings without permission may be punished, which may pose a real threat to freedom

of assembly. Finally, in line with Steuer's (2019, 5) thesis, the Swedish political nation respects and seeks effective protection of freedom of public assembly in national legislation, adopting measures of neo-militant democracy and using them in practice without the risk of a hybrid model of modern militant democracy occurring.

## 5 CONCLUSIONS

The study, especially in Austria's case, uncover the possibility of using both instruments of neo- and quasi-militant democracy measures. In practice, this strategy reduces the possibility of exercising the right to assemble. The risk of existing hybrid forms increased when the effectiveness of neo-militant democracy measures declined, and ruling elites were convinced about the need to introduce new restrictions. In this case, it is necessary to point out factors that influence their ineffectiveness. This study shows, that the values recognized by the members of the political nation play an important role. Compliance with the provisions of the laws that implement neo-militant democracy derives from these values. When members of the political nation do not recognize the protection of freedom of assembly as a principle, ruling elites and members of public administration may violate it to expand their power competencies. Another significant factor is the presence of institutions that ensure effective protection and adherence to national legislation.

Neo-militant democracy restrictions are consistent with international law and guarantee the peaceful character of gatherings. In the context of militant democracy studies, the participants who violate the rules are classified by authority states as enemies of democracy, like extremist entities. Despite the provisions that guarantee the protection of freedom of assembly in national legislations, in practice, ruling elites might use quasi-militant democracy means. The tendency was noted in Austria and Finland. Moreover, Austria's case confirmed the analytical utility of the distinction between neo-militant democracy and quasi-militant democracy. The distinction allows a researcher to differentiate between the structures' aims. Finland's case confirmed that measures peculiar to quasi- and neo-militant democracy might exist at the same time and are not mutually exclusive. Thus, it is necessary to differentiate between them by taking into account their objectives and consequences for the political nation's sovereignty.

Furthermore, violations of freedom of assembly in Austria were indicative of quasi-militant democracy performed, despite implementing the idea of neo-militant democracy in national regulations. They aimed to expand the ruling elite's scope of power competencies. Experience from Austria allows the formulation of conclusions about the main essential feature of a hybrid strategy of modern militant democracy: using quasi-militant democracy in practice, despite national legislation convergent with neo-militant democracy rules. These practices reduced opportunities to put forward public demands and limited the sovereignty of the political nation. The risk of hybrid forms arising in Finland and Sweden in the future is real, but it is dependent on government policy. Counterdemonstrations were prohibited as part of these states' quasi-militant democracy measures. Nevertheless, the state authority did not misuse their power. Those who used weapons and forbidden materials, or who may have jeopardized public order, security, or health, may be barred from public gatherings, in accordance with international standards in democracies. Such participants were classified as enemies of democracy. The same conditions may

result in dissolving public gatherings. Lack of detailed regulations about violating public order, security, and health may be conducive to the abuse of power by the police and state authority.

In 2008-2019, the acts that regulated freedom of assembly were amended six times in all these countries. In Austria, two amendments (in 2012 and 2014) were typical of neo-militant democracy because their provisions did not violate freedom of assembly and limited opportunities to endanger this freedom. In Finland, the amendments in 2009 lengthened the time to one day for assembly notification. Since it may reduce the number of public gatherings, it should be classified as a quasi-militant democracy means; even though NGOs reports did not note the abuse of its provisions. Finally, in Sweden, the parliament passed three amendments. Since 2009, using pyrotechnics without the permission of the police is forbidden. In 2015, the Swedish parliament passed the law that introduced the duty to apply for permission to organize a public assembly at least one week before the meeting. Since 2019, the consumption of alcohol during public gatherings is prohibited. These provisions were typical of neo-militant democracy measures in that they did not prohibit the exercise of this freedom but only limited its abuse. In a consolidated democracy, where the political nation's values contribute to the freedom of assembly, the right to gather peacefully is guaranteed and protected, despite adopting restrictions characteristic for neo-militant democracy. In Austria, the level of political rights protection was the lowest, which allowed a hybrid model of modern militant democracy used by ruling elites at the state and local levels. The study confirms the relationship between the sovereignty of the political nation and the adequate protection of freedom of assembly. In the case of strengthening the sovereignty of a political nation, the effectiveness of protecting the freedom of assembly increases. Austria's case draws attention to the increasing possibility of using quasi-militant democracy means in practice, as the level of effectiveness of neo-militant democracy means implemented through national legislation has declined. Why should members of the political nation oppose the use of quasi-militant democracy instruments in consolidated democracies? Beyond the mentioned democratic values, constitutional provisions and court judgments based on constitutional law, play a significant role in stopping that process. My study confirms that a hybrid model of modern militant democracy can emerge in the face of attempts to implement rules typical of illiberal policy, particularly against minorities and anti-government entities. In practice, violating freedom of assembly in this model does not necessitate the abolition of the legal framework that protects it. Finally, why might a hybrid strategy of restricting certain rights and freedoms pose a threat to established democracies? Because it may be implemented by populists, entities with a broad catalogue of protection in their political regime's functioning. Selected cases allow me to conceptualize one subtype of modern militant democracy's hybrid model – restrictions imposed on various types of minorities and opponents of ruling elites.

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## HIBRIDNA STRATEGIJA OMEJEVANJA SVOBODE ZBIranJA V SODOBNIH MILITANTNIH DEMOKRACIJAH. IZKUŠNJE IZ AVSTRIJE, FINSKE IN ŠVEDSKE

*Ta primerjalna študija temelji na empirični analizi omejevanja svobode zbiranja, ki se izvajajo v nacionalni zakonodaji in se uporabljajo v praksi. Namen študije je ugotoviti in pojasniti, kako v konsolidiranih demokracijah oblasti izvajajo hibridno strategijo omejevanja svobode zbiranja, saj je gospodarska kriza leta 2008 sprožila val družbene mobilizacije po vsej Evropi. Zadnja prelomnica je leto 2019, trenutek pred izbruhom pandemije COVID-19. Primerjalne študije temeljijo na kvalitativni analizi virov, in sicer nacionalne zakonodaje in poročil nevladnih organizacij. Ta raziskava razkriva omejevanje javnih zbiranj, ki se izvajajo v konsolidirani demokraciji, ter ocenjuje njihov obseg in učinkovitost v boju proti družbenim skupinam, ki so prepoznane kot sovražniki demokracije. Poleg tega določa, kako so se omejevanja javnih zbiranj skozi čas spreminjala, kar je pomembno za pojasnitev razlike med nacionalno zakonodajo in določbami o njihovi zaščiti. Primerjalna*

*študija tudi prispeva k raziskavi omejevanja zgoraj omenjenih državljskih pravic in svoboščin v konsolidiranih demokracijah.*

**Ključne besede:** neomilitantna demokracija; kvazimilitantna demokracija; svoboda zbiranja; omejitve; javna zbiranja.