States and their domestic enemies: legal options to safeguard democracy from extremist parties

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Abstract

This thesis will overview the concept of militant democracy and its implementation in the jurisdiction of the Federal Republic of Germany, the Russian Federation and the European Court of Human Rights. The comparative analysis will focus on the evolution of the term militant democracy: how it has changed since Germany incorporated ‘militancy’ into Basic Law and what are the current challenges that democracies are confronted with. Besides the theoretical outline, I will introduce the practical application of militant democracy and I will argue that the case law of the Strasbourg Court provides general standards that are applicable to every democratic states.

Table of Contents

Introduction

It has always been a highly debated question how a democratic state can preserve its existence against internal enemies, more precisely against extremist political parties. It is obvious that every state has some legal and political opportunities to neutralize these threats, but the scope of such measures are usally controversial and contentious. Although since the collapse of the Weimar Republic[1], scholars have produced many articles and researches dealing with the topic, comparative analysis is still rare, the vast majority of the research papers have focused on a particular country and its unique solutions. There is no doubt that those works are essential, but it is fair to say that a comparative research can more easily identify broader correspondences and consequences. The term militant democracy was first introduced by Karl Loewenstein in 1937.[2] In the early years, constitutional militant democracy was adopted as a response to the horrible events of the past, especially as a response to the German and Italian Nazi and Fascist regimes, and also as a future prevention to the spreading of communist ideology in Europe. Although the meaning and understanding of militant democracy has changed a lot since Loewenstein's first essays[3], the main question has remained the same: what are the legal instruments that a state can use to protect the democratic order from parties and movements whose aim is to annul the virtues of democracy. During the twentieth century European democracies have confronted the question of self-defence because many extremist political parties were founded all over the world and some of them have become influential. These parties take advantage of democracy and basic human rights, such as the freedom of speech and the freedom of association to broadcast their undemocratic views and to find supporters. We can say that extremist parties are taking advantage of democratic benefits to abolish democracy.

[1] The Weimar Republic is the name of the parliamentarian regime established in 1919 in Germany after the First World War. It was named after Weimar, the city where the constitutional assembly was held.
[2] Karl Lowenstein *Militant Democracy and Fundamental Rights* Article I in: Militant Democracy (edited by András Sajó) Utrecht, Eleven International Publishing 2004.
[3] For instance see Nancy L. Rosenblum's chapter on militant democracy in: On the Side of the Angels - An Appreciation of Parties and Partisanship - Princeton University Press. 2008.

The aim of this thesis is to provide a comparative analysis on the different understandings of the the term militant democracy in three jurisdictions: the Federal Republic of Germany, the Russian Federation and the European Court of Human Rights (ECtHR). I will argue that the original understanding of militant democracy has changed due to the rise of religious political parties but still a determining element of every costitutional state. Germany is chosen because it is the archetype of the militant democratic state since 1949, the Russian Federation is chosen because it is very different from the "general" Western states and it serves as a good benchmark and finally, the ECtHR contains 47 European countries and provides a standard judicial interpretation of militant democracy and potentially presents general standards that are applicable to its member states. To reach this aim, I focus on the question of self-defence against domestic enemies in my thesis. I address the question: what are the legal possibilities for the legislative and judicial branch within their own constitutional framework to ban these parties or to prevent their registration?
My thesis is divided into two parts. In the first I will review the history and different theoretical interpretations of militant democracy, mainly focusing on how the meaning of the term has changed since Loewenstein introduced it. Then I will turn to the practical interpretations: I will compare the different understandings of militant democracy in the jurisdiction of Germany, Russia and the ECtHR.

Chapter 1

The academic background of militant democracy

1.1 Self-defense as the most natural characteristic of the state

Every community has distinctive characteristics: these unique and special features distinguishes them from each other. However, there is - at least - one common parameter: the aim of self-preservation. Every society, including democratic states, wants to maintain the public order because "the state's most natural characteristic is self-defense".[4] It is obvious - even in a democracy - that not everybody is a supporter of the democratic principles, there has always been enemies of democratic regimes. Consequently, the state must defend itself against the internal and external threats to ensure its survival. These measures are often criticised: the criticisms points out the contrast between the notion of democracy and these restrictive measures. That is beyond the scope of this paper to provide a comprehensive analytical review of democracy, but it is worthy of note that seemingly there is a paradox. Namely that democracy fights against its enemies by limiting basic civil and political rights such as freedom of association, speech and press. To put it differently, democracy ensures its survival using antidemocratic restrictions. This viewpoint is obviously false because otherwise democracy would mean a suicidal regime. John Rawls, the famous liberal theorist argued against this viewpoint in his book A Theory of Justice:[5]

> justice does not require that men must stand idly by while others destroy the basis of their existence... the only question then is whether the tolerant have the right to curb the intolerant when they are of no immediate danger to the equal liberties of others.

[4] András Sajó *Militant Democracy and Transition towards Democracy* in: Militant Democracy (edited by András Sajó) Utrecht, Eleven International Publishing 2004. p.213
[5] John Rawls *A Theory of Justice.* Cambridge: Harvard University Press 1970. p.218

As Rawls points out democracy must defend itself. The only question is how far can it go preserving the status quo, what are the justifiable limits of the self-defense or as András Sajó observes it: "(militant democracy)... is acceptable only if it capable of excluding conceptually and institutionally the abuse of opportunities for restricting rights, or, to be realistic, at least of keeping them within rational bounds."[6]

There are two widely known models, the American and German model, which provides a possible democratic response to threats. In the American model the state provides as "much freedom as possible"[7], irrespectively of their nature. On the one hand the opinions can be freely shared even if they are promoting non-democratic ideas. On the other hand the state punishes violent actions and "violent political groups are the subject of serious state repression."[8] Contrarily, the German model (or as it is officially called the wehrhafte Demokratie or streitbare Demokratie[9]) based on the tragic experience of the Weimar Republic and the Nazi regime. The German legal system punishes not only actions but ideas also that are opposed to democratic principles. In the second chapter I will elaborate the German model much more precisely, but as we can see, it is more severe than the American method in limiting the scope of free speech.

Sajó contributed also to the field highlighting the importance of risk-aversion and risk taking. He notes that within a democratic framework and using democratic mechanisms, the democratic order might be replaced with an authoritarian regime, to put it simple, democracy provides tools for its dissolution. So if it wants to avoid this, it has to be 'militant', it has to take measures to preserve its integrity, that is how democracy is "risk averse".[10] Every democratic order, bound by legal rules accepted by the majority, has to ask itself: what are the acceptable limits of rights in favour of defending the public order. The answer for the question depends on historical background, legal culture and on the role of the civil society. As we have seen above, Germany

[6] András Sajó *Militant Democracy and Transition towards Democracy* in: Militant Democracy (edited by András Sajó) Utrecht, Eleven International Publishing 2004. p.211
[7] Cas Mudde *Defending democracy and the extreme right* in: Western Democracies and the New Extreme Right Challenge (edited by Roger Eatwell and Cas Mudde). Routledge: London and New York. 2004 p.196
[8] Ibid., p.196
[9] These terms can be translated as militant democracy
[10] András Sajó *Militant Democracy and Transition towards Democracy* in: Militant Democracy (edited by András Sajó) Utrecht, Eleven International Publishing 2004. p.214

with tragical memories (the collapse of the Weimar Republic and the Third Reich) in its mind took another path than the United States which has never experienced dictatorship on its territory. It is important to highlight that a strong and spirited civil society is a key factor in risk-taking: with self-conscious citizens the legal order can easily take more risk, consequently the basic rights remain less limited. In a society where - mainly due to the historical context - people fear of an "anti-democratic U-turn", the higher level of restricitions can be justified.[11] Sajó concluded that "liberty is about higher risk-taking."[12], but the degree is different. Militant democracy is only acceptable if it clearly identifies the possible threats and provides a justifiable and controlled measures. He identifies at least three major risks to a democracy in a transition period: (1) the communist comeback, (2) extreme nationalism and (3) right-wing extremism.[13] These "standard" challenges start up the state's defensive mechanism according to the risk-taking willingness. As Sajó rightly points out that even an isolated incident, for instance a racist speech can easily lead to serious consequences: "the first instance of hate speech going unpunished encourages the second one, and once unpunished expressions that mutually encourage hate reach a critical mass the danger of mass violence suddenly becomes imminent."[14] The defensive mechanism is indispensable if the state (certainly not just democratic ones) wants to maintain the democratic order and principle of the rule of law, subsequently every democracy is "militant" because it has to defend itself from internal threats. Although the term militant democracy, coined by Karl Lowenstein in 1937[15], is a modern expression, the phenomenon has been known since liberal democracy has owerthrown absolute monarchies. Before the end of World War II numerous states used militant measures to protect the integrity of the country. These various techniques were protecting not only democratic but

[11] for instance see Rekvényi v Hungary, 20 May 1999 (Case No. 25390/94) where the European Court of Human Rights accepted the argument of the Hungarian Government referring to the special historical past of the state.
[12]András Sajó *Militant Democracy and Transition towards Democracy* in: Militant Democracy (edited by András Sajó) Utrecht, Eleven International Publishing 2004. p.217
[13] Ibid., p.217
[14] Ibid., p.216
[15] Karl Lowenstein *Militant Democracy and Fundamental Rights* Article I in: Militant Democracy (edited by András Sajó) Utrecht, Eleven International Publishing 2004.

authoritarian regimes as well. For instance during the interwar period, the Hungarian government banned the Hungarist party[16] to maintain its power and to preserve the public order.

1.2 The original understanding of militant democracy

Lowenstein in his famous articles coined the term militant democracy as a response to the international fascism. He stated the fascism exists everywhere in Europe, in some states it is visible and strong (Germany, Italy, Austria), in other countries it is hidden in the parliamentary sytem (Belgium, Ireland). He argued that fascist invasion affects every European state, irrespectively of its government. There are one-party dictatorships (Germany, Italy) and authoritarian regimes which preserved some (usually limited) appearances of democracy (elections, freedom of press). The main difference lies between rational systems (democracies) and emotional sytems (dictatorial and authoritarian states). The first one means what we can understand under the term of democracy: constitutional government, the rule of law, rational and calculable administration, fundamental rights and the notion of legality. In addition to that, the sphere of private and public law is separated, the government provides its citizen autonomous space to cooperate and to handle their businesses without interference from the state. The emotional system is just the opposite: emotional government denies individual rights, the principle of rule of law is missing and law appears as an "unchallangeable command"[17] and private and public law is one mixed system. While rational (democratic) regimes can "only appeal to reason"[18] and the cohesion within the state is the confidence in democratic values and achievements, emotional government uses nationalism, intimidation and coercion to mobilize the mass. One big novelty of the international fascism is that it needs publicity to abolish democracy. In contrary, the former revolutionary movements - before the First World War - were secret. Lowenstein found that international fascism is uniform, there are

[16] Arrow Cross Party (Nyilaskeresztes Párt-Hungarista Mozgalom, literally: Arrow Cross Party-Hungarist Movement) was outlawed in 1937.
[17] Karl Lowenstein *Militant Democracy and Fundamental Rights* Article I in: Militant Democracy (edited by András Sajó) Utrecht, Eleven International Publishing 2004. p.232
[18] Ibid., p.241

key features that describes every movement: strong anti-communist ideology usually linked to anti-semitism and xenophobic statements, nationalism and some kind of corporativism. So behind national diversities there is a noticeable uniformity which means that uniform anti-fascist measures can be used to fight against uniform fascism. Lowenstein, after the detailed examination of the European situation, provides two different conclusions: firstly, he claims that fascism is can be seen as a natural development of the history. It is the next step of the progression and if that is true "democray is doomed"[19]: it has become as obsolete as the absolute monarchy was a century ago. The second conclusion is far more optimistic because fascism can be seen as a political technique (the most effective political technique in modern history[20]), consequently it is just a technique for holding power to the sake of power without any metaphysical justification. Lowenstein believed that fascism is not an ideology but a political technique, so the supporters of democracy can fight against it or as he claimed: "democracy must become militant."[21] The novelty and the real value of Lowenstein's articles, besides inventing the term militant democracy, that he discovered that fascism can be described as a uniform political technique, so there can be a standard response to the threat. The modern concept of militant democracy was invented to fight with fascist movements, but laws were created to ban all kinds of subversive movements to avoid discrimination and maintain the principle of equality before the law. Lowenstein in his second article mentioned several possible measures against anti-democratic parties and movements[22]. The most important instruments are: (1) criminal codes against high treason (he finds that every state is well equipped), (2) proscribing subversive movements (joint task for the government and the court), (3) banning para-military armies and uniforms, symbols (to prevent self-advertisement and intimidation), (4) strengthening procedural parliamentary rules, (5) prohibition on hate speech, (6) prohibit public officials and members of armed forces to join to any political parties (curtailing their right to take part in public discourse, and (7) establishing specially selected and trained political police. The last

[19] Ibid., p.236
[20] Ibid., p.236
[21] Ibid., p.236
[22] Karl Lowenstein *Militant Democracy and Fundamental Rights* Article I in: Militant Democracy (edited by András Sajó) Utrecht, Eleven International Publishing 2004. pp.250-261

one might be problematic: it can easily become the "fist of the government or the ruling party" without proper and effective control. Although Lowenstein dedicates his second article to anti-fascist legislation, he warns us not to overestimate the efficiency of the legislation, "legal measures are unsuccesful without governmental policies protecting democracy."[23]. Legislation needs support from the citizens and from the civil society: it must be clear and visible that the society wants to maintain democracy and advocates democratic values. Lowenstein finsihes his article with the following thought[24]:

In this sense, democracy has to be redefined. It should be - at least for the transitional stage until a better social adjustment to the conditions of the technological age has been accomplished - the application of disciplined authority, by liberal-minded men, for the ultimate ends of liberal government: human dignity and freedom.

1.3 The expanded concept of militant democracy

In the post-war period the techniques of militant democracy have become widely used, the best and most known example is Germany which has become the archetype of militant democracy. The German Basic Law (Grundgesetz) reflected to the anti-democratic challenges and incorporated some militant democracy measures. During the Cold War the fear from the international communism and from the Soviet Union caused a wide usage of such techniques: many Western democracies' attention turned to self-preservation and these states have become more and more militant. After the collapse of the Soviet Union the Eastern-European region faced with the problems that Sajó highlighted as the major challenges: the comeback of communism, extreme nationalism that undermines the territorial integrity of the independent states and right-wing extremism that confronts with the new democratic order. The terrorist attacks of 11 September

[23] András Sajó *Militant Democracy and Transition towards Democracy* in: Militant Democracy (edited by András Sajó) Utrecht, Eleven International Publishing 2004. p.230
[24] Karl Lowenstein *Militant Democracy and Fundamental Rights* Article I in: Militant Democracy (edited by András Sajó) Utrecht, Eleven International Publishing 2004. p.262

2001caused a new renaissance of militant democracy: terrorism brought back militant democracy into the center of political discourse. It is obvious that Islamic terrorism and fundamental Islam ("the new Marxism"[25]) is very different from the previous challenges. During the Cold War period internal political parties and subversive movements had the leading role, since fundamental Islamic terrorism has become the major threat states are fighting against elusive and internationally organized terrorist cells. The idea of militant democracy deals with internal threats, "...therefore the problems associated with the international terrorism are not completely congruent with the 'militancy' issue." - argues Markus Thiel.[26] Although this definition is obviously true, we cannot deny that the problem is common: namely how can a state defend itself against groups or movements which aiming to destroy it. Beside the intimidation of terrorism, the internal threat still exists, every political systems have antidemocratic and antisystematic elements. Consequently, militant democracy is still current and definitely worth to deal with it. In this thesis I focus on the "narrower" interpretation of militant democracy and I deal with internal enemies (political parties).

The original understanding of militant democracy was a legal and political concept that treats democracy itself as a valuable form of coexistence and it argues that democratic states have to incorporate defensive measures into their legal order to protect themselves from antidemocratic parties. It is the well-known paradox of the democracy that the majority might elect an antidemocratic government that destroys the democratic achievements. The reason for implementing militant measures is simply to avoid such situations because the democracy is assumed valuable. Here I will not deal with the question whether democracy is the best possible political system or not, I just want to refer to András Sajó's observation again that "the state's most natural characteristic is self defense"[27], so it is certain that a state wants to maintain its public order.

[25] Nancy L. Rosenblum *On the side of The Angels - An Appreciation of Parties and Partisanship* - Princeton University Press. 2008. p.415
[26] Markus Thiel *Comparative Aspects* in: The "militant democracy principle in modern democracies (edited by Markus Thiel). Farnham: Ashgate. 2009. p.380
[27] András Sajó *Militant Democracy and Transition towards Democracy* in: Militant Democracy (edited by András Sajó) Utrecht, Eleven International Publishing 2004. p.213

Nancy L. Rosenblum in her book argues that "the orthodox view of 'militant democracy' is not the whole story today"[28], the key features of political parties has changed since Lowenstein's theory. The "old-fashioned" militant democracy deals with extremist parties (usually right and left-wing extremism somehow connected to political ideologies), but today parties are organized on ethnic or regional ground. These parties are inciting hatred against other communities or their separatist agenda challenges the national identity and/or the territorial integrity of the state. Such parties are not connected to major ideologies: "these parties have only a loose identification with twentieth-century political ideologies, if any."[29] So the question is whether the instruments of militant democracy are applicable to such political organizations. Rosenblum's convincingly argues that the answer is yes. These parties have the same aim as every "classic" political party: they want to gain political power or at least influence the public discourse. As she puts it: "religious and ethnic parties, among others, compete for office to win their share of public benefit and support or "they insist that some other group's claim to public recognition or public funding (national minorities, immigrants, refugees, guest workers) should be denied."[30] So it is clearly visible that the general understanding of political parties has changed: it shifted from antidemocratical ideologies (nazism, communism) to ethnic and religious parties. The original attitude is incorporated into the German Basic Law, where Article 21 Section 2 states: "Parties that, by reason of their aims or the behavior of their adherents, seek to undermine or abolish the free democratic basic order or to endanger the existence of the Federal Republic of Germany shall be unconstitutional. The Federal Constitutional Court shall rule on the question of unconstitutionality."[31] Contrarily, the Bulgarian Constitution[32] explicitly prohibits organizing political parties on ethnic, racial or religious lines or we can mention the Basic Law of Israel which states:

[28] Nancy L. Rosenblum *On the side of The Angels - An Appreciation of Parties and Partisanship* - Princeton University Press. 2008. p.416
[29] Ibid., p.417
[30] Ibid., p.417
[31] German Basic Law Article 21 (2) 1949
[32] Bulgarian Constitution Article 11 (4) 1991

A candidates' list shall not participate in elections to the Knesset if its objects or actions, expressly or by implication, include one of the following:

(1) negation of the existence of the State of Israel as the state of the Jewish people;[33]

The significance of banning these parties is different than excluding right or left-wing extremism: (the ban) "can amount to the political exclusion of a whole sector of society."[34] To avoid this side-effect, the techniques of militant democracy have to adapt to the new circumstances and clear standards must be provided to justify the ban.

1.4 Classification of democracies

Before the detailed comparative analysis, I have to introduce some theoretical categories and ideal groups that help in the classification. We need to establish an academic framework to present the possible categorizations of democracies from a militant perspective. Here I present three possible classifications: (1) the most simplistic one, (2) the one that was developed by Gregory H. Fox and Georg Nolte[35] and (3) the one that I found the most convincing: the typology of Angela K. Bourne[36]. The first typology is very simple and therefore it is not very useful. This classification proposes only one question: whether a democracy is militant or not. It suggests that there are militant and non-militant democracies which is a false classification as we saw above. It is nearly impossible to imagine that a democracy fails to incorporate at least some basic defensive measures into its legal system to protect the public order because it would simply mean that it is doomed. "Democracies are always more or less militant"[37] and "many countries look back on briefer or longer periods of increased vigilance or a more restrictive treatment of 'enemies' of the democratic

[33] Israel Basic Law (Amendment No.9.) 1985 7A
[34] Nancy L. Rosenblum *On the side of The Angels - An Appreciation of Parties and Partisanship* - Princeton University Press. 2008. p.418
[35] Gregory H. Fox and George Nolte *Intolerant Democracies*, 36 Harvard International Law Journal, 1.1995.
[36] Angela K. Bourne.*The proscription of parties and the problem with 'militant democracy'*. Centre for the Study of European Political Parties. Online Working Paper Series, No. 3/2011. University of Dundee. 2011.
[37] Otto Pfersmann. *Shaping Militant Democracy: Legal Limits to Democratic Stability* in: Militant Democracy (edited by András Sajó). Utrecht, Eleven International Publishing. 2004. p.53

system, the state or fundamental values of the particular constitution."[38] Such simplistic typology is pointless, democracies cannot be classified as militant and non-militant.

The second typology is much more comprehensive, it is the well-known classification of Fox and Nolte. They make a distinction between procedural and substantive democracies and additionally complete their typology with the term 'militant' and 'tolerant' democracy. Procedural democracy provides an istitutional framework and it ensures the leading role of the majority. The key features are free elections, the separation of powers, free press and freedom of speech. This type of democracy is a "skeleton", it guarantee that citizens can take part in the political process but nothing more, it does not promote democratic values. Procedural democracy is the "form and the process of governance"[39], the form comes first then the content. Contrary to that, substantive democracy is principally about the content: it concentrates on the original meaning of democracy, not only on the process. It makes sure that democratic ideas are represented in every aspect of the democratic system and that the decisions of the legal and political order can be traced back to such values: "a 'substantive democracy' secures the people's participation in policymaking as regards contents."[40] From the militant perspective the conclusion is the following: a substantive democracy, that respects and promotes democratic values, is more likely to use militant techniques to preserve its status than a procedural one. In the latter model a legally elected but otherwise corrupt and amoral government can easily ruin the democratic order as long as it obeys the procedural rules.

In her typology Angela K. Bourne improved the Fox and Nolte's classification by adding a second and a third variable. She also distinguishes between procedural and substantive democracies, though she provides a different definition. According to her viewpoint, in a procedural democracy there are no substantive limits on the parliament, the parliament is the sovereign and there are no "eternity clauses"[41] in the constitution, every provision can be amended somehow. The

[38] Markus Thiel *Comparative Aspects* in: The "militant democracy principle in modern democracies (edited by Markus Thiel). Farnham: Ashgate. 2009. p.385
[39] Ibid., p.385
[40] Ibid., p.386
[41] Eternity clause is a legal provision in a constitution aiming to ensure that certain parts of the constitution cannot be changed by ulterior amendments

third parameter is that most scholars agree that proscribing a party is unconstitutional. Contrarily, a substantive democracy refers to a system that contains specific constitutional prohibitions on amendments, it prescribes the constitutional duty for political parties to respect and promote values of democracy and finally, it explicitly permits the exclusion of antisystematic parties. A democracy, consequently a militant democracy, can be either procedural or substantive and "as such should be conceived as a dichotomous variable."[42] The novelty of Bourne's typology is that she adds two extra variable: firstly she distinguishes between states that might ban parties (1) only for their behaviour and/or (2) for holding and promoting antidemocratic ideologies. It is very similar to the American and German model that I mentioned above. The second variable is the distinction between active states that "actively employ available legal rules to ban extremist political parties"[43] and 'abstentionist' states that avoid implementing such rules, either because they choose to "remain silent" and not to adopt militant legal measures (permissive states) or because they simply do not want to use their otherwise available instruments.[44] I think that this typology has several advantages compared to the former one: it is more precise, it provides a much more detailed classification and as we will see in the second chapter, it makes possible to introduce militant democracy as an inconstant concept: for instance Germany - according to this typology - is clearly a substantive democracy which has actively employed militant measures against parties for both antidemocratic behaviour and ideas. This was obviously the case in the 1950s when the Federal Constitutional Court banned the Socialist Reich Party and the Communist Party of Germany, but since then Germany has not applied such rules. The situation was just the opposite in Spain: today Spain is an active procedural democracy that bans parties for the behaviour like as Batasuna was banned in 2003. Formerly Spain was passive, the adequate legal rules were unused. In the second chapter - among other things - I will use Angela K. Bourne's typology to compare the jurisdictions of

[42] Angela K. Bourne.*The proscription of parties and the problem with 'militant democracy'*. Centre for the Study of European Political Parties. Online Working Paper Series, No. 3/2011. University of Dundee. 2011. p.21
[43] Ibid., p.23
[44] Ibid., p.23

Germany, the Russian Federation and the European Court of Human Rights from a militant democracy perspective.

Chapter 2

Militant democracy in practice

In the following chapter I will introduce the implementation of militant measures comparing three jurisdictions: the Federal Republic of Germany, the Russian Federation and the European Court of Human Rights. I will summarize how these legal systems deal with internal threats maintaining the notion of democracy and additionally, I will highlight the similarities and differences among these legal orders.

2.1 The classic model of militant democracy: Germany

According to the previously mentioned classification Germany qualifies as a substantive democracy which actively employs militant measures against antidemocratic behaviour and activity as well. Substantive because the Basic Law contains limitations on amendment[45] and it explicitly permits the exlusion of parties.[46] It is also true that Germany right after its democratic reconstruction actively used defensive militant mechanisms in the 1950's. The fact that there has been only two occassions in the history of the German democracy when the Federal Constitutional Court has banned a political party doesn't mean that the arsenal of the militant democracy's potential weapons are useless, as we will see later, the society and the political system has been seriously changed since the 1950's causing different implementation of such instruments. As the

[45] Article 79 (3) of German Basic Law: Amendments to this Basic Law affecting the division of the Federation into Länder, their participation on principle in the legislative process, or the principles laid down in Articles 1 and 20 shall be inadmissible.

[46] Article 21 (2) of German Basic Law: Parties that, by reason of their aims or the behaviour of their adherents, seek to undermine or abolish the free democratic basic order or to endanger the existence of the Federal Republic of Germany shall be unconstitutional. The Federal Constitutional Court shall rule on the question of unconstitutionality.

third variable, in Germany both the antidemocratic behaviour and activity justifies the proscription, as we will see in the Sozialistische Reichspartei (Socialist Reich Party, SRP) and the Kommunistischer Partei Deutschlands, KPD) case. To present the German undestanding of militant democracy, at first I will briefly write about the treatment of extremist parties, then I will turn to the three most relevant cases in the topic, namely I will introduce militant democracy "in practice" using the example of the Socialist Reich Party, the Communist Party and - as the most recent case - the Nationaldemokratische Partei Deutschlands (Nationalist Democratic Party, NDP) case.

The German political party system can be labelled as "exclusionary oligopoly".[47] It means that due to the condemnation of the Nazi regime and the committed crimes, the extreme right parties are completely excluded from all levels (federal and state level as well) of government. The Federation prevents democracy from a Nazi "take over" providing an active protection. The system is the oligopoly of the democratic parties (CDU, FDP, SPD and Greens[48] at federal level) and for others it is pretty hard to enter into the territory of politics, it is an "exlusive or closed autarchic space".[49] The high level of entry causes that extreme parties cannot enter to even regional parliaments. The Austrian system is just the opposite: it treats extreme parties with much more acceptance. For instance the Freedom Party of Austria (Die Freiheitliche Partei Österreichs, FPÖ) and its leader, Jörg Haider was twice the leader (Landeshauptmann) of Carinthia in 1989-91 and 1999-2004. The Austrian far right-wing party has been a decisive and influental party since the 1970's, they governed with the conservative Austrian People's Party (Österreichische Volkspartei, ÖVP) and with the Social Democratic Party (Sozialdemokratische Partei Österreichs, SPÖ). It is

[47] Laurent Kestel and Laurent Godmer *Institutional inclusion and exclusion of extreme right parties* in: Western Democracies and the New Extreme Right Challenge (edited by Roger Eatwell and Cas Mudde).Routledge: London and New York. 2004. p.135

[48] Christlich Demokratische Union Deutschlands (Christian Democratic Union), Freie Demokratische Partei (Free Democratic Party), Sozialdemokratische Partei Deutschlands (Social Democratic Party of Germany), Bündnis 90/Die Grünen (Alliance '90/The Greens)

[49] Laurent Kestel and Laurent Godmer *Institutional inclusion and exclusion of extreme right parties* in: Western Democracies and the New Extreme Right Challenge (edited by Roger Eatwell and Cas Mudde).Routledge: London and New York. 2004. p.135

clearly visible that while the within the Austrian democracy extreme politics is a natural part of the political system, in Germany the mere idea of any form of inclusion is unacceptable.

German militant democracy is deeply rooted in the historical context. The fall of Weimar Republic led to the Third Reich and the denial and condemnation of Hitler's regime led to militant democracy. It is very well-known that the Weimar Constitution was - despite its strengths - a failure. It provided proportionate representation in Reichstag and allowed extremist parties to enter into the political arena. Proportionate representation resulted in unstable coalitions and governments: there were too much parties in the legislation and none of them were able to form a stable and reliable government. After the lost World War and during the worldwide economic crisis in the 1930's, the vast majority of the German society felt that Republic is useless, it cannot solve the acute problems of the state. As Lowenstein stated: democracy cannot use the techniques of an emotional system (mass mobilization, symbols and coercion), the only chance to prove its usefulness is the achievements. And without serious achievements Nazis could take over the state promising a glorious empire to German people. The rational (democratic) government lost a battle against emotionalism and mass politics. Besides the Weimar system's weaknesses, it is important to claim that the Nazi's rise to power was due to the lack of legal culture and democratic tradition also. The Weimar Republic as a democratic regime wasn't supported by the German society, so the lack of democratic traditions led to dictatorship. It is always essential to state that legal measures are very important, but definitely not sufficient alone: without support and assistance from the society every democratic system is doomed. People are the foundation of the state, its their primary interest to maintain the basic democratic order because - as far as we know - democracy ensures liberty and property the most.

After the Second World War the state's main aim was to prevent Nazis from return, consequently Germany needed defensive measures to protect the newly established order from the enemies of the state. Thus, they created a 'self-defence' democracy implicating militant

democracy's instruments to the Basic Law of 1949. The idea in the focus of protection is the so-called 'free democratic basic order' which appears several times in the Basic Law.[50] The Federal Constitutional Court (Bundesverfassungsgericht) elaborated the meaning of the free democratic basic order in its 1952 judgment:[51]

> The free democratic basic order can be defined as an order which excludes any form of tyranny or arbitrariness and represents a governmental system under a rule of law, based upon self determination of the people as expressed by the will of the existing majority and upon freedom and equality. The fundamental principles of this order include at least: respect for the human rights given concrete form in the Basic Law, in particular for the right of a person to life and free development, separation of powers, responsibility of government, lawfulness of administration, independence of the judiciary, the multi-party principle, and equality of opportunities for all political parties.[52]

Accordingly, the free democratic basic order is a sytem which excludes any kind of arbitrariness and represents such basic democratic principles as the rule of law, human rights and the power of the majority. Moreover the definition given by the Constitutional Court (Court) strengthens the principles of the Basic Law representing the idea that the notion of free democratic basic order and the Constitution are inseparable entities, the basic order is materialized by the constitutional provisions.

Although the main aim of the useage of militant measures was to exclude unconstitutional political parties from the public discourse, during the years, the concept of militant democracy has become some sort of constitutional value and guiding principle that helps in the interpretation of different cases. In these days militant democracy is no longer just about banning antidemocratic parties, but it is widely used to deal with potential threats and misbehaviours. A good example is the case that an officer of the Bundeswehr (the Federal Armed Forces) had questioned the free basic democratic order in a public debate.[53] The Constitutional Court stated:

[50] For instance Article 18 and 21 of the German Basic Law
[51] Socialist Reich Party Case 2BverfGE 1 (1952)
[52] Markus Thiel *Germany* in: The "militant democracy" principle in modern democracies (edited by Markus Thiel). Farnham: Ashgate. 2009. p.116
[53] BVerfGE 28, 36, 48, et seq.

The Federal Republic of Germany is a democracy that expects of its citizen the defence of the free order and does not accept the misuse of fundamental rights to fight this order (Article 9 Section 2, 20 Section 4, 18, 21 Section 2, 98 Sections 2 and 5 of the Basic Law). This principle of militant democracy applies to the internal order of the Federal Armed Forces, too. Therefore, it is a fundamental duty of the soldiers to advocate for the maintenance of the free order in their entire behaviour.[54]

Or in another case the Court had interpreted Article 33 Section 5 of the Basic Law[55] in its judgment:

The duty of allegiance demands to approve the state and its effective constitutional order, also insofar it is subject to constitutional transformation, not only verbally, but especially within the occupation by regarding and abiding by the constitution and by the laws and holding office in the spirit of this provisions. The duty of political allegiance asks for more than a formally correct, otherwise uninterested, cool inwardly distant attitude towards state and constitution, it demands from the public servants to dissociate from organizations and activities that attack, fight and defame this state, his constitutional institutions (and bodies), and the existing constitutional order. It is expected from the public servant that he perceives and recognizes this state and its constitution as a high positive value worth advocating for.[56]

It is obvious from these two examples that the Constitutional Court widened the interpretation of militant democracy and started to use as an explanatory principle. In its judgment the Court stated that public service (either in Armed Forces or elsewhere) includes loyalty to the democratic order: "it is a fundamental duty of the soldiers to advocate for the maintenance of the free order in their entire behaviour"[57] or "it is expected from the public servant that he perceives and recognizes this state and its constitution as a high positive value worth advocating for"[58]. According to these statements, public service in Germany has a special status, it is not a regular occupation. Public service is bound to free basic democratic order, consequently it is the fundamental duty of civil servants to (1) accept and respect it as a value and (2) protect it. Protection excludes for instance the

[54] BVerfGE 28, 36, 48, et seq. (translated by Markus Thiel)
[55] Article 33 Section 5 of Basic Law: The law governing the public service shall be regulated and developed with due regard to the traditional principles of the professional civil service.
[56] BVerfGE 39, 334, head note 2 (translated by Markus Thiel)
[57] BVerfGE 28, 36, 48, et seq. (translated by Markus Thiel)
[58] BVerfGE 39, 334, head note 2 (translated by Markus Thiel)

membership in an antidemocratic association or questioning it in a public debate. Obviously this interpretation limits the civil servant's freedom of expression and freedom of association rights. So the Court had to examine whether such forms of militant democracy is congruent with basic fundamental rights. In its KPD decision[59] in 1956, the Court was faced to the question whether outlawing a political party[60] is acceptable in the light of basic rights. The Court found:

> Article 21 Section 2 of the Basic Law... does not conflict with a fundamental principle of the constitution, it is an expression of the conscious constitutional-political will to solve a border problem of the democratic form of state, a reflection of the experiences of the constitutional legislator, who tought he could not realize the principle of neutrality of the state towards political parties in a pure form of a specific historical situation, a confession to 'militant democracy'. This decision is binding the Federal Constitutional Court.[61]

Militant democracy has become a widely used and accepted principle of the constitutional Germany as a "guiding light" of the interpretation. As Markus Thiel puts it: "in the aftermath, the court developed 'militant democracy' into an 'all-purpose' principle and uncompromisingly used it as an argument, criterion and reasoning in a couple of decisions.[62] As the Constitutional Court stated militant democracy corresponds to basic human rights, but obviously limits some of them. To sum up, militant democracy as a defensive mechanism that protects democracies from internal attacks (more often considered as a legal instrument against anidemocratic political parties) is congruent with indispensable values of Western democracies (freedom of expression, freedom of association), but - by its nature - obviouly limits them in certain forms. Additionally, it is more than a defensive measure, it has become a constitutional principle that influences the interpretation of the constitutional order. Militancy in Germany is not only "comprising the measures the constitution

[59] BverfGE 5, 85
[60] Article 21 Section 2 of German Basic Law: Parties that, by reason of their aims or the behaviour of their adherents, seek to undermine or abolish the free democratic basic order or to endanger the existence of the Federal Republic of Germany shall be unconstitutional. The Federal Constitutional Court shall rule on the question of unconstitutionality.
[61] BverfGE 5, 85, 139
[62] Markus Thiel *Germany* in: The "militant democracy" principle in modern democracies (edited by Markus Thiel). Farnham: Ashgate. 2009. p.112

and sub-constitutional laws offer to defend the free democratic basic order, but is a constitutional principle with a substantive content of its own."[63]

As a constitutional value, militant democracy - except the area of public service as we see above - doesn't impose any direct legal duty on citizens. Constitution provides the possibility for every citizen - as a last resort - the rightful resistance to antisystematic attacks as it is explicitly mentioned in the Basic Law: "All Germans shall have the right to resist any person seeking to abolish this constitutional order, if no other remedy is available."[64]. However, "it does not go so far as to enforce a legal duty or responsibility on the citizen to protect democracy."[65] Thiel argues that the rationale behind that is the following: "such duty would in practice require an (inner) acceptance of the free democratic basic order which cannot be demanded: the 'militant democracy' principle reacts to attack against the democracy, not to simple disaffirmation."[66] This remark has two very important consequences: firstly, the German model explicitly distinguishes between 'ordinary citizens' and public servants: the latter group has a fundamental duty to maintain free democratic basic order, while the rest of the citizens are "free not to respect it". The second consequence is that "disagreement" with the basic order and scepticism in democracy per se is not a threat, militant democracy protects the state against real attacks. Therefore, the concept is totally acceptable within any democratic-constitutional framework because it only interferes when the state is under a real attack and at the same time stops the state from becoming the "Big Brother".

Keeping in mind the theoretical background, in the following section I will present how militant democracy operates in practice introducing the cases of the two banned political parties and additionally one recent case from the German jurisdiction. The first case under Article 21 Section

[63] Ibid., p.115
[64] Article 20 Section 5 of German Basic Law
[65] Markus Thiel *Germany* in: The "militant democracy" principle in modern democracies (edited by Markus Thiel). Farnham: Ashgate. 2009. p.115
[66] Ibid., pp.115-116

(2)[67] is the case of the Socialist Reich Party (SRP)[68]. This was the first case when the Constitutional Court of Germany banned a political party. This Neo-Nazi party was founded in 1949 as a successor of Hitler's Nationalsozialistische Deutsche Arbeiterpartei (National Socialist German Worker's Party, NSDAP). It was quite succesful at regional and local level and they had two seats in the Bundestag as well.[69] SRP was an easy case for the Constitutional Court to deal with: it was openly antisemitic and racist and members of the party claimed that they are followers of the National Socialist ideology. In addition to that, some of the leaders were former Nazi office-holders.[70] Because of its upfront Nazism, the ban did not "cause a sensation"[71]: it was well-known that this constitutional provision has been primarily incorporated to the Basic Law to outlaw Neo-Nazi parties and therefore was no debate about the SRP's program and ideology. It was common knowledge in Western Germany[72] that the Socialist Reich Party was a Nazi party. The Court in its judgment examined three aspects of the party: (1) whether SRP is a political party at all, (2) the internal organization and (3) the program of the party. The Basic Law differentiates between associations and political parties. Associations fall under Article 9 that ensures the freedom of associations for every German citizen and states that "associations whose aims or activities contravene the criminal laws, or that are directed against the constitutional order or the concept of international understanding, shall be prohibited".[73] Basic Law contains a different provision which explicitly deals with political parties.[74] Article 21 Section 1 states that parties reports the will of the

[67] Article 21 Section 2 of German Basic Law: Parties that, by reason of their aims or the behaviour of their adherents, seek to undermine or abolish the free democratic basic order or to endanger the existence of the Federal Republic of Germany shall be unconstitutional. The Federal Constitutional Court shall rule on the question of unconstitutionality.
[68] Socialist Reich Party Case 2BverfGE 1 (1952)
[69] Fritz Dorls and Fritz Rössler were the members of Bundestag. However Dorls was elected as a deputy of the German Right Party (DKP-DRP) and Rössler joined the party later.
[70] Otto Ernst Remer, the founder of the party, was a Wehrmacht major general, Fritz Dorls was an author of Völkisch and Gerhard Krüger was the former leader of the German Student Union
[71] Markus Thiel *Germany* in: The "militant democracy" principle in modern democracies (edited by Markus Thiel). Farnham: Ashgate. 2009. p.121
[72] Federal Republic of Germany (Bundesrepublik Deutschland, BRD)
[73] Article 9 Section 2 of German Basic Law:
Associations whose aims or activities contravene the criminal laws, or that are directed against the constitutional order or the concept of international understanding, shall be prohibited.
[74] Article 21 of German Basic Law:

people, parties are "agents forming the political will of the people."[75] Both associations and parties can be formed freely, but parties have a special constitutional status in the democratic order because parties are essential and indispensable actors in forming and transmitting the citizens'will, consequently the Basic Law treats them differently by adding special guarantees and imposing special duties on them. This is the reason why those "associations whose aims or activities contravene the criminal laws, or that are directed against the constitutional order or the concept of international understanding"[76] are banned by the Federal Minister of the Interior and unconstitutional parties are banned exclusively by the Constitutional Court. In 1993 the Hamburg Senate filed a petition to ban National List (Nationale List, NL) a small right-wing party and the Bundesrat filed another petition in the same year to ban the Free German Worker's Party (Freiheitliche Deutsche Arbeiterpartei, FAP). Both parties were small without any noticeable support from the voters. The Court dismissed both petitions because it found that NL and FAP were not political parties according to Article 21 (the Court could not identify their organization or internal structure), so the Minister could ban both of them.[77]

The second question the Court dealt with was the internal structure of the SRP. They found that the structure was similar to NSDAP's construction (both were organized in a hierarchy called the Führer-principle[78]), so it wasn't in accordance with the democratic principles. The options of voluntary entry and leaving were not guaranteed also. Article 21 Section 1 is clear: political parties' "internal organisation must conform to democratic principles" which meant that SRP failed to meet this requirement. Every political party's structure must be democratically organized otherwise it

(1) Political parties shall participate in the formation of the political will of the people. They may be freely established. Their internal organisation must conform to democratic principles. They must publicly account for their assets and for the sources and use of their funds.
(2) Parties that, by reason of their aims or the behaviour of their adherents, seek to undermine or abolish the free democratic basic order or to endanger the existence of the Federal Republic of Germany shall be unconstitutional. The Federal Constitutional Court shall rule on the question of unconstitutionality.
(3) Details shall be regulated by federal laws.

[75] Donald P. Kommers *The Constitutional Jurisprudence of the Federal Republic of Germany* Durham, N.C.:Duke University Press. 1997. p.219
[76] Article 9 Section 2 of German Basic Law
[77] Markus Thiel *Germany* in: The "militant democracy" principle in modern democracies (edited by Markus Thiel). Farnham: Ashgate. 2009. pp.121-122
[78] or Führerprinzip. It is basically meant that Hitler's word stands above every law, he is the final arbiter.

might be banned. Finally, the Court examined the program of the party and found that it promoted hatred and the main aim was to abolish the democratic order and found a new Reich. Because of the three examined aspects of the SRP, the party was declared unconstitutional under Article 21 Section 2 in 1952. Additionally, the members lost their seats in Bundestag and in the regional governments as well. This was the first time when the Federal Constitutional Court found a party unconstitutional and it was a "clear cut": obviously Article 21 Section 2 has been incorporated to the Basic Law to ban precisely this kind of parties.

The second (and so far the last) case when the Court outlawed a political party was the Communist Party of Germany (Kommunistischer Partei Deutschlands, KPD) case in 1956.[79] The awarding of the case was controversial. The Federal Government filed a petition in 1951 asking the Court to ban the Communist Party, but the Court only came to decision 5 years later, mainly because of the enforcement by the Government. It is fair to say that the biggest difference between the two cases was that while the SRP was a real internal threat, the Communist party was not. It was rather a symbolic fight againts the Soviet Union and the spreading of international Communisn: the KPD lacked noticeable support from the society: it was a small, marginal party without any chance to influence the public discourse. In the judgment the Court examined (1) the ideological background of the party (Marxism-Leninism), (2) the internal structure and (3) the party's program. The most important lesson is that the Court stated: there is no need for actual danger to find a party unconstitutional, it is enough if there is a chance in the future that the party is going to realize its antidemocratic and antisystematic aims. Certainly the probability of the chance must be somehow demonstrable. This interpretation has expanded the scope of militant democracy because it clearly stated that not only potential danger justifies the ban, but also the mere chance is sufficient. Finally, the Court found KPD unconstitutional under Article 21 Section 2 and banned the party. This judgment was controversial from several aspects: the most important is that KPD did not

[79] Communist Party of Germany Case 5 BverfGE 8. (1956)

constituted danger, it lacked support and voters. The Government forced the Court to deal with the case so they maintained the attention while without support from the society the party would have disappeared. This enforcement clearly shows that Federal Government did not trust in the power and sanity of the civil society, otherwise they would have let the party end.

With this interpretation the Court theoretically expanded the use of militant measures against vague and uncertain threats, but surprisingly the Court - so far - has never outlawed a political party since 1956. This is due to the changes in the political and social situation: after the reunification (1990) "the political climate changed"[80] and the internal danger has partly diminished. However, the Constitutional Court in 2003 faced with the problem called the National Democratic Party (Nationaldemokratische Partei Deutschlands, NPD).[81] This far right-wing party was founded in 1964 and it was a succesful party in the 1960s. After the decade the support significantly decreased, so the Government refrained from filing a petition against the party. At the beginning of the twenty first century - due to several racially motivated attacks - the Bundestag and Bundesrat together with the Federal Government asked the Court to examine the unconstitutionality of NPD. Right before the hearing the Court was informed that the witness, who had a leading role in the litigation, was an agent of the secret service, furthermore around 15 percents of the party's leadership were agents too. The secret service refused to disclose the names of the agents who were involved in the case, so the Court decided not to continue the proceeding. We must underline that the Court did not rule on the constitutionality of the NPD, it simply ended the procedure because of procedural failures: it left the door open for a future suit. This case was clearly about the procedure not the content, the only lesson is that procedure matters and the party still can be found unconstitutional under Article 21 Section 2.

Germany is definitely a substantive democracy which actively employed the measures of militant democracy in the 1950's and banned two political parties, but since then, due to the change

[80] Markus Thiel *Germany* in: The "militant democracy" principle in modern democracies (edited by Markus Thiel). Farnham: Ashgate. 2009. p.114
[81] National Democratic Party Case BVerfG, 2 BvB 1/01 (2003)

in the political and social system, the Court has not outlawed any party. However, it does not mean that militant democracy is useless: the Court has elaborated a wide framework for interpretation and thanks to that the German system seems effective in protecting the free basic democratic order. Another intereseting example might be the Russian Federation which is obviously far away from the German democratic model.

2.2 Democracy under construction: the Russian Federation

The Russian Federation (Russia) might not be our first thought when we are talking about democracies. Although it is ideally a democratic state - a "restricted version of democracy" - there are several concerns about its democratic order. But in the light of militant democracy the Russian instance might be instructive. It is fair to say that the Russian model is far away from the German basic order and generally speaking from Western democracies. Russia can be considered as a "procedural" democracy: it virtually provides certain essential democratic elements (elections, freedom of press, freedom of assembly, the power of majority) but it limits many fundamental rights and the "substance of democracy" is missing. Thus, Russia is in a temporary situation: unambiguously showing off its former one party ruled totalitarian system to a democracy but it has not reached it yet. That is the reason why Russia is a good example because the use of militant democracy can be presented in the light of a "transitional" democracy.[82]

The Constitution of the Russian Federation, which was enacted in 1993, does not contain any provision related to political parties, but Article 13[83] talks about political diversity which -

[82] Svetlana Tyulkina *Militant Democracy* (SJD Thesis). Central European University. 2011.p.143
[83] Article 13 of The Constitution of the Russian Federation (1993):
1. In the Russian Federation ideological diversity shall be recognized.
2. No ideology may be established as state or obligatory one.
3. In the Russian Federation political diversity and multi-party system shall be recognized.
4. Public associations shall be equal before the law.
5. The creation and activities of public associations whose aims and actions are aimed at a forced change of the fundamental principles of the constitutional system and at violating the integrity of the Russian

indirectly- refers to parties. The third point mentions the multi-party system and that associations "whose aims and actions are aimed at a forced change of the fundamental principles of the constitutional system and at violating the integrity of the Russian Federation, at undermining its security, at setting up armed units, and at instigating social, racial, national and religious strife shall be prohibited."[84] Article 13 is applicable to political parties: it makes the outlawry possible. For a long time, Constitution and the Federal Law on Public Associations were the only legal instruments related to political parties. In the 1993 election a vast number of groups emerged who wanted to participate in the election. Finally, 35 electoral blocks and unions took part and eight of them gained seats (323) in the State Duma. The rest (127) was occupied by indenpendent candidates. The second election was in 1995, but previously the legislation had accepted a new federal law regulating the elections.[85] This law expanded the potential concerned groups' scope: as a result, 258 public associations and 15 trade unions were potential candidates in the 1995 elections. Three years later the participatory rights of the "non-party type" associations were denied, so the candidate parties number dropped to 139.[86] In 2001 the Duma enacted a new federal law which was the first act that directly dealt with political organizations.[87] Besides other innovations, the law defined political party[88] and imposed some duties on it. The law has introduced severe requirements[89] for

Federation, at undermining its security, at setting up armed units, and at instigating social, racial, national and religious strife shall be prohibited.

[84] Article 13 Section 5 of The Constitution of the Russian Federation

[85] Federal Law on Elections of Deputies of the State Duma of the Federal Assembly of the Russian Federation (2005 as amended 2010)

[86] Svetlana Tyulkina *Militant Democracy* (SJD Thesis).Central European University. 2011.pp.146-147

[87] Federal Law on Political Parties (2002)

[88] Article 3 of the Federal Law on Political Parties (2002):
1.A political party is a public association created for the purpose of the participation of citizens of the Russian Federation in the political life of society by way of the formation and expression of their political will, the participation in public and political actions, in elections and referenda and also for purposes of representing the interests of citizens within the state authorities and local self administration bodies.

[89] Article 3 of the Federal Law on Political Parties (2002):
2. A political party shall meet the following requirements:
- a political party shall have regional branches in more than a half of the subjects of the Russian Federation, understanding that only one regional branch of the given political party may be opened within a subject of the Russian Federation;
- a political party shall comprise not less than fifty thousand members of political party, understanding that in more than half of the subjects of the Russian Federation a political party shall have its regional branches comprising not less than five hundred members of political party as is envisaged under Item 6 of Article 23 of this federal law. In the remaining regional branches, the membership of each such branch shall be not less than two hundred and fifty members of political party as is provided under Item 6 of Article 23 of this Federal Law;

the sake of registration and made the parties' dissolution possible. This law determines the rights and duties of the parties in details from registration to ban. Stick to the original aim of this paper, I will only deal with the prosciption of the parties. For the purpose of our topic Article 9 of the Federal Law on Political Parties is the most important: this provision contains the list of prohibitions. First of all Article 9 prohibits - among others - the foundation and activity of any political party "whose objectives or actions are aimed at the performance of an extremist activity" and "the creation of political parties on the basis of professional, racial, national or religious affiliation."[90] Additionally, this Article prescribes that a party can have its branches created only on territorial basis.[91] The law regulating parties "established not only content-based restrictions" but also "quantitative restricitions" to qualify as a party that can enter into the electoral process.[92] A very important feature of the Russian party system is the registration process is arranged by the State, precisely by the Ministry of Justice. This body of the state supervises the registration and checks whether the party fulfills the prescribed requirements. The 2001 Law required the parties to have at least 10,000 members and to have their units in at least half of the regions moreover each unit shall contain at least 100 members. In 2004 a major change has come: the amendment of the

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- the governing and other bodies of a political party, its regional branches and other structural subdivisions shall be located on the territory of the Russian Federation.
3. A regional branch of a political party in this federal law shall imply a structural subdivision of a political party which is created by decision of its duly authorized governing body and conducts its activity on the territory of a subject of the Russian Federation. Within a subject of the Russian Federation, comprising an autonomous district (autonomous districts) the creation of a combined regional branch of a political party is allowed. Other structural subdivisions of a political party (local and grass-roots branches) shall be created in the instances and according to the procedure envisaged under its charter.
Federal Law No. 93-FZ of July 21, 2005 amended Item 4 of Article 3 of this Federal Law
4. The objectives and goals of a political party shall be set forth in its charter and program.
The basic objectives of a political party shall be as follows:
- shaping of public opinion;
- political education and development of citizens;
- expression of opinions of citizens on any issues of public life, raising the awareness of the general public and state authorities of those opinions;
- the nomination of candidates (lists of candidates) in an election of President of the Russian Federation, deputies of the State Duma of the Federal Assembly of the Russian Federation, an election to the legislative (representative) governmental bodies of subjects of the Russian Federation, election of elected local self-government officials and election to the representative bodies of municipal formations, participation in such elections and also in the operation of elected bodies.

[90] Article 9 Section 1 and 3 of the Federal Law on Political Parties (2002)

[91] Article 9 Section 4 of the Federal Law on Political Parties (2002):
The structural subdivisions of political parties shall be set up and operate only on a territorial basis. It is not allowed to set up structural subdivisions of political parties within state authorities and local self-administration bodies, within the Armed Forces of the Russian Federation, law enforcement bodies and other state bodies, within governmental and non-governmental organizations.

[92] Svetlana Tyulkina *Militant Democracy* (SJD Thesis). Central European University. 2011.p.149

law raised the figures to at least 50,000 members in general and to minimum 500 members per unit and additionally the law proscribed the regional and local parties as well.[93] Every party had two years - the deadline was 1 January 2006 - to fulfill these new regulations, otherwise it lost its political party status and became an ordinary association.

Article 41 of the Law on Political Parties is about the dissolution of the parties. It states that a party can be outlawed by the decision of the Supreme Court since (1) it fails to meet the requirements prescribed by Article 9, (2) it fails to restore its lawful operation within the given time, (3) it does not have enough member altogether and/or in its subunit or (4) it does not participate in the elections.[94] These are the requirements that a party has to meet, otherwise the registration will be denied or it will be outlawed by the Supreme Court. The Supreme Court is the final arbiter as the only organization in Russia that can ban a party. The procedure is initiated by either the Ministry or the Prosecutor General. After observing that a given party fails to meet the regulations, the Prosecutor or the Ministry warns the party couple of times. If it disregards the warnings, the Supreme Court - at the request of the previously mentioned bodies - can suspend the party's operation for up to 6 months. If the party during this period fails to restore its lawful operation, the Supreme Court can outlaw the party.[95] Yet this is a theoretical option, since 1993 this procedure was never invoked.[96]

[93] Article 3 Section 2 of the Federal Law on Political Parties (2002):
A political party shall meet the following requirements:
- a political party shall have regional branches in more than a half of the subjects of the Russian Federation, understanding that only one regional branch of the given political party may be opened within a subject of the Russian Federation;
- a political party shall comprise not less than fifty thousand members of political party, understanding that in more than half of the subjects of the Russian Federation a political party shall have its regional branches comprising not less than five hundred members of political party as is envisaged under Item 6 of Article 23 of this federal law. In the remaining regional branches, the membership of each such branch shall be not less than two hundred and fifty members of political party as is provided under Item 6 of Article 23 of this Federal Law;
- the governing and other bodies of a political party, its regional branches and other structural subdivisions shall be located on the territory of the Russian Federation.
[94] Article 41 Section 3 ot the Federal Law on Political Parties (2002)
[95] Chapter IX of the Federal Law on Political Parties (2002)
[96] Svetlana Tyulkina *Militant Democracy* (SJD Thesis). Central European University. 2011.p.151

The Russian Federation and the Federal Republic of Germany from a 'militant democracy perspective' are far from each other: latter is the archetype of the classic militancy, while Russia as a "transitional" democracy is still developing its democratic order. The Federal Constitutional Court of Germany has elaborated a wide domain which provides an effective shelter hand in hand with the German society and - at the same time - it preserves the "private" sphere of the parties. Contrary to that, the 2001 Russian Law on parties (and especially its 2004 amendment) has imposed severe restrictions and a detailed regulation on parties aming to determine every possible aspects of the operation. This approach suggests that central authority has no trust in the civil society and in autonomous public associations at all: it wants to cover all the potential loopholes.

2.3 General guideline? The case law of the European Court of Human Rights

In the following section I will introduce the case law of the European Court of Human Rights (ECtHR, Court or Strasbourg Court) in connection with militant democracy with a special focus on its 'classic appearance': the prosciption of political parties. In this section again I will stick to the 'original' meaning of militant democracy and present only those decisive cases where the ECtHR upheld or rejected the national authority's proscription. Examining the jurisdiction of the Council of Europe's judicial body is essential and indispensable if we want to understand properly the European scenery. The Court's supervisory power points out several problems existing within its members' national legislation and its judgment provides general guidelines and standards for the states to what extent can they interfere to parties' life and operation. To sum up, it shows the justifiable limits of militant democracy. In the course of its operation the ECtHR showed off its original interpretation and since the 1990's it has elaborated the minimal standards of the acceptable intrusion. The case of law of the Strasbourg Court also very useful because it collects all the implemented measures and methods from 47 states, so it serves as a collection of the possible European militant instruments.

The early case law of the Court dealt mainly with cases related to either the communist or the fascist ideology. The European Convention on Human Rights (Convention or ECHR) contains some provisons that are essential to recognize if we are examining militant democracy in a European context. Firstly, Article 17 was integrated to the Convention to prevent Europe from the repeated rise of fascism, the "drafters of Article 17[97] understood it as bulwark against a democracy's capacity to surrender to fascist rule."[98] Article 10[99] and Article 11[100] referring to the freedom of expression and freedom of assembly and association: these provisions are invoked in conjunction to protect the free sphere of the political debate and the freedom for persons and parties to freely participate in the public discourse. Although Article 17 was originally created to protect democracy, the Court does not use it often. The case when this particular provision of the Convention was used was the first case in the history of the Council of Europe when the Court dealt with party prohibition. The Commission upheld the prosciption of the Communist Party of Germany (KPD) which was banned under Article 21 Section 2 of the Basic Law. In its judgment the function of the Article was defined as "protecting the rights enshrined in the Convention by safeguarding the free functioning of democratic institutions (...)."[101] The Commission validated the

[97] Article 17 of the Convention:
Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and 14 15 freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.
[98] Patrick Macklem *Guarding the Perimeter: Militant Democracy and Religious Freedom in Europe*. 2010. p.6
[99] Article 10 of the Convention:
1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises. 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention
of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary
[100] Article 11 of the Convention:
1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State
[101] KPD v FRG. Decision of the Former European Commission of Human Rights (1957) Application number: 250/57.

judgment of the German Federal Constitutional Court - which was controversial from the beginning - and accepted party proscription as a justifiable safeguard to prevent democracies from the rise of totalitarian ideologies.

The major turn has come in the end of the 1990's mostly due to Turkish cases. The focus point has shifted from totalitarian challenges to new types of threats. As Patrick Macklem points out: "no doubt the rejuvenation of militant democracy is partly a response to the profoundly destabilizing potential of new forms of terrorism and religious fundamentalism."[102] The first case was the United Communist Party of Turkey[103] in 1998. The party's program sought the constitutional recognition of the Kurdish people and the promoted the peaceful coexistence of the Turkish and Kurdish people within the boundaries of Turkey. The Turkish Government identified the party as a threat and accused the party with several charges. The charges were: (1) the party promotes the domination of the proletariat over other classes of the society, (2) the party's name consists the word Communist, (3) the party's program undermines the territorial integrity of the state and (4) it is the successor of a previously dissolved political party, the Turkish Workers' Party. The Constitutional Court found that the mere fact that the party's name contains the word Communist is enough to ban the party[104], consequently it dissolved it under Article 69 Section 9 of the Turkish Constitution.[105] The ECtHR in its judgment examined the case and found that the prosciption violates Article 11 of the Convention. At first, the Court explicitly stated that Article 11 refers to parties which are "a form of association essential to the proper functioning of democracy."[106] Secondly, the State's action shall be compatible with the obligations under the Convention and thirdly, there is no difference between constitutional provisions and ordinary laws:

[102] Patrick Macklem *Guarding the Perimeter: Militant Democracy and Religious Freedom in Europe*.2010. p.5
[103] The United Communist Party of Turkey and Others v. Turkey (Application no: 133/1996/752/951) (1998)
[104] This is prohibited by Section 3 of Article 96 of the Law on Political Parties no. 2820
[105] Article 69 (9) of the Turkish Constitution:
A party which has been dissolved permanently cannot be founded under another name. Article 69 (10) establishes that "The members, including the founders of a political party whose acts or statements have caused the party to be dissolved permanently cannot be founders, members, directors or supervisors in any other party for a period of five years from the date of publication in the official gazette of the Constitutional Court's final decision and its justification for permanently dissolving the party.
[106] The United Communist Party of Turkey and Others v. Turkey (Application no: 133/1996/752/951) (1998) para.25

both of them fell under the Court's supervision.[107] Additionally, Article 10 and 11 must be considered jointly and - because there is "no democracy without pluralism" - Article 10 is also applicable to ideas "that offend, shock or disturb."[108] The Court added that these rights are not unlimited, the State definitely has the right to impose restrictions on freedom of expression and freedom of assembly, however these limitations must be necessary in maintaining the public order. As the Court claimed in Paragraph 46: "only convincing and compelling reasons can justify restrictions on such parties' freedom of association. In determining whether a necessity within the meaning of Article 11 § 2 exists, the Contracting States have only a limited margin of appreciation, which goes hand in hand with rigorous European supervision embracing both the law and the decisions applying it, including those given by independent courts."[109] In its final conclusion the Strasbourg Court found that parties' name in general is not enough to justify the prosciption and "there can be no justification for hindering a political group solely because it seeks to debate in public the situation of part of the State's population and to take part in the nation's political life in order to find, according to democratic rules, solutions capable of satisfying everyone concerned."[110] Consequently the Court found that the prosciption of the Turkish party violates Article 11: the ban was disproportionate and unnecessary.

Similarly, the Socialits Party of Turkey claimed that Kurdish people possessed the right of self-determination - including external self-determination - so the party's agenda was to establish a bilingual federation within the existing Turkish boundaries.[111] The party was dissolved by the Constitutional Court and - in the same year - the ECtHR during the appeal procedure found again the violation of Article 11. In its judgment the Court stated that "the fact that party's political program is considered incompatible with the current principles and structures of the Turkish State

[107] The United Communist Party of Turkey and Others v. Turkey (Application no: 133/1996/752/951) (1998) para.30 states: The political and institutional organisation of the member States must accordingly respect the rights and principles enshrined in the Convention. It matters little in this context whether the provisions in issue are constitutional (...) or merely legislative (...). From the moment that such provisions are the means by which the State concerned exercises its jurisdiction, they are subject to review under the Convention.
[108] Ibid., para.43
[109] Ibid., para.46
[110] Ibid., para.57
[111] Socialist Party and Others v. Turkey (Application no: 20/1997/804/1007) (1998)

does not make it incompatible with the rules of democracy."[112]At the end of 1990s the ECtHR reaffirmed its previous judgment in other similar cases[113] and reconfirmed its above mentioned finding from the Socialist Party case.[114] So far the Court has not find any of the parties's agenda incompatible with the Convention and the basic values of the democratic order: it claimed that the mere fact that these parties promote ideas that are not compatible with the current Turkish order is not enough to justify the prohibition.

However, the time has come when the ECtHR identified an agenda that violates the Convention: this was the landmark case of Refah Party v. Turkey.[115] This case is different from the previous ones: mainly the size and the support of the party makes it unique. In 1998 the Refah Party (founded in 1983) was one of the biggest parties in Turkey and it was a member of the governing coalition. Moreover, the Prime Minister, Necmettin Erkaban was a member of the Refah. Still the Constitutional Court - in the same year - found that the party is inconsistent with the principle of secularism[116] and according to the Law on Political Parties the party is a "centre" for activities contrary to the principle of secularism.[117] The Constitution underlines that "political parties are indispensable elements of democratic political life" and it states that parties can be banned in case of the statutes, programmes and activities conflicts with: (1) the independence of the state, (2) the territorial integrity, (3) human rights, (4) principle of equality and the rule of law, (5) sovereignty, (6) the principle of democratic and secular republic furthermore (7) they cannot establish dictatorship or (8) incite citizens to crime.[118] After its dissolution, the Refah turned to the ECtHR and asked for judicial review. The Court rejected the appelant's claim twice and found that the dissolution was compatible with the Convention. This is due to three major topics that the party

[112] Socialist Party and Others v. Turkey (Application no: 20/1997/804/1007) (1998) para.47
[113] See Freedom and Democracy Party (ÖZDEP) v. Turkey (Application no: 23885/94) (1999) and Yazar and others v. Turkey (Application nos: 22723/93, 22724/93, 22725/93) (2002)
[114] Socialist Party and Others v. Turkey (Application no: 20/1997/804/1007) (1998) para.47
[115] Refah Partisi (The Welfare Party) and Others v. Turkey (Application nos: 41340/98, 41342/98, 41343/98, 41344/98) (2001)
[116] Article 2 of the Constitution of the Republic of Turkey:
The Republic of Turkey is a democratic, secular and social state governed by the rule of law; bearing in mind the concepts of public peace, national solidarity and justice; respecting human rights; loyal to the nationalism of Atatürk, and based on the fundamental tenets set forth in the Preamble.
[117] Section 103 of Turkey's Law on Political Parties
[118] Section 68 of the Constitution of the Republic of Turkey

promoted in its program. First of all, Refah wanted to establish an unaccaptable form of legal pluralism: it proposed to divide the Turkish society into several subunits along the different types of religions and each person would be required to choose the order to which he or she would be subject. Refah argues that the system would be based on the principle of freedom of contract and it would not alter public law. The Court held that this system would be an unaccaptable form of legal pluralism because it violates the principle of rule of law and equality.[119] It is important to note that not every form of pluralism is incompatible with the Convention, but the "Refah's proposed agenda was unaccaptable because it did not guarantee individual choice or limit the lawmaking authority of the various religious orders, and failed to ensure the state's capacity to protect individual rights and freedoms.[120] The judgment highlights the "State's role as the guarantor of individual rights and freedoms and the impartial organiser of the practice of the various beliefs and religions in a democratic society" and it adds that any kind of different treatment of the citizens "in all fields of public and private law according to their religion or beliefs cannot be justified under the Convention, and more particularly Article 14 thereof, which prohibits discrimination."[121] Legal pluralism is acceptable if it complies with three conditions as Macklem summarized: first, the legal order must provide individuals with the freedom to choose whether to be bound by religious, ethnic or other cultural rules or by the public law on the same topic. Second, the scope of the lawmaking authority of the different orders must be limited and third, the plural legal order must respect the state's role as the guarantor of rights and freedoms.[122] The second main charge was that Refah proposed Jihad[123] as a possible mean to achieve its political goals. The Court directly linked Jihad to violence, thus it found "that a political party whose leaders incite to violence or put forward a policy which fails to respect democracy or which is aimed at the destruction of democracy and the

[119] Refah Partisi (The Welfare Party) and Others v. Turkey (Application nos: 41340/98, 41342/98, 41343/98, 41344/98) (2001) para.119. (quoting the Chamber Court, at para.70.)
[120] Patrick Macklem *Militant Democracy, Legal Pluralism, and the Paradox of Self-determination*. University of Toronto, Faculty of Law. Legal Studies Research Paper. No.05-03. p.31
[121] Refah Partisi (The Welfare Party) and Others v. Turkey (Application nos: 41340/98, 41342/98, 41343/98, 41344/98) (2001) para.119. (quoting the Chamber Court, at para.70.)
[122] Patrick Macklem *Militant Democracy, Legal Pluralism, and the Paradox of Self-determination*. University of Toronto, Faculty of Law. Legal Studies Research Paper. No.05-03. p.32
[123] Jihad has two main interpretations: it either means physical or spiritual struggle in Islam

flouting of the rights and freedoms recognised in a democracy cannot lay claim to the Convention's protection against penalties imposed on those grounds."[124] The third base that justified the ban was that Refah sought to introduce Sharia (religious law of Islam) as one potential legal order within the legal pluralism. The Court stated that Sharia is incompatible with the fundamental principles of democracy. Some scholars - including Patrick Macklem - argues that Sharia is a "complex body of law, rich in its scope and depth", so the Court took the path of least resistance and declared the whole legal system incompatible with the European norms without examining it properly. He argues that the Court has missed a great chance: "it could have begun a jurisprudential dialogue between European and Islamic legal orders", but "instead, the Court turned a blind eye to his opportunity by defining democracy - and sharia - at a level of abstraction that forecloses further jurisprudential debate on the topic."[125] Macklem notes that there are elements of Sharia "appear to present no challenge to norms underpinning the European Convention."[126] Although this argument sounds convincing and that is - at least - definitely true that ECtHR did not examine Sharia in its details, acccording to the previous finding from the United Communist Party case, the total exclusion of the Islam religious law is understandable. In the former judgment the Court claimed that the only political model which is compatible with the Convention is democracy.[127] According to this, the refusal of religious law seems justifiable because within a democratic regime the whole body of legal norms must be compatible with democracy not just particular elements. The mere fact that it might be possible to identify suitable norms in every legal system does not make these legal orders compatible with the notion of democracy.

Refah is obviously a landmark case in relation to political parties. The Strasbourg Court underlined some essential requirements and reaffirmed that States have the right to impose restrictions on parties but such limitations must be proportionate and necessary in a democratic

[124] Refah Partisi (The Welfare Party) and Others v. Turkey (Application nos: 41340/98, 41342/98, 41343/98, 41344/98) (2001) para.98
[125] Patrick Macklem Militant Democracy, Legal Pluralism, and the Paradox of Self-determination. University of Toronto, Faculty of Law. Legal Studies Research Paper. No.05-03. pp.35-36
[126] Ibid., p.35
[127] Refah Partisi (The Welfare Party) and Others v. Turkey (Application nos: 41340/98, 41342/98, 41343/98, 41344/98) (2001) para.123

society. It added that legal pluralism can be only acceptable (1) if it provides the freedom of choice for the citizens, (2) the lawmaking authority of each legal order is somehow limited and (3) the state retains its role as the safeguarder of human rights. The Court also made it clear that violence and the introduction of Sharia is not compatible with the Convention and justifies the immediate proscription of any party.

Conclusion

Militant democracy (defensive or fighting democracy) means a legal and political technique that states implement to safeguard the substance of the democratic order and the values of democracy. These pre-emptive, sometimes illiberal measures ensure the survival of the state when internal attacks and threats challenges the constitutional order. The classic notion of militant democracy - as Lowenstein introduced in 1937 - aimed to preserve the public order against international fascism. Germany as a response to the Nazi totalitarian regime has incorporated militancy into the German Grundgesetz to preclude antidemocratic parties from the public discourse. The "old-fashioned" understanding of militant democracy deals with political parties promoting totalitarian ideologies as we saw above in the early German cases.[128]

However, the term since the end of the twentieth century has shifted from its original meaning to an expanded interpretation. After September 11, terrorism has become the main enemy of Western societies. Although international terrorism is not an internal challenge, the question is the same: what are the justifiable measures that a state can implement to maintain its peaceful operation. As Nancy L. Rosenblum points out in her book, the emergence of religious and ethnic parties represents a new type of domestic challenge.[129] These parties often promote ideas that confront with secularism and the territorial integrity of the state.[130] In the Refah case the European Court of Human Rights stated that the dissolution of the Turkish party by the Constitutional Court

[128] See Socialist Reich Party and Communist Party of Germany cases from the 1950s
[129] Nancy L. Rosenblum *On the side of The Angels - An Appreciation of Parties and Partisanship* - Princeton University Press. 2008.
[130] See Refah Partisi (The Welfare Party) and Others v. Turkey case

was compatible with the Convention because the party - among other things - wanted to establish an unacceptable form of legal pluralism that obviously confronted the notion of secularism. It is important to note that though the Court referred to secularism as a potential ground of proscription, it did not claim that secularism is an indispensable element of liberal democracy.[131]

Jan-Werner Müller in his essay argues that "there exist no general legal or, for that matter, proper normative theory of militant democracy."[132] The lack of such theory is due to three reasons. Firstly, militant democracy has not only legal but political aspects as well: the actual implementation depends largely on the particular political actors (parties, state authorities, civil society) and therefore legal measures are necessary but clearly not sufficient elements of the whole story. Secondly, the actual scope of militancy reflects to the history of the given state: the past and present historical context confronts each state with different issues. A state that experienced totalitarianism might implement severe defensive mechanism to prevent the return of such threat, but it can also refrain from such measures claiming that illiberal instruments are incompatible with the new democratic order. Thirdly, as we saw above, militant democracy is definitely not a constant concept: the understanding of the term has changed since Lowenstein and definitely will change in the future: militant democracy always adapts to different circumstances. The case law of the ECtHR shows that there are identifiable elements of militant democracy that applies to every member state. As a general guideline - upon the request of the Court - the European Commission for Democracy Through Law (Venice Commission) in 1999 accepted basic standards in relation to the dissolution of political parties. The Commission stated that proscription can only be the "last resort" in resolving such cases.[133] It is true what Jan Werner Müller said about the lack of normative theory, but at the same time generally applicable measures from the case law of the Strasbourg Court can be derived. Militant democracy is still an indispensable concept of every constitutional order because there always will be internal enemies of every state.

[131] Jan-Werner Müller *Mlitant Democracy* in: Oxford Handbook of Comparative Constitutional Law (edited by Michel Rosenfeld and András Sajó). Oxford: Oxford University Press. 2012. p.1256
[132] Ibid., p.1254
[133] Guidelines on Prohibition and Dissolution of Political Parties and Analogous Measures. Adopted by the Venice Commission at its 41st plenary session (Venice, 10 – 11 December, 1999)

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