

Political party bans

SUMMARY

Political parties are foundational to liberal democracy, serving as intermediaries between public opinion and governance. All European Union (EU) Member States uphold the freedom of association, enabling citizens (and sometimes even EU mobile citizens) to engage politically through political parties. Many Member States enshrine fair political party competition as a cornerstone of democracy.

However, history, such as Hitler's rise in Weimar Germany, illustrates how extremists can exploit political parties to abuse power and subvert democracies. To address the concerns of democracies being undermined through democratic processes, scholars have suggested measures that would allow democracies to defend themselves. Among the most significant, and also the most controversial, is the possibility of banning a political party. Such an extreme decision aims to strike a balance between protecting party pluralism and democracy. The precise moment at which democracy should intervene to protect itself has long been a subject of debate and contention.

Nowadays, all EU Member States, at least theoretically, consider that banning a political party is a last resort measure against extremism, recognising its potential to safeguard liberal democracy. Notably, these bans can also affect EU democracy by influencing national electoral laws, which in turn affect European Parliament elections. National regulations on political parties can therefore have broader implications for EU-wide politics, highlighting the interconnectedness between Member States' legal orders and the EU's democratic framework.

This briefing examines the theoretical and legal foundations of party bans, their implementation in EU Member States, and international recommendations concerning this measure.



IN THIS BRIEFING

- Introduction
- Theoretical background
- Diverging approaches to political party bans
- International approaches to party bans
- How Member States address political party bans
- Current status of political party bans



Introduction

Political parties play an essential role in liberal democracy. Their fair competition signifies the existence of a pluralistic society where differing ideas vie for public support. In democracies, political parties serve as a bridge between voters' preferences and political decisions. All EU Member States acknowledge that freedom of association ensures that citizens (and sometimes even [EU mobile citizens](#)) can express and support ideas through political parties in the political arena. Many Member States have enshrined the concept of free competition among political parties during elections as a fundamental aspect of their understanding of liberal democracy. For example, Article 5 of the Constitution of Czechia stipulates that 'the political system is founded on the free and voluntary formation of and free competition among those political parties which respect the fundamental democratic principles and which renounce force as a means of promoting their interests'.

Despite the vital role that political parties play in a democratic society, historical experience has demonstrated that political parties can abuse political power forcefully, leading to the annihilation of democracy. The most prominent historical example in this regard is Hitler's rise to power through a democratic process that ultimately led to the collapse of the Weimar Republic.

To address these concerns for the well-being of democracy, numerous legal thinkers, philosophers, social scientists, and other academics have explored ideas that aim to restrain or even exclude political parties with illiberal tendencies from participating in free party competition. The underlying motivation for these restrictions on freedom of association has been to ensure the existence of a pluralistic party system and to protect other fundamental rights. One of the most pervasive measures against political extremism is the ban on political parties.¹

Although the banning of political parties remains within the national competencies of each Member State, such a measure can have a significant impact on EU democracy. The national regulations governing political parties and electoral systems influence the elections to the European Parliament, the composition of the European Council and the Council of the EU and, by extension, the entire concept of EU democracy. This briefing explores the national implications of party bans and their effects on EU politics.

Theoretical background

The philosophical underpinnings of the claim that a democratic system has the right to act with force against intolerant entities seeking to destroy democracy have been linked to the liberal thinker from the 19th century, John Stuart Mill. Many other famous philosophers, such as Karl Popper and John Rawls, have elaborated on these ideas and maintained that it is not sufficient to support only democracy in its 'thin' or procedural iteration.² They argue that a narrow understanding, in which democracy covers only majority rule, would not prevent radical political parties from abusing the powers they gain through democratic processes. Without legal restrictions, these parties could limit the political rights of their opponents and undermine political competition in subsequent electoral processes, allowing them to rule indefinitely. Therefore, democracy without appropriate safeguards could provide the legal tools for its own annihilation and establishment of tyranny.³

In the 1940s, constitutional scholar and political scientist Karl Loewenstein popularised the idea of limiting political party competition to preserve democracy. He argued that this approach could help combat the rising threats of Fascism and Nazism that were spreading around the globe. Loewenstein believed that democracies would be unable to defend themselves against such existential threats if they continued to rely heavily on an 'exaggerated formalism of the rule of law'.⁴ To address these critically dangerous situations, Loewenstein introduced the concept of '**militant democracy**', also known as 'defensive or fighting democracy', or a democracy capable of defending itself. This concept involved the adoption of special measures that would allow democracy to withstand populist and

extremist exploitation of democratic rights. According to Loewenstein, these measures could include restrictions on political rights, such as limits on freedom of speech, assembly, and association, as well as the possibility of revoking citizenship.⁵

The German Federal Constitutional Court, in the decisions on dissolutions of the Socialist Reich Party in 1952 and the German Communist Party in 1956, subscribed to the theoretical concept of militant democracy. It reasoned that the German Constitution as a 'basic decision' represented a substantive understanding of democracy with a set of values that had to be defended.⁶ However, this justification has not been universally accepted.⁷ Currently, all EU Member States allow, at least in theory, the dissolution of political parties. However, most of them do not formally recognise the concept of militant democracy in their legal systems.

Diverging approaches to political party bans

There have been many attempts to categorise political party bans. This last-resort measure is generally seen as a tool against extremist political parties generating a significant threat to democracy or public order. The traditional concept of 'militant democracy' focuses on threats to the entire democratic system. Simply advocating for violence or aiming to restrict the human rights of a specific group is not enough to warrant a party ban. Only when a political party poses a threat to the entire democratic order can a ban be justified. Consequently, this approach primarily targets the most radical political parties that seek to replace democracy with a dictatorial form of government. The '**Weimar-inspired**' party bans were implemented in the 1940s and 1950s against Communist, National Socialist and Fascist parties whose political programmes explicitly featured the goal of overthrowing democracy. Some central European Member States used similar justifications to dissolve their Communist parties after the fall of Communism. Outside the EU, this model has been applied in cases of religious extremism and fundamentalist movements.⁸

The 'Weimar' model of party ban can, in a relatively straightforward manner, identify an 'anti-democratic' political party as one that is **fully committed to reversing the system of liberal democracy**. However, political parties have found ways to bypass these drastic measures by avoiding specific wording in their manifestos, bylaws or public declarations. As a result, even the most radical parties have stopped explicitly declaring their aim to overthrow parliamentary democracy. Instead, they have focused on targeting specific aspects of the liberal democratic regime (such as equality for all, attitudes towards foreigners and migrants, etc.).⁹ Therefore, it has become questionable whether the 'Weimar' model is still a valuable instrument to check current political parties' anti-democratic tendencies.

Article 21 of the German Constitution is arguably the clearest example of a country that adheres to the idea of militant democracy. The Federal Constitutional Court's 'militant' interpretation of this concept has gradually evolved yet continues to incorporate certain principles from the militant democracy toolbox, such as restrictions on the rights of expression and freedom of association for political reasons.¹⁰ The underlying justification – that the party bans target political parties pursuing an anti-democratic agenda, creating a threat to the democratic system as a whole – still holds in Germany.

More recent justification for the ban on political parties has shifted focus to **their activities and declarations** rather than their goal of overthrowing democracy. This model allows for coercive measures, such as party bans against political parties that threaten the constitutive elements of liberal democracy. This approach is based on a more substantive model of democracy that encompasses not only democratic processes but also specific substantive values, such as a commitment to equality, non-discrimination, secularism and even territorial integrity. As a result, these fundamental values become entrenched and cannot be challenged through political means (i.e. they are unamendable).¹¹ However, this second model presents legitimacy challenges as judicial

decisions and, at times, law enforcement practices, rather than political processes, shape the content of these broad constitutional provisions.¹²

Most Member States have taken the latter approach. They have either not applied any party bans or have focused on constitutive elements of liberal democracy, such as sovereignty, territorial integrity or individual liberties. For example, the Constitutional Court of Spain explicitly declared that there is *no room for a model of militant democracy* in the Spanish constitutional system. It recognised that, while the Constitution protects fundamental rights and the rule of law, it does not grant the power to suppress political parties based solely on their ideology or aims if they pursue their goals through democratic means. The dissolution of a party must be justified by the protection of the most fundamental values. Moreover, such a measure must be ordered under strict procedural guarantees, observing the principle of proportionality and ensuring predictability.¹³

Past experience with authoritarianism has been considered one of the **main reasons for party bans**.¹⁴ In several Member States, political party bans have been implemented shortly (i.e. within 10 years) after the fall of their previous authoritarian systems.¹⁵ However, this traditional understanding of the historical connections between party bans and past authoritarianism has been challenged in recent studies.¹⁶

There are many other explanations rooted in current local political experiences (e.g. the current polarised political landscape, where extremist parties question the fundamentals of the political system). Among the most relevant are:

- Defence of certain aspects of the current political system
 - Defence of the state's identity (e.g. secularism)
 - Defence against terrorism
 - Defence against incitement of violence and hate
 - Defence against human rights violations and discrimination
- Defence of sovereignty and territorial integrity
- Defence against military or paramilitary associations
- Defence against foreign power interference

Any proposed party ban must be rigorously evaluated and balanced against undue limitations on the free competition of political parties and freedom of association. Some Member States have set an even higher bar before introducing party bans, as they cease consideration if the tested political parties do not have a chance to influence the changing of a political system.¹⁷ However, most Member States have not added such a criterion and historically focused mostly on minor political parties with radical leanings. In many Member States, bans on political parties have been possible through limitations on the constitutional provision of freedom of association. For many, the party ban has been only a theoretical possibility.¹⁸

Despite divergent national approaches to political party bans, common ground, or the lowest common denominator, exists for all Member States on international and supranational levels. These spheres are discussed in the following section.

International approaches to party bans

International Covenant on Civil and Political Rights (ICCPR)

The [ICCPR](#) has been one of the main pillars of the United Nations (UN) human rights system, serving as a model for many other more specific and detailed international covenants and treaties on civil and political rights.¹⁹ It establishes a universal set of minimum standards for human rights, with [174 states parties](#) currently, including all EU Member States. The UN Human Rights Committee (UN Committee) is the principal monitoring body for ICCPR rights.

Article 22 of the ICCPR – Freedom of Association

(1) Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

(2) No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.

Article 22(2) of the ICCPR addresses freedom of association, and the UN Committee has discussed the issue of restricting this freedom.²⁰ It has determined that the states parties to the covenant should refrain from criminalising public associations, including political parties, for their legitimate activities under broadly defined criminal law provisions that do not comply with the principle of legal certainty. States parties should also clearly outline the grounds for the suspension or dissolution of political parties.²¹ Associations, including political parties, should only be prohibited in extreme cases, such as when they promote and incite racial discrimination. The dissolution of a political party should be considered an *ultima ratio* measure, only used when less severe measures would be ineffective and when these associations threaten state or other rights guaranteed by the ICCPR.²²

Council of Europe

All EU Member States are also members of the Council of Europe. Consequently, the [European Convention on Human Rights](#) (ECHR) has provided a common framework for all EU Member States regarding freedom of association. This framework also addresses the potential banning of political parties.

Article 11 of the ECHR – Freedom of assembly and association

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.

European Court of Human Rights (ECtHR)

The ECtHR has elaborated on the scope of freedom of association under the ECHR, including its limitations, in its extensive case law. According to the ECtHR, political parties ensure pluralism and the proper functioning of democracy. Any measures taken against them affect both freedom of association and, consequently, democracy.²³ Therefore, any exceptions to this freedom must be construed strictly.

The ECtHR has established criteria for the bans on political parties that all Member States must adhere to. It has ruled that the dissolution of a political party would constitute a violation of Article 11 of the ECHR (Freedom of assembly and association) unless it withstands a three-step proportionality analysis. The ECtHR has used this method as a legal framework to evaluate whether a law, policy, or government action that restricts a right or freedom is justified and appropriate in relation to its intended objective.

First, the possibility of a party ban must be *prescribed by law*, meaning that the party ban must have a basis in domestic legislation. This legislation must be generally accessible and sufficiently precise to allow for the foreseeable application of its potential effects. Second, the party ban must have been pursued for one or more *legitimate aims*, such as being necessary in a democratic society in

the interests of national security, public safety, disorder or crime prevention, protection of health or morals, or the protection of the rights and freedoms of others. These exceptions to freedom of association must be narrowly interpreted, with their enumeration strictly exhaustive and their definition restrictive.²⁴ Third, banning a political party must be *necessary in a democratic society* for the achievement of declared legitimate aims. The party ban must correspond to a 'pressing social need' (i.e. the banned political party must be an existential threat to democracy²⁵) and be proportionate to the aim being pursued. Any potential party bans must be interpreted strictly, and only convincing and compelling reasons can justify such a restriction.

The ECtHR considers a ban on political parties to be a highly intrusive interference with the freedom of association, and it should only be implemented in the most serious cases.²⁶ Additionally, a political party's programme cannot be the sole criterion for determining its objectives and intentions. The programme must be compared with the actions of the party's leaders and the positions they have defended.²⁷

European Commission for Democracy Through Law (Venice Commission)

The [Venice Commission](#), the Council of Europe's advisory body on constitutional matters, has issued several guidelines, opinions and reports concerning political parties and their potential bans or dissolutions. It has underlined the importance of three basic principles relating to the prohibition or dissolution of political parties: '(1) the exceptional nature of prohibition or dissolution, (2) the proportionality of the dissolution or prohibition to the legitimate aim pursued and (3) the procedural guaranties: the procedure for prohibition or dissolution of political parties should guarantee the principles of fairness, due process and openness'.²⁸

The Venice Commission [report on the prohibition of political parties and analogous measures](#) (1999) aimed to establish a set of common principles for banning political parties, unifying the otherwise disparate approaches applied by the different member states. This report aligns with ECtHR case law and puts forward several recommendations. It reiterates that the prohibition or dissolution of a political party must be an exceptional measure in a democratic society. Such restrictions may be justified if a political party promotes violence or is clearly involved in terrorist or subversive activities. State authorities must also assess the level of threat to the democratic order and consider whether additional measures could effectively address the situation. Importantly, no political party should be held responsible for the behaviour of its members not authorised by the party. When evaluating the activities of a political party, it is vital to consider the overall context of the political situation. The report emphasises the role of the judiciary, claiming that a court should independently determine whether a political party poses a genuine threat to the constitutional order or the fundamental rights of citizens.

A more recent [compilation of Venice Commission opinions and reports concerning political parties](#) (2013) also addresses the issue of political party bans. It recommends that party bans should be utilised with the utmost restraint, taking into account the overall political context, and should only be considered after exploring less radical measures. The decision to ban or dissolve a party should come after judicial proceedings, preferably before the constitutional court or another suitable jurisdiction, to ensure a fair trial, due process and transparency. Political parties should have clear and sufficient procedural safeguards in place to allow for contestation of decisions regarding dissolution.

European Union

[Article 10](#) of the Treaty on European Union (TEU) stipulates that 'Political parties at European level contribute to forming European political awareness and to expressing the will of citizens of the Union'. Additionally, [Article 12](#) of the Charter of Fundamental Rights (charter), protecting the freedom of association, adds a subjective right dimension to Article 10 TEU.²⁹

Article 12 of the Charter of Fundamental Rights of the European Union – Freedom of Association

1. Everyone has the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade union and civic matters, which implies the right of everyone to form and to join trade unions for the protection of his or her interests.

2. Political parties at Union level contribute to expressing the political will of the citizens of the Union.

However, Article 10 TEU is primarily relevant to [EU political parties](#) operating at the EU level. Furthermore, the applicability of the charter's provisions is limited by its defined [scope of application](#). Consequently, national political parties and their regulation generally fall outside the scope of EU law. Their establishment, organisation and functioning are governed by the constitutional and legal frameworks of the individual Member State. EU law influences national political parties mostly in an indirect manner, for example, through the rights conferred by EU citizenship or through general obligations to uphold the EU's fundamental rights and values.

Nevertheless, the banning of a political party at national level also excludes it from participating in elections to the European Parliament. Indirectly, through a system of proportional representation, the [Electoral Act](#) presupposes the participation of national political parties. Similarly, national political parties have been indispensable in establishing the EU-level political parties. As a result, the proper functioning of democratic national political parties has become a matter of concern for EU law.

Finally, some academics have suggested that the EU itself, too, should take measures to defend its core values outlined in [Article 2](#) TEU. They propose that the EU might intervene in the competencies of individual Member States through the concept of militant democracy.³⁰ These authors argue that such measures could involve deregistration of European political parties.³¹ Others have pointed out that the EU judiciary has already utilised a 'militant conception' in its identity-building process. They contend that the Court of Justice of the EU, acting as an EU constitutional court, has fashioned an untouchable core of EU fundamental rights, which are opposable to interference from the EU Member States.³² Nevertheless, none of these 'militant' measures have addressed interference against national political parties, which remains outside the EU's competencies.

How Member States address political party bans

All Member States, in some form or another, recognise that political parties aiming to threaten democracy or its constitutive components can be entirely banned or partially restricted.

Legal frameworks for banning a political party

Some Member States explicitly mention the possibility of a political party ban at the constitutional level. Alternatively, their constitutional provisions contain principles that political parties must adhere to.

Arguably, **Germany** stands out as the most emblematic example of the constitutional entrenchment of the concept of 'militant democracy', shaped by deep philosophical foundations and the harrowing lessons of its history under the Nazi regime. Article 21 of the Basic Law stipulates that '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.'

Other Member States have formulated a variety of explicit constitutional restrictions that political parties cannot transgress. **Bulgaria's Constitution** stipulates, in Article 11(4): 'There shall be no political parties on ethnic, racial or religious lines, nor parties which seek the violent seizure of state power.' Furthermore, in Article 44(2), it provides: 'The organisation/s activity shall not be contrary to the country's sovereignty and national integrity, or the unity of the nation, nor shall it incite racial,

national, ethnic or religious enmity or an encroachment on the rights and freedoms of citizens; no organisation shall establish clandestine or paramilitary structures or shall seek to attain its aims through violence.' **Croatia's Constitution**, in Article 6, states: 'Political parties which by their programmes or violent activities aim to demolish the free democratic order endanger the existence of the Republic of Croatia are unconstitutional. The decision on unconstitutionality shall be made by the Constitutional Court of the Republic of Croatia.' **Estonia's Constitution**, in Article 48, provides: 'Organisations, unions, and political parties whose aims or activities are directed at changing the constitutional order of Estonia by force, or are otherwise in conflict with the law providing for criminal liability, are prohibited.' **Poland's Constitution**, in Article 13, states: 'Political parties and other organisations whose programmes are based upon totalitarian methods and the modes of activity of Nazism, Fascism and Communism, as well as those whose programmes or activities sanction racial or national hatred, the application of violence for the purpose of obtaining power or to influence the State policy, or provide for the secrecy of their own structure or membership, shall be forbidden.' **Romania's Constitution**, in Article 40, stipulates: 'Parties or organisations which by their objectives or activities militate against political pluralism, the principle of rule of law, or the sovereignty, integrity, or independence of Romania, are unconstitutional.'

Austria offers a specific constitutional entrenchment of a (historical) party ban in a separate federal constitutional statute ([Verbotsgesetz](#)), which outlawed the National Socialist Workers' Party (NSDAP) and its subsidiaries in 1945. Similarly, **Italy**, in the [XII Transitory and Final Provision](#) of its Constitution, specifies another historical party ban, stipulating: 'It shall be forbidden to reorganise, under any form whatsoever, the dissolved Fascist party.'

Another cluster of Member States have constitutional provisions describing the role that political parties are expected to play in shaping democratic governments. **Czechia's Constitution**, in Article 5, stipulates: 'The political system is founded on the free and voluntary formation of and free competition among those political parties which respect the fundamental democratic principles and which renounce force as a means of promoting their interests.' **France's Constitution**, in Article 4, proclaims: 'Political parties and groups shall contribute to the exercise of suffrage. They shall be formed and carry on their activities freely. They shall respect the principles of national sovereignty and democracy.' **Greece's Constitution**, in Article 29, declares: 'Greek citizens possessing the right to vote may freely found and join political parties, the organisation and activity of which must serve the free functioning of democratic government.' **Spain's Constitution**, in Article 6, specifies: 'Political parties are the expression of political pluralism, they contribute to the formation and expression of the will of the people and are an essential instrument for political participation. Their creation and the exercise of their activities are free in so far as they respect the Constitution and the law. Their internal structure and their functioning must be democratic.'

However, most Member States' constitutions do not contain explicit provisions specifying the role of political parties or the limits applicable to them. Instead, they typically address freedom of association, which is subject to constitutional limitations, often delegating further detail to statutory provisions. Sometimes, these constitutional provisions specifically state that freedom of association includes the right to form political parties. This is the case with the constitutions of **Cyprus, Denmark, Hungary, Ireland, Latvia, Lithuania, Portugal, Slovakia, Slovenia** and **Sweden**.

The constitutions of **Belgium, the Netherlands, Finland, Malta** and **Luxembourg** do not set out any explicit potential restrictions on freedom of association, leaving such matters entirely to ordinary legislation.

Legal processes and practice

From the constitutional frameworks relevant to potential bans of political parties in respective Member States, it is evident that the mentioned provisions do not create a clear list of situations or procedures that could lead to the dissolution of a political party.

However, the constitutional provisions, or lack thereof, are not an indicator of the severity of the approach of the Member State towards party bans. Justifications and procedures for party bans vary among Member States and are dependent on the national legal interpretation of state bodies, especially courts, that oversee the enforcement of these provisions. Often, only privileged entities (e.g. the government, the prosecutor general, or a specific number of MPs) can legally call for a ban on a political party.

Although some countries allow the executive branch to ban a political party, it is the independent judiciary that ultimately holds the power in making such critical decisions in all EU Member States. Judges, often from the highest courts, are responsible for either imposing or reviewing bans on political parties. This ensures that proper procedures are followed, including maintaining impartiality, conducting a public hearing, and making decisions based on solid evidence. Importantly, the impartial nature of this process prevents political parties from unilaterally undermining or destroying their political opponents.

For example, in **Germany**, the Bundestag, the Bundesrat or the Federal Government can file applications for banning a political party if they believe that the party seeks to undermine or abolish the free democratic order or endanger the existence of the Federal Republic of Germany. A two-thirds majority of the Justices in the Senate of the Federal Constitutional Court is required to consent to the party ban taking effect.³³ In **Slovakia**, the General Prosecutor is the sole authority authorised to file a motion with the Supreme Administrative Court for dissolving a political party. This petition must be justified on the grounds that the by-laws, programme or activities of the relevant political party violate the Constitution, constitutional laws, statutes or international treaties. If the Supreme Administrative Court decides on the dissolution of a political party, the Constitutional Court can still review the constitutionality of this decision.³⁴

In its 1998 report, the Venice Commission concluded that rules on party bans 'are not essential to the smooth functioning of democracy' and that these rules have seldom been invoked. Interestingly, despite their existing legal frameworks, many Member States have never banned a political party. Several Member States have no constitutional entrenchment of any limitations on freedom of association, yet they manage well without it. Various long-standing democracies have not had to apply such measures for several decades (e.g. Finland since the 1930s, Denmark since 1953, Germany since 1956).³⁵

Luxembourg has possibly had the most lenient approach towards the banning of political parties, without any specific anti-extremist party legislation. Its constitution does not impose any limitations on freedom of association. In **the Netherlands**, the general courts have been dealing with party bans in the same manner as with other activities of associations that are contrary to public order, i.e. the district courts decide on them at the request of the Public Prosecution Service.³⁶

At the other end of the spectrum, Spain and France have been the most active in the process of banning political parties. In **Spain**, the government or the Public Prosecutor can file a request to ban a party, typically at the request of either the Congress of Deputies or the Senate. The Special Chamber of the Supreme Court decides on such motions. The Constitutional Court of Spain may review the decision to dissolve the political party under certain circumstances.³⁷ In **France**, the dissolution of a political party is primarily an administrative process that occurs through a decree issued by the Council of Ministers. The President of the Republic initiates it with the approval of the Prime Minister and the Minister of the Interior. Such a decision can be contested before the Conseil d'État (the country's highest administrative court and advisory body), which is responsible for reviewing the legality of the dissolution. There is also a judicial dissolution option based on the 1901 law regarding freedom of association. However, this method has been rarely used.³⁸ As a result, the administrative limb, a relatively straightforward but politically costly procedure, has dominated the process of political party dissolution in France.

Consequently, there is no uniform model across the EU regarding political party bans. Instead, there is significant diversity in how each Member State approaches this issue. This variation can be attributed to different constitutional traditions, historical developments, societal expectations and the unique social and political conditions of each Member State.

Current status of political party bans

There have been various proposals on how to mitigate the effects of political extremism in public life. The ban on a political party is arguably the most radical and controversial measure, and some have questioned whether such measures of exclusion can truly safeguard democracy in today's world. Experience has shown that party ban proceedings, which often involve public court trials and debates on the reasons for the ban, often lead to increased publicity for many marginal political parties with obscure ideologies.³⁹

Additionally, the political parties that come under scrutiny often gain a 'martyr' status within the political system, enabling them to blame 'the establishment', i.e. the mainstream or ruling political parties, for attempting to exclude their rival ideas from democratic competition. Enhanced visibility allows these groups to effectively promote the 'us versus them' narrative that further strengthens societal divisions.⁴⁰

After the 1970s, many democracies began to shift away from the idea of banning political parties based on militant democracy. Instead, some countries adopted a more positive and comprehensive approach that focused on civic education, engagement, and addressing citizens' grievances.⁴¹

Marginalising or outright banning contemporary political parties that challenge the concept of liberal democracy in their political programmes may not be an effective solution to the current rise of populism.⁴² Instead, academics suggest a more tolerant approach, focusing on cooperative relationships with these political movements. This integration could potentially lead to political moderation, socialisation to democratic norms, or even result in incumbency costs that weaken voter support.⁴³ However, even with a tolerant approach, restrictive remedies should not be abandoned when dealing with political extremists.⁴⁴

ENDNOTES

- ¹ This briefing does not address the administrative dissolution of political parties that occurs when they fail to comply with statutory administrative requirements, such as those related to financing and annual reports.
- ² G. Bligh, 'Defending Democracy: A New Understanding of the Party-Banning Phenomenon', in *Vanderbilt Journal of Transnational Law*, 2013, pp. 1328-1329.
- ³ A. Bourne and F. Béroa, 'Mapping 'Militant Democracy': Variation in Party Ban Practices in European Democracies (1945-2015)', in *European Constitutional Law Review*, 2017, p. 225.
- ⁴ J. W. Müller, 'Militant Democracy', in M. Rosenfeld, A. Sájo (eds.), *The Oxford Handbook of Comparative Law*, Oxford University Press, 2012, p. 1256.
- ⁵ See K. Loewenstein, 'Militant Democracy and Fundamental Rights, II' in *American Political Science Review*, 1937, pp. 638-658.
- ⁶ J. W. Müller, 'Militant Democracy', in M. Rosenfeld, A. Sájo (eds.), *The Oxford Handbook of Comparative Law*, Oxford University Press, 2012, p. 1254.
- ⁷ For many, mostly English-speaking countries, the banning of a political party has been relatively unknown. In fact, these countries have never prohibited any goals, programmes, or objectives of political parties. The only limitation that exists is in the form of criminal legislation that restricts certain activities. Yet, for these acts, only the members of the political parties, not political parties themselves, are held criminally responsible. (G. Capoccia, 'Militant Democracy: The Institutional Bases of Democratic Self-Preservation', in *Annual Review of Law and Social Science*, 2013, 9, p. 210).
- ⁸ G. Bligh, 'Defending Democracy: A New Understanding of the Party-Banning Phenomenon', in *Vanderbilt Journal of Transnational Law*, 2013, pp. 1323-1326.
- ⁹ *ibid*, p. 1336.

- ¹⁰ G. Capoccia, 'Militant Democracy: The Institutional Bases of Democratic Self-Preservation', in *Annual Review of Law and Social Science*, 2013, 9, p. 213.
- ¹¹ S. Suteu, 'Eternity Clauses and Electoral Democracy', in T. Ginsburg, A. Huq and T. Khaitan (eds.), *The Entrenchment of Democracy. The Comparative Constitutional Design of Elections, Parties and Voting*, Cambridge University Press, 2024, p. 225.
- ¹² B. Bernatskyi, 'Why and when democracies ban political parties: a classification of democratic state orientations to party bans', in *Comparative European Politics*, 2024, p. 761.
- ¹³ Constitutional Court Judgement [STC 48/2003](#), of 14 March 2003, FJ 4.
- ¹⁴ A. Sájo (ed.), *Militant Democracy*, Eleven Int, 2014, p. 215.
- ¹⁵ E.g. Austria (1945), Belgium (twice in 1945), Croatia (1995), Estonia (1991), Germany (1952), Greece (1947), Latvia (1991), Lithuania (1991), the Netherlands (1945, 1955), Italy (1947).
- ¹⁶ A. Bourne and F. Béroa, 'Mapping 'Militant Democracy': Variation in Party Ban Practices in European Democracies (1945-2015)', in *European Constitutional Law Review*, 2017, p. 233.
- ¹⁷ See 'potentiality criterion' in the Judgment of the Second Senate of Federal Constitutional Court of 17 January 2017 ([2 BvB 1/13](#)).
- ¹⁸ J. W. Müller, 'Militant Democracy', in M. Rosenfeld, A. Sájo (eds.), *The Oxford Handbook of Comparative Law*, Oxford University Press, 2012, pp. 1263.
- ¹⁹ A Commentary on the International Covenant on Civil and Political Rights The UN Human Rights Committee's Monitoring of ICCPR Rights, p. xxvii.
- ²⁰ The committee has paid close attention to this restrictive provision in the Concluding Observations, expressing concern about the broad restrictions on a wide variety of associations, including political parties (e.g. Uzbekistan CCPR/C/UZB/CO/3 (2010) 25; Kazakhstan CCPR/C/KAZ/CO/1 (2011) 27; Swaziland CCPR/C/SWZ/CO/1 (2017) 52; Belarus CCPR/C/BLR/CO/5 (2018) 54).
- ²¹ Kazakhstan [CCPR/C/KAZ/CO/2 \(2016\)](#) § 53 and 54.
- ²² 'Article 22: Freedom of Association', in P. Taylor, *A Commentary on the International Covenant on Civil and Political Rights. The UN Human Rights Committee's Monitoring of ICCPR Rights*, Cambridge University Press, 2020, pp. 621-622.
- ²³ *Republican Party of Russia v Russia*, application [No 12976/07](#), 12 April 2011, § 78.
- ²⁴ *Sidiropoulos and Others v Greece*, application [No 26695/95](#), 10 July 1998, § 38.
- ²⁵ *Socialist Party and Others v Turkey*, application No [21237/93](#), 25 May 1998, § 104-106.
- ²⁶ *Herri Batasuna and Batasuna v Spain*, applications [Nos 25803/04 and 25817/04](#), 30 June 2009, § 78
- ²⁷ *Refah Partisi (the Welfare Party) and Others v Turkey*, applications [Nos 41340/98, 41342/98, 41343/98 and 41344/98](#), 13 February 2003, § 101, 104.
- ²⁸ Compilation of Venice Commission opinions and reports concerning political parties (2013), p. 37.
- ²⁹ Commentary to Article 40, in M. Kellerbauer, M. Klamert, and J. Tomkin, *The EU Treaties and Charter of Fundamental Rights: A Commentary*, Vol. 1, pp. 1271-1272.
- ³⁰ E.g. J. Muller, 'The EU as a Militant Democracy, or: Are there Limits to Constitutional Mutations within EU Member States?' in *Revista de Estudios Políticos*, 2014, pp. 141-162.
- ³¹ T. Theuns, 'Is the European Union a militant democracy? Democratic backsliding and EU disintegration', in *Global Constitutionalism*, 2024, pp. 113-114.
- ³² G. Martinico and A. Russo, 'Is the European Union a Militant Democracy? The Perspective of the Court of Justice in *Zambrano and Kadi*', in *European Public Law*, 2015, p. 676.
- ³³ Proceedings for the prohibition of a political party are governed by Article 21(2) of the [Basic Law](#) and §§ 43 ff. of the [Federal Constitutional Court Act](#).
- ³⁴ Articles 142(2) and 129(4) of the [Constitution of the Slovak Republic](#).
- ³⁵ Compilation of Venice Commission Opinions and Reports Concerning political parties (2013), p. 39.
- ³⁶ Article 2:20 of the Dutch [Civil Code](#).
- ³⁷ Article 11(7) of the [Organic Law 6/2002](#) of 27 June of Political Parties.
- ³⁸ A. Berthout, '[Between Legal Deficiencies and Political Restraint: The Prohibition of Political Parties in France](#)', in *VerfBlog*, 2024/4/02.
- ³⁹ A. Bourne, '[Party Bans and Populism in Europe](#)', in: *VerfBlog*, 2024/3/27.
- ⁴⁰ A. Bourne and T. Olsen, 'Tolerant and intolerant responses to populist parties: who does what, when and why?', in Special issue *Comparative European Politics*, 2023, pp. 725-741.

- ⁴¹ J. W. Müller, 'Militant Democracy', in M. Rosenfeld, A. Sájo (eds.), *The Oxford Handbook of Comparative Law*, Oxford University Press, 2012, p. 1262.
- ⁴² A. Malkopoulou and B. Moffitt, 'How Not to Respond to Populism', in the special issue of *Comparative European Politics*, 2023, pp. 848-865.
- ⁴³ A. Bourne and T. Olsen, 'Tolerant and intolerant responses to populist parties: who does what, when and why?', in Special issue of *Comparative European Politics*, 2023, pp. 732-734.
- ⁴⁴ A. Malkopoulou and B. Moffitt, 'How Not to Respond to Populism', in Special issue of *Comparative European Politics*, 2023, pp. 857-860.

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