

**VIOLATIONS OF THE RELIGIOUS FREEDOMS IN THE
EUROPEAN UNION MEMBER STATES IN 2015-2019: SELF-
DEFENCE UNDER A NEO-MILITANT DEMOCRACY RULE?¹**

Abstract:	<p><i>In 2015, a serious crisis called the “refugee crisis” took place. Migrations had already taken place before, primarily in connection with armed conflicts, but the largest number of asylum applications was received in 2015 and was therefore described as the beginning of the crisis. One of the apprehensions in the European Union Member States about the reception of migrants was cultural differences and religion. The purpose of this study is to determine violations of various types of religious freedoms in all the EU Member States. The period 2015-2019 was considered in connection with the largest influx of refugees and before the next crisis on a huge scale, i.e., the coronavirus pandemic.</i></p> <p><i>The study will provide an answer to the question: what religious freedoms were violated in the years 2015-2019 in the EU Member States? In connection with increased migrations, were there more violations of the types of religious freedom related to refugees? The source analysis of the United States Department of State reports was used for the study. An assessment of restrictions on religious freedom will be made at the level of what extent and against whom were supposed to protect political nations. On this basis, it will be possible to compare all countries in terms of solutions characteristic of neo-militant democracies regarding respect for religious freedom.</i></p>
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Introduction

In 2015, one of the most serious crises took place in Europe, which was related to the mass influx of refugees from war-torn areas. Although in practice the first refugees arrived in the previous year, it was in 2015 that the largest number of asylum applications were submitted, and the Member States of the European Union (EU) began to feel the consequences of this situation on an increasing scale. For this reason, this phenomenon has been called the refugee crisis¹. As a result of the increased influx of people to Europe's borders, questions began to arise about the status of respect for human rights, as many people drowned on their way to land, and others became victims of smugglers and human traffickers. Moreover, the media used stereotypical narratives about security threats, economics, and victimization on a large scale². In the countries of destination, there was a fear of a potential terrorist threat, above all acts of violence by jihadists. In addition to the many concerns about providing shelter, and food and determining the number of refugees and the possibilities of states, there have also been arguments related to the origin of the incoming people. This was due to the fact that most of them came from a different cultural background than Europe³. Religion is one of the elements of culture and religious freedom is one of the fundamental values of democratic and European countries. Respect for it is often regulated in the constitutions of individual states.

Religious freedom covers a wide spectrum of rights and possible actions, and violations. On the 25th anniversary of the adoption of resolution 1986/20 of the Commission on Human Rights, the Special Rapporteur on freedom of religion or belief prepared a document in which the freedom of religion or belief is clearly and precisely defined. The document distinguishes three main categories such as

- (1) Freedom to adopt, change or renounce a religion or belief;
- (2) Freedom from coercion;
- (3) The right to manifest one's religion or belief.

Within the last category, the following freedoms have been distinguished: freedom to worship; places of worship; religious symbols; observance of holidays and days of rest; appointing clergy; teaching and disseminating materials

¹ Pew Research Center, *Number of Refugees to Europe Surges to Record 1.3 million in 2015*, <https://www.pewresearch.org/global/2016/08/02/number-of-refugees-to-europe-surges-to-record-1-3-million-in-2015/>, (20.08.2022)

² Esthet Greussing, Hajo G. Boomgaarden, *Shifting the refugee narrative? An automated frame analysis of Europe's 2015 refugee crisis*, in "Journal of Ethnic and Migration Studies", Vol. 43, No. 11, pp. 1749–1774

³ Mette Buchardt, *The „Culture” of Migrant Pupils: A Nation- and Welfare- State Historical Perspective on the European Refugee Crisis*, in "European Education", Vol. 50, No. 1, pp. 58–73

(including missionary activity); the right of parents to ensure the religious and moral education of their children; registration; communicate with individuals and communities on religious matters at the national and international level; establish and maintain charitable and humanitarian institutions/solicit and receive funding; and conscientious objection¹.

Further, there is discrimination based on religion or belief/inter-religious discrimination/tolerance, state religion, categories vulnerable groups and intersection of freedom of religion or belief with other human rights². However, for the study proposed in the article, three main categories will be crucial. Respect for religious freedom may also depend to a large extent on the adopted official religion policy in a given country. Jonathan Fox distinguishes two types, within the first, i.e., the state with official religions, which are the religious state; state-controlled religion, positive attitude; active state of religion. Within the second type, i.e., a state without an official religion, Fox distinguishes: preferred religion; multi-level preferences – one religion; multi-level preferences - many religions; cooperation; supportive; accommodation; separatist; non-specific hostility; state-controlled religion; specific hostility. Most Member States of the European Union can be classified as multi-level preferences-one religion or multi-level preferences-multiple religions³. This may be due to efforts to promote political pluralism, the viewing world.

The study aims to provide an answer to the question: what religious freedoms were violated in years 2015-2019 in the EU Member States? In connection with increased migrations, were there more violations of the types of religious freedom related to refugees? The source analysis of the United States Department of State reports was used for the study. An assessment of restrictions on religious freedom will be made at the level of what extent and against whom were supposed to protect political nations. On this basis, it will be possible to compare all countries in terms of solutions characteristic of neo-militant democracies regarding respect for religious freedom.

The article adopts the following structure: presentation and explanation of the theoretical category used in the study and the methodological assumptions adopted to answer the research questions posed; presentation of the results of the analysis carried out and their discussion and clarifications.

¹ *Rapporteur's Digest on Freedom of Religion or Belief. Excerpts of the Reports from 1986 to 2011 by the Special Rapporteur on Freedom of Religion or Belief Arranged by Topics of the Framework for Communications*, <https://www.ohchr.org/Documents/Issues/Religion/RapporteursDigestFreedomReligionBelief.pdf>, (20.08.2022)

² *Rapporteur's Digest on Freedom of Religion or Belief*, <https://www.ohchr.org/sites/default/files/RapporteursDigestFreedomReligionBelief.pdf>, (11.11.2022)

³ Jonathan Fox, *An Introduction to religion and politics. Theory and Practice*, Routledge, London, New York, 2018, pp. 130–135

Theoretical background and methodological remarks

Karl Loewenstein first applied the category of militant democracy to the Weimar Republic, seeking an explanation of the reasons for its failure to fight Nazism. Militant democracy is a type of political system in which parliament and the judiciary are equipped with legal means to restrict individual democratic freedoms to defend democracy, and thus its survival, against those who are considered its internal but also external enemies¹.

Contemporary researchers noted that after the financial crisis of 2008, the multitude of restrictions on the rights and freedoms of citizens may indicate an acceleration of the process of militant democracy. However, due to other social and political conditions, nowadays the categories of neo-² or quasi-militant democracy³ should be applied to delve analytically into the details of modern militant democracies. In quasi-militant democracies, the ruling progressively implement elements of an authoritarian regime to the political structure and create appearances of action in accordance with existing legal means⁴. Governments use democratic tools to self-destruct the democratic regime. In the case of the analyzed period, it will be more appropriate to use the category of neo-militant democracy, since the potential enemy from which the political nation should be protected are refugees whose rights are protected under the international law. This category covers the restrictions of fundamental rights to protect the sovereignty of the political nations.

The restrictions specific to neo-militant democracy are: restrictions on press freedom⁵, religious freedom⁶, assemblies⁷, speech⁸, association⁹, active voting

¹ Roman Bäcker, Joanna Rak, *Trajektora trwania opancerzonych demokracji*, in "Studia nad Autorytaryzmem i Totalitaryzmem", Vol. 41, No. 3, 2019, pp. 63–82

² Joanna Rak, *Conceptualizing the Theoretical Category of Neo-militant Democracy: The Case of Hungary*, in "Polish Political Science Yearbook", Vol. 49, No. 2, 2020, pp. 61–70

³ Joanna Rak, Roman Bäcker, *Neo-militant Democracies in Post-communist Member States of the European Union*, Routledge, London, New York, 2022

⁴ Kamila Rezmer-Plotka, *Contentious Politics in Defense of Neo-Militant Democracy in Poland: The Rationale Behind Fighting a Quasi-Militant Democracy*, in "HAPSc Policy Briefs Series", Vol. 2, No. 1, 2021, pp. 24–29

⁵ Giovanni Capoccia, *Defending Democracy Reactions to Extremism in Interwar Europe*, Baltimore, London, 2005, pp. 57–61

⁶ Jan-Werner Müller, *Militant Democracy*, in Rosenfeld, Michel; Sajó, Andras (Eds.), *The Oxford Handbook of Comparative Constitutional Law*, Oxford University Press, New York, 2012, p. 1119

⁷ Miroslav Mareš, *Czech Militant Democracy in Action: Dissolution of the Workers' Party and the Wider Context of This Act*, in "East European Politics and Societies", Vol. 33, No. 26, 2012, p. 34

⁸ Ivars Ijabs, *After the Referendum: Militant Democracy and Nation-Building in Latvia*, in "East European Politics and Societies and Cultures", Vol. 2, No. 30, 2016, p. 289; Miroslav Mareš, *Op. cit.*, p. 36

⁹ Miroslav Mareš, *Op. cit.*, p. 36

rights¹ and passive², related to the organization of referendums³, regulations related to terrorism and counteracting this phenomenon⁴, restrictions in the registration and activities of political parties⁵, in the acquisition of citizenship⁶, in access to public employment⁷, anti-extremism⁸, freedom of movement⁹, as well as judicial independence¹⁰.

Other crises that emerged in Europe, the so-called refugee crisis and the coronavirus pandemic, also confirm the acceleration of the process of militant democracy. Citizens' rights and freedoms are being restricted on a larger scale than before.

The article focuses on the refugee crisis and respect for religious freedom due to the influx of huge numbers of people in need of help from another cultural background. It determines violations of various types of religious freedoms in all UE Member States. The period 2015-2019 was considered in connection with the largest influx of refugees and before the next crisis on a huge scale, i.e., the coronavirus pandemic.

The study will provide an answer to the question: what religious freedoms were violated in 2015 in the EU Member States? In connection with increased migrations, were there more violations of the types of religious freedom related to refugees? The source analysis of the United States Department of State reports¹¹ was used for the study. All available reports relating to the Member States of the European Union in the selected period were used. The reports focused mainly on the government practices section, which will allow you to check the level of what extent, and against which were supposed religious freedom restrictions to protect political nations. In order to better illustrate the data obtained during the analysis of the reports, coding was used by using ISO 3166 symbols to designate the Member States of the European Union, i.e., Austria (AT), Belgium (BE), Bulgaria (BG), Croatia (HR), Cyprus (CE), Czech Republic (CZ), Denmark (DK), Estonia (EE),

¹ Ivars Ijabs, *Op. cit.*, p. 289

² *Idem*

³ Ivars Ijabs, *Op. cit.*, p. 288

⁴ Patrick Macklem, *Militant Democracy, Legal Pluralism, and the Paradox of Self-determination*, in "International Journal of Constitutional Law", Vol. 3, No. 4, 2006, pp. 488-489

⁵ Miroslav Mareš, *Op. cit.*, p. 36.

⁶ Ivars Ijabs, *Op. cit.*, p. 289.

⁷ Miroslav Mareš, *Op. cit.*, p. 36.

⁸ Giovanni Capoccia, *Op. cit.*, pp. 57–61; Andras Sajó, *From Militant Democracy to the Preventive State*, in "Cardozo Law", Vol. 5, No. 27, 2005, p. 2280

⁹ Andras Sajó, *Op. cit.*, p. 2280.

¹⁰ Alexander Kirshner, *A Theory of Militant Democracy: The Ethics of Combatting Political Extremism*, Yale University Press, New Haven, London, 2014, p. 21

¹¹ U.S. Department of State, <https://www.state.gov/bureaus-offices/under-secretary-for-civilian-security-democracy-and-human-rights/office-of-international-religious-freedom/>, (25.08.2022).

Finland (FI), France (FR), Greece (GR), Spain (ES), Ireland (IE), Lithuania (LT), Luxemburg (LU), Latvia (LV), Malta (MT), Netherlands (NL), Germany (DE), Poland (PL), Portugal (PT), Romania (RO), Slovakia (SK), Slovenia (SI), Sweden (SE), Hungary (HU), Italy (IT), Great Britain (GB).

For restrictions on religious freedom, the following designations were adopted: Freedom to adopt, change or renounce a religion or belief (R1); Freedom from coercion (R2); The right to manifest one's religion or belief: freedom to worship (R3a); Places of worship (R3b); Observance of holidays and days of rest (R3c); Appointing clergy (R3d); Teaching and disseminating materials (including missionary activity) (R3e); The right of parents to ensure the religious and moral education of their children (R3f); Registration (R3g); Communicate with individuals and communities on religious matters at the national and international level (R3h); Establish and maintain charitable and humanitarian institutions/ solicit and receive funding (R3i); Conscientious objection (R3j); religious symbols (R3k).

An assessment of restrictions on religious freedom will be made at the level of what extent and against which were supposed to protect political nations. On this basis, it will be possible to compare all countries in terms of solutions characteristic of neo-militant democracies in terms of respect for religious freedom.

Restrictions on religious freedom in the Member States of the European Union in the years 2015-2019

An analysis of the 2015-2019 period showed that restrictions on religious freedom in Europe covered virtually the same areas in all countries. In addition to incidental examples of other restrictions, the violations mainly related to the issue of financing churches. The countries that finance the Churches are Greece, Belgium, Luxembourg, Malta, Slovakia, Croatia, and the Czech Republic. In some countries, churches operate on the basis of mandatory taxes, specifically in Germany, Austria, Denmark, Finland, Switzerland, and Sweden. In Italy, Spain, Portugal, and Hungary, the Churches are supported by voluntary taxes. The countries in which the Churches maintain themselves practically independently, with little financial support from the state, are France, Poland, and Lithuania¹.

Typically, religions considered to state, registered, or for various reasons occupying important positions in the state, received more funding. Often, government funds were directed primarily to the Catholic Church, e.g., for its pastoral activities in prisons based on existing laws on the mutual relations between the government and the church. It happened that other religious associations may not receive funds or financing from external sources has been

¹ Pew Research Center, *In Western European Countries with Church Taxes, Support for the Tradition Remains Strong*, <https://www.pewresearch.org/religion/2019/04/30/in-western-european-countries-with-church-taxes-support-for-the-tradition-remains-strong/>, (23.08.2022); *Kto finansuje Kościół w krajach Unii Europejskiej*, <https://www.ekai.pl/kto-finansuje-kosciol-w-krajach-unii-europejskiej/>, (25.08.2022)

prohibited. For example, bans on financing mosques from abroad were introduced in order to limit the potential threat from radical circles, or residence permits for foreign imams financed from foreign sources were denied. These solutions were the result of, among others, terrorist attacks that took place in Europe and also involved carrying out information campaigns on jihadism and the consequences of proclaiming radical views and the abuse of religion for political purposes.

However, it happened that, as in Belgium, solutions were adopted to finance Buddhism to facilitate the building of the institutional capacity. The adopted method of financing and violating religious freedom in this area can be a significant tool of neo-militant democracy in the hands of the rulers. First, it allows the ruling to control the activity of churches and religious associations. Financing only a particular community or group of communities, or increasing resources for them, allows us to emphasize its primacy over others. In this way, churches that do not receive help or a small part of the funds are treated as less important, can be marginalized, and do not have the approval of the government. Thereby, it is possible to diminish their rank.

In addition, in the case of bans related to external financing, these churches may be treated as an enemy of the political nation, because it is assumed that receiving such support will serve harmful purposes, e.g., undermining the democratic order, will pose a threat to the security of the state and its citizens. Further restrictions often linked to funding, which have appeared regularly in all EU Member States, are the issue of registration, which is often associated with privileges for registered religious associations and their absence for others. There has also been litigation over lengthy registration procedures. Also, the inability to register and lengthy procedures lead to the non-recognition of the church or community by the government, often depriving them of many of the benefits provided by these institutions.

Among the most common violations of religious freedom, there is also a broadly understood freedom to manifest one's beliefs, i.e., through religious symbols. In many countries, there are prohibitions related to covering the head or face in public places, specific workplaces, and schools. In Austria, for example, there is an exception for photographs in documents, where partial obscuration is allowed if it results from religious views. Ritual slaughter was also interfered with, by prohibiting it or, as in Finland, the practice of circumcision was discouraged outside of medically justified cases. In this way, material things, or rather the content they carry, become a threat to the political nation. It is the transfer of the threat to the symbolic dimension. The removal of symbols from the public space and adaptation in terms of clothing allows the government to incorporate followers of other religions into a given community, a political nation on its own terms, their separateness is rejected. This may lead to actions for assimilation, but also to emphasizing the applicable rules and imposing on them strangers due to their origin or religion.

Other regular restrictions applied to places of worship. In this case, it was both about new places of worship and procedures related to them, as well as

restrictions on existing temples, cemeteries, or interference of security services in rituals, during which radical views were proclaimed. Lengthy procedures for putting objects into use, closing them, controlling them, or limiting their number are a way to interfere with where, how, and on what terms religious gatherings can take place. However, places of worship are also cemeteries that are created or exist and the regulations associated with them.

The right of parents to the religious education of their children or its refusal was also violated. In Greece, for example, there has been pressure from various organizations to respect the possibility of exemption from religion without the need to provide further explanations regarding the reasons or to declare one's religion, and to point out that the courts do not always enforce the right to take an alternative, secular oath. In France, the action was taken to promote secularism and the government adopted a policy change at the beginning of the school year back in 2013 before the refugee crisis (it now happens that the granting of state subsidies to non-governmental organizations depends on signing the charter of secularism and republican values), whereby parents were asked to sign a charter for secularism. Interfering with worldview and religious issues during school education creates the opportunity to create attitudes of citizens and their tolerance for other challenges. It is also an opportunity to create an enemy people of a different religion, coming from other cultural circles.

From the incidental violations, one can point to those concerning the respect of holidays. The European Court of Justice has delivered a judgment in relation to Austria in which it found that granting paid leave on religious holidays to workers belonging to certain religious groups constitutes religious discrimination¹. In the case of discrimination against people professing a religion other than the current one or several binding ones, it becomes possible to further marginalize the followers of other religions and strengthen the position of the religions preferred by the government.

In addition to the main restrictions indicated, there were protests against the admission of refugees in 2015 and controversial statements by key politicians. Furthermore, over the analyzed period, there were numerous examples of discrimination based on religion. In Romania, which is an extreme example, in public speeches, some politicians and the media identified Romanian Orthodoxy with national identity, suggesting a lack of patriotism for followers of other religions. Often, in the Member States of the European Union, religions and churches that do not have a state status or a significant place within the state in political and public discourse are treated as inferior. Belonging to a given church can be used as a tool of division within one political nation. In this case, however, research should be undertaken in relation to quasi-militant democracy, because the

¹ *Case C-193/17, Cresco Investigation GmbH v Markus Achatzi*, <https://www.europeansources.info/record/case-c-193-17-cresco-investigation-gmbh-v-markus-achatzi/>, (22.08.2022)

internal enemy is the citizens of the state, i.e., religious minorities that are part of the political nation.

Conclusions

Based on the study, it cannot be concluded that after the refugee crisis there were violations of religious freedom on a larger scale than in the previous period. This may also be since, of all the Member States of the European Union, Italy and Greece were the most affected by the crisis. Although Greece became the main target for 85 percent of all migrants and refugees, far fewer people used the “Italian route”¹. The source analysis of the reports focused primarily on the part devoted to Greece, as this country was most affected by the crisis related to the reception of the incoming population from different regions of the world, as evidenced by the launch of EU aid for Greece and Italy as the frontline countries. The study used the category of militant democracy, which allows for the theoretical validation of the research and explanation of the activity undertaken by this state in relation to refugees.

Apart from controversial statements by politicians, protests of citizens, or incidental violations and attacks, the religious freedom of refugees would not be noticed. There have been regular violations that have already taken place before. Violations related to the right to manifest one’s religion and beliefs, places of worship, issues related to the registration of churches and religious associations and funding, and restrictions on religious symbols are the most common in EU Member States. Official religion policy was also of no particular importance for the restrictions on religious freedom, regardless of the analyzed state, there were similar problems and difficulties related to respecting religious freedom.

Regarding the highlighted restrictions, which appeared regularly and most often during the prescribed period, there are several ways to protect the political nations by the governments. Most of all, these are actions aimed at marginalizing a specific group, church, or community, emphasizing the primacy of those recognized by the government, pointing to possible threats, lack of approval for symbols in public space, control, and creation of attitudes of citizens. This means that religion and the church can be treated instrumentally by the government. Specifically used as a tool of neo-militant democracy to discipline citizens and limit their rights and freedoms.

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